# Mapping report on the rules applicable to video-sharing platforms

## Focus on commercial communications

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# Mapping report on the rules applicable to video-sharing platforms – Focus on commercial communications

**European Audiovisual Observatory**

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# Foreword

Our 2021 mapping report on the rules applicable to video-sharing platforms (VSPs)[1] drew a parallel with the situation encountered by lawmakers in the early 20th century, who needed to come up with new rules to regulate traffic following the invention of the first production automobiles and their rapid proliferation, and the subsequent rise in the number of accidents. Just like automobiles, VSPs took a few years to graduate from recent technological development into a rapidly growing industry and the universal phenomenon that occupies so much of our lives today.

With the more prevalent place of VSPs in society came the realization that they cause unwanted side effects and pose risks to individuals and society as a whole, and that there was an ever more pressing need to adapt the legal framework to accommodate them.

This is where the analogy with automobiles reaches its limit: While it is unlikely that the rise of VSPs will cause traffic jams, overzealous honking and twisted steel, they are bringing about different yet very real risks for all of their users. Our 2021 mapping report focused specifically on the risks associated with the exposure of minors to content not suitable for them, while the current mapping report focuses on the risks posed by audiovisual commercial communications on the platforms.

The initial Audiovisual Media Services Directive 2010/13/EU[2] (AVMSD), adopted in 2010, did not include VSPs in its regulatory scope because they did not then occupy such a prominent place in our lives. Coupled with their overwhelming expansion came the potential for advertisers to use them to reach a wider public, and substantially increase their revenues. The enlarged scope of the 2018 revision of the AVMSD[3] subjected VSPs to a degree of regulation.

This mapping report, requested by the European Commission, tracks the measures in place to regulate the use of audiovisual commercial communications, and offers an overview of the most significant self- and co-regulatory initiatives in the field. The report includes a pan-European comparative analysis and detailed country profiles. It reflects the state of play of October 2022. The report therefore considers both existing rules and practices and newly introduced legislation.

Such a complex and scattered legal snapshot could not have been elaborated without the invaluable contribution of our national experts, who helped us gather information, of our coordinating experts Jean-François Furnémont and Asja Rokša-Zubčević, who helped us structure and analyse the legal framework, and of the media regulators across the European member states, who assisted us in checking the correctness of the information. I would like to thank them all.

---

[1] https://rm.coe.int/mapping-report-on-national-remedies-against-online-piracy-of-sports-co/1680a4e54c.

[2] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF.

[3] https://eur-lex.europa.eu/eli/dir/2018/1808/oj.

Have a pleasant read.

Strasbourg, December 2022

**Maja Cappello**
Head of the Department for Legal Information
European Audiovisual Observatory

# Acknowledgements

The data used in the report was provided by a pan-European team of national experts and has been cross-checked with the national regulatory authority in each respective territory covered.

The report and the national factsheets were drafted by the international experts Ms. Asja Rokša-Zubčević and Mr. Jean-François Furnémont of Wagner-Hatfield.

**Pool of national experts for the collection of data**

| | |
|---|---|
| AT | The Austrian submission was provided by Dr. Harald Karl and Samuel Schuber of Pepelnik & Karl Rechtsanwälte GmbH. |
| BE | The Belgian submissions were provided by Pierre-Emmanuel Mouthuy and Alexandra Moyen, Attorneys at Law at Mouthuy Avocats SPRL (French Community) and by Nadia Feci, Doctoral Researcher at both KU Leuven (CITIP) and Ghent University (Law & Technology) (Flemish Community). |
| BG | The Bulgarian submission was provided by Dr. Bissera Zankova, independent researcher and President of the "Media 21" Foundation and Dr. Ivo Indzhov, Associate Professor of Journalism at St. Cyril and St. Methodius University. |
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| CZ | The Czech Republic submission was provided by Jaroslav Tajbr, lawyer at Squire Patton Boggs. |
| DE | The German submission was provided by Christina Etteldorf, Senior Research Scientist, at the Institut für Europäisches Medienrecht (EMR). |
| DK | The Danish submission was provided by Terese Foged, Attorney and Partner of Lassen Ricard law firm. |
| EE | The Estonian submission was provided by Andres Jõesaar, Associate Professor of Media Policies at Tallinn University. |
| ES | The Spanish submission was provided by Joan Barata Mir, Fellow at the Stanford Cyber Policy Center. |
| FI | The Finnish submission was provided by Riku Neuvonen, Senior Lecturer of Public Law at the University of Helsinki. |
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| | |
|---|---|
| HU | The Hungarian submission was provided by Zsuzsa Detrekői, Fellow at the Center for Media, Data and Society (CMDS) of the Central European University School of Public Policy. |
| IE | The Irish submission was provided by Martina Chapman, independent consultant and the director of independent consultancy Mercury Insights. |
| IT | The Italian submission was provided by Ernesto Apa, lawyer and partner at Portolano Cavallo, and Fabiana Bisceglia and Eugenio Foco, lawyers at Portolano Cavallo. |
| LT | The Lithuanian submission was provided by Kristina Juraite, Professor of Public Communication at Vytautas Magnus University. |
| LU | The Luxembourgish submission was provided by Romain Kohn, journalist and media expert. |
| LV | The Latvian submission was provided by Ieva Andersone, Partner and Head of the Competition and Regulatory team and Lūcija Strauta, assistant lawyer at Sorainen. |
| MT | The Maltese submission was provided by Pierre Cassar, Director of Marketing and Communications at the University of Malta and Lecturer at the Faculty of Media and Knowledge Sciences. |
| NL | The Dutch submission was provided by Louise Doorman, independent legal adviser. |
| NO | The Norwegian submission was provided by Terje Colbjørnsen, Associate Professor at the Oslo Metropolitan University, COLBYCO. |
| PL | The Polish submission was provided by Karol Kościński, Attorney at Law at Karol Kościński Legal Office. |
| PT | The Portuguese submission was provided by Elsa Costa e Silva, Assistant Professor and Mariana Lameiras, Researcher at the Communication and Society Research Centre (CSRC) of the University of Minho. |
| RO | The Romanian submission was provided by Dr. Manuela Preoteasa, Associate Professor at the Faculty of Journalism and Communication Sciences of the University of Bucharest. |
| SE | The Swedish submission was provided by Malin Wallin, lawyer at Wallin Olofsson Advokatbyrå. |
| SI | The Slovenian submission was provided by Deirdre Kevin, consultant and expert in media regulation, media law and media market trends at CommSol Ltd. |
| SK | The Slovakian submission was provided by Norbert Vrabec, Associate Professor at the Faculty of Mass Media Communication of the University of St. Cyril and St. Methodius in Trnava. |
| UK | The British submission was provided by Sally Broughton Micova, Lecturer in Communications Policy and Politics at the University of East Anglia. |

# 1. Executive summary

## 1.1. Project objective

In 2021, the European Audiovisual Observatory (EAO) published a report mapping national rules applicable to video-sharing platforms, with a focus on illegal and harmful content online, following the transposition of the revised Audiovisual Media Services Directive 2018/1808 (revised AVMSD). For 2022, the European Commission asked the EAO to map the legal frameworks and the current practices relating to video-sharing platforms (VSPs), this time focusing on audiovisual commercial communications (ACCs) and the most significant self- and co-regulatory initiatives and national experiences in enforcing the existing rules.

The geographical scope covers the EU member states, Norway and the UK. While Norway was part of the Creative Europe programme at the time of the mapping, the UK Government has contributed resources to include the UK in the mapping.

## 1.2. Key findings

### 1.2.1. General approach

The rules on commercial communications applicable to VSPs have been adopted in national legislations pursuant to the transposition of the revised AVMSD, generally following the wording of the Directive and, in many cases, envisaging further and more detailed rules on implementing the legal provisions by means of secondary legislation. In addition, there is a wide range of soft-law or self-regulatory instruments pertaining to commercial communications and commercial practices in general, many of which directly affect VSPs. The overview of applicable provisions across territories covered by this report offers an insight into many areas of the revised AVMSD, that are complementary to its objectives in the field of commercial communications (i.e. consumer protection, competition, e-commerce, health protection, data protection).

It is still early to assess the full extent of the transpositions of self- and co-regulatory measures, as some of the implementing mechanisms are yet to be developed

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and enacted. Finally, Ireland had still not finished the entire transposition process at the time of writing this report, as some aspects of the AVMSD shall be regulated by the future Media Commission, as well as the future competences of this new authority itself. All of this will have an impact on the entire sector, but the details remain to be seen.

### 1.2.2. Definitions

The definitions related to ACCs (audiovisual commercial communication, television advertising, surreptitious commercial communication, sponsorship, product placement) provided for in the revised AVMSD have, in the vast majority of cases, been transposed verbatim or using similar wording to the revised AVMSD.

Where defined, the concept of "misleading commercial communication" is either drawn from the rules on unfair commercial practices or understood from the reference to the misleading nature of surreptitious commercial communications.

The definitions of "advertiser", "sponsor" and "sponsored content" are provided in a small number of cases, since the meaning of these terms can be deduced from the definition of activities they refer to. Another concept identified as relevant was "virtual advertising", which is also defined in just a few cases.

In addition to these main notions related to ACCs, certain legislative and regulatory frameworks include additional definitions (relevant in the context of commercial communications on VSPs) such as "targeted advertising", "direct marketing" and "online behavioural advertising".

### 1.2.3. Restrictions regarding audiovisual commercial communications

As provided by Article 9(1) of the AVMSD, VSPs must comply with obligations regarding ACCs. Generally, these requirements are transposed into national legislations in such a way as to make VSP providers responsible for ensuring their compliance where such commercial communications are marketed, sold or arranged by them; they must also take measures to ensure that, when commercial communications are marketed, sold or arranged by the platform users, such communications meet the same requirements.

In some cases, stricter or more detailed rules are observed, in particular with regard to ACCs for alcoholic beverages and the protection of minors. More detailed rules are also observed in measures to prevent the exposure of children to ACCs for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intake in the overall diet is not recommended; they are also observed in the prohibition of the processing of personal data of minors collected or otherwise generated by VSP providers.

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### 1.2.4. Sponsorship and product placement

Obligations stemming from the revised AVMSD vis-à-vis sponsorship and product placement and their applicability to VSP providers can be observed in two ways. On the one hand, restrictions stemming from Article 9(1) also apply to sponsorship and product placement (i.e. through the prohibition of surreptitious commercial communications or requirements for the protection of minors).

On the other hand, the specific rules pertaining to these types of commercial communication in audiovisual media services, as stipulated by the revised AVMSD (e.g. recognisability, prohibition of promotional references or undue prominence, etc.) apply to VSPs in only a minority of cases, typically if they provide programmes or qualify as an on-demand media service. In other instances, there are no specific rules pertaining to sponsorship or product placement in relation to VSPs.

### 1.2.5. Obligations regarding (v)blogs and (v)blogging

The number of territories covered by this report that do not consider (v)blogs potential audiovisual media services is approximately equal to the number that do. In order to be identified as an on-demand audiovisual media service, a (v)blog should meet the relevant criteria as provided by the AVMSD, in some cases with defined criteria of economic activity and mass media criteria. If (v)blogs qualify as on-demand audiovisual media services, they need to follow the requirements applicable to video on-demand (VoD) providers, primarily the rules on commercial communications and the protection of minors. Specific recommendations on influencer marketing that have been developed by some territories are especially worth mentioning in this regard.

In cases where (v)blogs are not considered audiovisual media services, they are nevertheless covered by advertising and consumer protection regulations, such as provisions on misleading and surreptitious commercial communications or identifiability requirements.

### 1.2.6. Content-related rules regarding audiovisual commercial communications

As far as less explored notions of ACCs are concerned, the most regulated area is gambling, which is predominantly covered under special gambling legislation or advertising legislation and, in some cases, self-regulatory instruments. These do not address VSPs specifically but they do apply to online advertising which includes VSPs. Rules revolve around the protection of minors from exposure to ACCs relating to the

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promotion of gambling, as well as consumer protection in terms of preventing harm and ensuring responsible advertising practices.

Environmental or "green" claims are less regulated, but are often referred to in connection with unfair commercial practices or fall within the scope of misleading advertising. In some instances, this area is subject to self-regulation with an objective to reduce commercial communications that have a negative effect on the environment.

Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems is dealt with to a much lesser extent. Whereas in the vast majority of cases there are no specific provisions on this matter in place, some have introduced prohibitions on advertising promoting religious or belief systems or specific restrictions that apply to this type of commercial communications.

### 1.2.7. Self- and co-regulation and enforcement

The national implementations reflect the Directive's emphasis on self- and co-regulation in relation to VSP providers, whether in terms of its encouragement, or in terms of establishing an obligation both on the part of VSP providers to engage in self-regulation and on the part of the regulatory authorities to support it.

Self-regulation in the field of advertising has long been established and functioning in many of the territories covered, and some of the existing self-regulators have extended their field of operation to VSPs. However, many territories are still at an early stage in the process of establishing self-regulation for VSP providers and no codes of conduct apply to them specifically yet. Areas in which self- or co-regulation through codes of conduct is envisaged for VSPs relate, in most cases, to the implementation of measures by the VSPs and ACCs for high fat, sugar and salt (HFSS) foods and beverages, but also to ACCs for alcoholic beverages, negative impact on the environment and consumer protection.

National regulatory authorities play an important role in establishing and developing self- and co-regulatory mechanisms and, in some cases, also in performing oversight of their implementation and reviewing the effectiveness of the system. With the exception of the UK, none of the envisaged co-regulatory schemes have been enacted yet. In addition, the majority of regulatory authorities have enforcement powers over VSPs in terms of assessment of the measures undertaken by VSPs and, ultimately, sanctioning powers in case of non-compliance.

### 1.2.8. Cross-sector and cross-border collaboration

As certain aspects of the commercial communications on VSPs encompass areas covered by other public institutions (e.g. electronic communications regulators, competition, consumer protection, tax and gambling authorities), it is clear that co-operative arrangements will be particularly important in order to ensure the smooth and effective

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application of the relevant rules. Indeed, some legislations provide for an obligation for regulatory and other authorities to engage in cooperation and enter into cooperation agreements.

Due to the transnational nature of services offered through VSPs, cross-border collaboration is of crucial importance, as recognised by the revised AVMSD.

### 1.2.9. Update on plans and practices related to new obligations of VSPs

The plans and practices in relation to the obligations of VSPs are still predominantly related to the application of the newly implemented legislations, the contours of which are still to be defined by secondary legislation yet to be adopted.

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# 2. Methodology and structure of the mapping report

## 2.1. Project objective

The transposition of the revised AVMSD has, at the time of writing this report, almost been completed,[4] introducing a new scope of application of the 2010 AVSMD to cover VSPs in national regulatory regimes.

The national data for this report covers the relevant information up to September 2022, when the collection of the national factsheets was finished, in order to prepare the comparative analyses.

This report aims at identifying the different laws, rules and current practices, as well as ongoing reforms implementing the revised AVMS Directive, in the EU member states and Norway, as well as in the UK, relating to commercial communications on VSPs, including, but not limited to:

- the legal definition of VSPs in existing legislation;
- categories of obligations;
- national instruments already in place to transpose/implement the new obligations.

The mapping includes the information from 27 EU member states (including the French and Flemish speaking communities of Belgium) and Norway, as well as the UK, totalling 30 national responses.

## 2.2. Methodology

The methodology adopted by the Observatory is inclusive of the collection and analysis of national data, done by means of a standardised and pre-approved questionnaire designed by the Observatory, submitted for completion by national experts, and in turn checked by the relevant national regulatory authorities.

The methodology is summarised to be inclusive of the following:

- the choice of international experts to provide assistance throughout the mapping and the elaboration of a comparative analysis;
- the choice of a pool of national experts: mainly academics and independent researchers and consultants;

[4] The last remaining transposition is awaited in the Republic of Ireland, with the adoption of the Online Safety and Media Regulation Bill, expected by the end of 2022.

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- the elaboration of a standardised questionnaire filled in by each national expert; one questionnaire per country was completed, with the exception of Belgium, where a questionnaire was completed for both the French and the Flemish communities; and questionnaire responses cross-checked by the relevant national regulatory authorities.

The questionnaire aimed at identifying, for each country, the different laws, rules and current practices in the EU member states, Norway and the UK relating to commercial communications on VSPs. It also aimed at identifying the most significant self- and co-regulatory initiatives and national experiences in enforcing the rules with regard to commercial communications, as well as the definitions and restrictions regarding commercial communications, rules around sponsorship and product placement, obligations regarding (v)blogs and (v)blogging, and certain specific content-related rules regarding commercial communications.

## 2.3. Structure of the report

The national summaries are structured around six sections:

- the first section deals with the definitions related to commercial communications;
- the second section includes the information relative to the restrictions and measures imposed under national legislation on media service providers, including VSP providers with respect to commercial communications;
- the third section includes information on the obligations, rules and practices pertaining to sponsorship and product placement vis-à-vis VSPs;
- the fourth section contains information regarding the less explored notions, such as rules pertaining to the advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems, as well as gambling and environmental claims vis-à-vis products and services;
- the fifth section identifies the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of bodies in charge of self- and/or co-regulatory and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs;
- the final sixth section focuses on the national documentation which is relevant for the purpose of the mapping (existence of studies, reports, etc.), addressing in particular the existence of relevant studies, position papers, guidelines and any other documentation regarding the issues of commercial communications.

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The comparative legal analysis mirrors the structure of the national legal summaries and provides an analysis aimed at highlighting the trends and patterns in the approach of national administrations towards the newly introduced obligations for VSPs. Tables are included throughout the report as a complement, to offer a more in-depth look at particular cases. The national summaries also provide more detailed information regarding the situation in each specific country. It is important to note that all pertinent definitions are covered in the national summaries, whether or not they are included in the revised AVMS Directive.

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# 3. Comparative legal analysis

## 3.1. Definitions

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive.

Definitions of concepts related to commercial communications found in the AVMSD include:

- audiovisual commercial communication;
- television advertising;
- surreptitious audiovisual commercial communication;
- sponsorship; and
- product placement.

In addition, this report enquires about the existence of definitions of certain other concepts relevant to applicable rules on commercial communications, namely:

- advertiser;
- misleading commercial communication;
- virtual advertising;
- sponsor; and
- sponsored content.

**Table 1. Overview of existence of relevant definitions**

| | ACC | TV advertising | Advertiser | Surreptitious ACC | Misleading CC | Virtual advertising | Sponsorship | Sponsor | Sponsored content | Product placement |
|---|---|---|---|---|---|---|---|---|---|---|
| AT | Yes | Yes | No | Yes | No | No | Yes | No | No | Yes |
| BE FR | Yes | Yes | No | Yes | Yes | Yes | Yes | No | No | Yes |
| BE NL | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| BG | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes | No | Yes |
| CY | Yes | Yes | No | Yes | No | No | Yes | No | No | Yes |
| CZ | Yes | Yes | Yes | Yes | Yes | No | Yes | Yes | No | Yes |
| DE | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| DK | Yes | No | No | No | No | No | Yes | No | No | Yes |
| EE | Yes | Yes | Yes | Yes | Yes | No | Yes | No | No | Yes |
| ES | Yes | Yes | No | No | Yes | No | Yes | No | No | Yes |
| FI | No | No | No | No | Yes | No | Yes | No | No | Yes |
| FR | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| GR | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |

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| | ACC | TV advertising | Advertiser | Surreptitious ACC | Misleading CC | Virtual advertising | Sponsorship | Sponsor | Sponsored content | Product placement |
|---|---|---|---|---|---|---|---|---|---|---|
| HR | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| HU | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | No | Yes |
| IE | Yes | Yes | No | Yes | Yes | Yes | Yes | No | No | Yes |
| IT | Yes | Yes | No | Yes | Yes | No | Yes | Yes | No | Yes |
| LT | Yes | Yes | Yes | Yes | Yes | No | Yes | No | No | Yes |
| LU | Yes | Yes | No | Yes | No | No | Yes | No | No | Yes |
| LV | Yes | Yes | Yes | Yes | Yes | Yes | Yes | No | No | Yes |
| MT | Yes | Yes | No | Yes | No | No | Yes | No | No | Yes |
| NL | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| NO | No | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| PL | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| PT | Yes | Yes | Yes | No | Yes | Yes | Yes | No | No | Yes |
| RO | Yes | Yes | No | Yes | Yes | Yes | Yes | No | No | Yes |
| SE | Yes | Yes | No | No | No | Yes | Yes | No | No | Yes |
| SI | Yes | Yes | No | Yes | Yes | No | Yes | No | No | Yes |
| SK | Yes | Yes | No | Yes | No | No | Yes | Yes | No | Yes |
| UK | Yes | Yes | No | No | No | No | Yes | No | No | Yes |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.1.1. Audiovisual commercial communications

Article 1 (1) (h) of the revised AVMSD offers the following definition of "audiovisual commercial communication":

> *images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;*

Most of the countries have a definition of ACC that is identical to the one contained in the revised AVMSD (BE NL, CY, ES, FR, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SI), or a definition corresponding to or closely following the revised AVMSD (AT, BE FR, BG, CZ, DE, EE, SK, UK).[5] Some variations of the term used exist in three cases: "advertising" (DE), "commercial communication" (DK) and "commercial media communication" (SK).

AT and BG expanded the definition to include other communications. In CZ, SK, and the UK, the definition makes no distinction between a natural and a legal person pursuing

[5] Note that any difference between the legislative provisions which are *identical* to the text of the AVMSD and those *corresponding* to it is predominantly in the linguistic and national legal writing styles, but the context of the provisions is consistent with the text of the AVMSD.

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an economic activity and therefore covers both. The reference to the criterion of exchange for payment or similar consideration is not mentioned in DK.

Finally, in FI and NO, there is no general definition of ACC but there are specific ones for: advertising, sponsorship and product placement.

**Table 2. Definition of audiovisual commercial communications**

| | Audiovisual commercial communications |
|---|---|
| Identical to the text of the AVMSD: BE NL, CY, ES, FR (with an addition of telesales and 'any other technically feasible means'), GR, HR (with an addition of radio advertising), HU, IE, IT, LT, LU, LV, MT, NL, PL, RO and SI | |
| AT | Also covers images designed to 'support a cause or an idea', while the rest of the definition closely follows the text of the AVMSD |
| BE FR | Corresponds to the text of the AVMSD, and also includes messages designed to sell and not only promote the goods, services or image. In addition, the list of forms of commercial communications includes interactive commercial communications, split-screen commercial communications and targeted and virtual advertising |
| BG | Also covers communications intended to 'promote a cause or an idea' or 'to induce another effect desired by the advertiser', while the rest of the definition corresponds to the text of the AVMSD |
| CZ | Follows the text of the AVMSD but lacks the distinction between a natural and a legal person; and contains only reference to a programme and not a user-generated video |
| DE | Corresponds to the text of the AVMSD, but refers to the broader term of advertising in general |
| DK | Definition of 'commercial communication' provided under e-commerce legislation referring to its aim of advancing the sale of image, similarly to the wording of the AVMSD, but without reference to the criterion of exchange for payment or similar consideration |
| EE | Almost verbatim |
| FI | No definition provided; covered under the definitions of sponsorship, teleshopping and product placement |
| NO | No definition provided; covered by individual definitions of advertising, sponsorship and product placement |
| PT | Identical to the text of the AVMSD, with the addition of production aids and telepromotion to the list of forms of commercial communications |
| SE | Defined as product placement, sponsorship, advertising, teleshopping or similar that accompanies, or is contained in, a television programme or user-generated video |
| SK | Defined as "commercial media communication", otherwise closely follows the wording of the AVMSD, but lacks the distinction between a natural and a legal person |
| UK | Corresponds to the text of the AVMSD, but lacks the distinction between a natural and a legal person |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.1.2. Television advertising

Article 1 (1) (i) of the revised AVMSD offers the following definition of "television advertising":

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*any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;*

This wording is used either verbatim, or closely corresponding to it in 22 cases (AT, BE FR, BE NL, BG, CY, CZ, DE, EE, ES, FR, GR, HR, IE, IT, LT, LU, LV, NO, PT, RO, SI, SK). Legislation does not provide for an explicit definition of television advertising in seven cases (DK, FI, HU, MT, PL, UK), although several of these countries pointed out that the definition is understood to be covered under the definition of ACCs (see 3.1.1.).

The broader concepts of "advertising" (BE NL, CZ, EE, HR, HU, LV, NO, PL) or "broadcast advertising" (DE) or "commercial advertisements" (SE) are used. Others expanded the definition to include additional forms (AT, BG, SI). In four cases (CZ, LT, LV, NO), the definition lacks any distinction between a natural and a legal person and therefore covers both.

**Table 3. Definition of television advertising**

| | Television advertising |
|---|---|
| Identical to the text of the AVMSD: CY, FR, GR, HR (but refers to the broader term of 'advertising'), IE, IT, MT, LU, PT, RO, SI (expanded to include forms of television advertising: advertisements, informative advertising, self-advertisements, paid video notices and other forms of television advertising) | |
| No definition provided: DK, FI, and UK (but the self-regulatory instrument on broadcast advertising defines advertisement) | |
| AT | Also includes announcements broadcast in support of a cause or idea, while the rest of the definition corresponds to the text of the AVMSD |
| BE FR | Almost verbatim |
| BE NL | The wording corresponds to the text of the AVMSD, but the definition refers to a broader term of 'advertising' to include radio |
| BG | Also covers communications intended to 'promote a cause or an idea' or 'to induce another effect desired by the advertiser', while the rest of the definition corresponds to the text of the AVMSD |
| CZ | Follows the text of the AVMSD but lacks the distinction between a natural and a legal person, and refers to advertising in general |
| DE | Corresponds to the text of the AVMSD but refers to the broader term of 'broadcast advertising' which includes radio and television |
| EE | Closely follows the text of the AVMSD, extending it to both television and radio advertising |
| ES | Follows the text of AVMSD, instead of referring to "any form of announcement broadcast", it refers to any form of ACC. |
| HU | The wording corresponds to a broad definition of advertising. |
| LT | Corresponds to the text of the AVMSD but lacks the distinction between a natural and a legal person |
| LV | Corresponds to the text of the AVMSD but lacks the distinction between a natural and a legal person, and refers to advertising in general |

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| | Television advertising |
|---|---|
| NL | Covered under the definition of an 'advertising spot', which similarly contains the elements of intention to promote the sale of products or the purchase of services of a particular business, industry or organisation |
| NO | Corresponds to the text of the AVMSD but lacks the distinction between a natural and a legal person, and refers to advertising in general |
| PL | The wording corresponds to a broad definition of advertising. |
| SE | Covered under the definition of commercial advertisements, which contains elements similar to the AVMSD: being broadcast in return for payment or similar consideration or self-promotion, as well as of promoting goods, services, real estate, jobs or other commodities |
| SK | Almost verbatim |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.1.3. Advertiser

The term "advertiser" is not defined in the AVMSD, but its meaning can be deduced from the definition of television advertising (announcement "by a public or private undertaking or natural person").

This is, indeed, reflected in national approaches since the majority of cases (18) do not provide for the definition of this term (AT, BE FR, BE NL, CY, DK, FI, FR, GR, HR, IT, LU, MT, NL, NO, PL, RO, SI, UK). As several respondents pointed out (e.g. IE), the meaning of the term "advertiser" is to be understood from the definition of television advertising. In three cases (DE, SE, SK), the legislations merely make reference to the term in the context of the obligations of the person(s) responsible for advertising.

In cases in which this term is defined, this is done primarily via advertising, rather than media, legislation (EE, ES, HU, LT, LV, PT) or self-regulatory instruments (BG, IE). The definitions reflect the different roles that the natural or legal person has in terms of the creation/commissioning/dissemination of advertising.

**Table 4. Definition of advertiser**

| | Advertiser |
|---|---|
| No definition provided: AT, BE FR, BE NL, CY, DE, DK, FI, FR, GR, HR, IT, LU, MT, NL, NO, PL, RO, SI and UK. | |
| BG | Physical person or legal entity, which directly or indirectly promotes goods, services, rights, obligations, firms, trademarks, symbols, etc. on its own or through an agent or intermediary |
| CZ | Legal or natural person placing an order for commercial communication with another legal or natural person |
| EE | Advertising legislation distinguishes between 'a person publicising advertising', 'a person placing advertising' and 'a person producing advertising' |
| ES | The natural or legal person in whose interest the advertising is carried out |

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| | Advertiser |
|---|---|
| HU | A person on whose behalf advertisements are disseminated, or who orders the publication of advertisements |
| IE | Anyone disseminating marketing communications, including promoters and direct marketers |
| LT | A person whose initiative and interests use (order, produce, spread) advertising |
| LV | Any person connected with a trade, entrepreneurship, position or profession which is produced for the purpose of advertising in order to promote the offer of goods, including immovable property or services, rights and obligations, for payment or other remuneration, as well as political advertising |
| PT | A natural or legal person in the interest of whom the advertising is carried out |
| SE | No definition provided; legislation makes reference to 'the party responsible for marketing' in the context of its identification obligation |
| SK | No definition provided; legislation makes reference to advertiser in the context of prohibition of their influence on programme content and editorial independence |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.1.4. Surreptitious audiovisual commercial communication

Article 1 (1) (j) of the revised AVMSD offers the following definition of "surreptitious audiovisual commercial communication":

> *the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;*

This definition is transposed verbatim in 18 cases (AT, BE NL, BG, CY, CZ, DE, EE, FR, GR, HR, IE, IT, LU, LV, MT, NO, RO, SI), or in a wording that closely corresponds to it (BE FR, ES, HU, LT, NL, PL, SK). In one case (BE FR) it is expanded to include such representation in user-generated videos, on VSPs, whereas in one case (LV) it also refers to radio advertising.

Five countries did not define surreptitious audiovisual commercial communication in their legislations: DK, , FI (which points out that it is covered by the obligation to identify advertising as such), PT, SE and the UK.

### 3.1.5. Misleading commercial communication

The revised AVMSD does not provide for the definition of misleading commercial communications, but in Recital (46), it states that:

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> *Commercial communications on video-sharing platform services are already regulated by Directive 2005/29/EC of the European Parliament and of the Council,[6] which prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services.*

This Directive (i.e. the Unfair Commercial Practices Directive), in Articles 6 and 7, deals with misleading commercial practices, defining them as follows:

> *A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case causes or is likely to cause him to take a transactional decision that he would not have taken otherwise:*

In six cases (BE FR, BE NL, CZ, DE, NO, SI), misleading commercial communications are covered precisely by the definition of misleading commercial practices corresponding to the wording of the Unfair Commercial Practices Directive, as provided in the appropriate commerce/consumer protection/competition legislation.

The definitions of misleading commercial communications or advertising are provided for in 13 cases, across a range of different legislative documents: media legislation (FR, HR), advertising legislation (EE, IT, LT, PT, RO), consumer protection legislation (FI, HU), competition legislation (ES), secondary legislation adopted by the regulatory authority (IE) and self-regulatory instruments (BG, NL). In all of these cases, however, the definitions are based on some or all of the elements contained in the definition of misleading commercial practice, namely, advertising/commercial communication which is false or which, even if factually correct, in any way, including the means of its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches, and is likely to affect their economic behaviour (BG, ES, GR, HR, HU, IE, IT, LT, LV, NL, PT, RO), or damage the interests of a competitor (BG, EE, GR, HR, IE, IT, LT, LV, RO).

There is no definition in nine countries: AT, LU and PL, where reference to the misleading nature is included in the definition of surreptitious commercial communications; and CY, DK, MT, SE, SK and the UK, where this matter falls under self-regulation.

[6] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No. 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive") (OJ L 149, 11 June 2005, p. 22).

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**Table 5. Definition of misleading commercial communication**

| | Misleading commercial communication |
|---|---|
| No definition provided: CY, MT, SK and UK (subject to self-regulatory instruments) | |
| The definition corresponds to the elements describing misleading commercial practice: BG, ES, GR, HR, HU, IE, IT, LT, LV, NL, PT and RO | |
| AT | No definition provided, a reference to misleading nature is included in the definition of surreptitious commercial communication |
| BE FR, BE NL | Defined in commerce legislation as 'misleading commercial practices' in a way that corresponds to the Unfair Commercial Practices Directive |
| CZ | Defined in consumer protection legislation as 'misleading commercial practices' in a way that corresponds to the Unfair Commercial Practices Directive |
| DE | No definition provided although the legislation makes reference to the term. Criteria to recognise misleading commercial practices exist in competition law |
| DK | No definition provided, but there is a requirement that advertisements respect generally observed ethical standards for advertisements, be legal, proper, decent and truthful, and designed with a due sense of social responsibility |
| EE | Advertising which, by reason of its misleading nature, is likely to affect the economic behaviour of customers or injure a competitor |
| FI | Information likely to lead to a consumer making a purchase decision or other decision relating to a consumer product which he would not have made without the information provided |
| FR | Any advertising containing, in any form whatsoever, claims, indications or presentations that are false or likely to mislead consumers |
| LU | No definition provided, reference to misleading nature in the definition of surreptitious advertising |
| NO | Defined in marketing control legislation as 'misleading commercial practices' in a way that corresponds to the Unfair Commercial Practices Directive |
| PL | No definition provided, covered by the definition of surreptitious advertising |
| SE | No definition provided, referred to under the rules on misleading commercial advertisement in the marketing legislation |
| SI | Defined as 'misleading commercial practices' in a way that corresponds to the Unfair Commercial Practices Directive |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.1.6. Virtual advertising

The revised AVMSD does not provide for the definition of virtual advertising. However, Article 7b can be considered to cover such advertising when it requires member states to "take appropriate and proportionate measures to ensure that audiovisual media services provided by media service providers are not, without the explicit consent of those providers, overlaid for commercial purposes or modified".

Whereas the vast majority of cases (23) do not define virtual advertising (AT, BE NL, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GR, HR, IT, LT, LU, MT, NL, NO, PL, SI, SK, UK), the definition exists in seven cases and refers to advertising which: is electronically inserted or image-embedded through digital technology (BE FR, HU, IE – by altering the broadcast signal itself, LV); replaces an advertisement present at the venue (BE FR – by means of an electronic imaging system modifying the broadcast signal, IE, RO); replaces other

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commercial communications by electronic means (PT); is inserted into the television image on fixed objects which are usually used for announcements; or where announcements can be physically placed (SE) or new images superimposed (IE, RO).

### 3.1.7. Sponsorship

Article 1 (1) (k) of the revised AVMSD offers the following definition of "sponsorship":

> *any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products;*

The majority of cases (19) provide for an identical definition of sponsorship to the one contained in the revised AVMSD (AT, BE NL, BG, CY, CZ, DK, EE, ES, FR, GR, HR, HU, IT, LU, MT, PL, PT, RO, SI). The rest correspond almost verbatim to the AVMSD definition, with some variants (see table below for further details).

**Table 6. Definition of sponsorship**

| | Sponsorship |
|---|---|
| Identical to the text of the AVMSD: AT, BE NL, BG, CY, CZ, DK, EE, ES, FR, GR, HR, HU, IT, LU, MT, PL, PT, RO and SI | |
| BE FR | Corresponds to the text of the AVMSD, adds a reference to promoting 'achievements' |
| DE | Corresponds to the text of the AVMSD, includes reference to 'direct or indirect' financing |
| FI | Follows the text of the AVMSD, but refers to financing of audiovisual content services, audiovisual programmes or radio broadcasting, without including VSP services and user-generated videos |
| IE | Follows the text of the AVMSD, but refers to financing of television and/or radio services or programmes, without including VSP services and user-generated videos |
| LT | Corresponds to the text of the AVMSD, but lacks the distinction between a natural and a legal person, and extends to radio programmes |
| LV | Corresponds to the text of the AVMSD, but lacks the distinction between a natural and a legal person, and extends to radio programmes |
| NL | Almost verbatim |
| NO | Follows the text of the AVMSD, but does not make reference to user-generated videos |
| SE | Corresponds the text of the AVMSD, but lacks the distinction between a natural and a legal person, and extends to radio programmes and searchable teletext |
| SK | Corresponds to the text of the AVMSD, but lacks the distinction between a natural and a legal person |
| UK | Corresponds to the text of the AVMSD, but lacks the distinction between a natural and a legal person |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

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### 3.1.8. Sponsor

Even though the revised AVMSD does not define the term "sponsor", it can be derived from the definition of sponsorship which includes a reference to sponsors describing them as: "persons not engaged in providing audiovisual media services or video-sharing platform services…" who contribute to the financing of such services "with a view to promoting their name, trademark, image, activities or products".

Almost none of the territories covered by the report (26) have a definition of sponsor included in their legislative or regulatory frameworks. Several respondents pointed out that the meaning of a sponsor is contained in the very definition of sponsorship. A few countries define it, in reference to sponsorship, as a person who provides it (SK), a person who makes a contribution to that purpose (CZ), or a subject who has sponsored the radio or television programme (IT). In one case (BG), the definition is provided in the self-regulatory instrument as the entity providing financial or other sponsorship support.

### 3.1.9. Sponsored content

Similarly to the term "sponsor", the term "sponsored content" is not defined in the AVMSD, but references to it can be found both in the definition of sponsorship and the rules applying to a sponsored programme (e.g. that it has to be clearly identified as such, the prohibition of sponsorship for certain programmes, etc.), which is what several respondents have highlighted (e.g. NO).

None of the territories covered by the report have a definition of sponsored content. In just one case (BG), the self-regulatory instrument provides that sponsored content "refers to an event, activity, organisation, individual, media and so on".

### 3.1.10. Product placement

Article 1 (1) (m) of the revised AVMSD offers the following definition of "product placement":

> *any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration;*

The majority of cases (20) provide for a definition of product placement identical to the one contained in the revised AVMSD (AT, BE NL, BG, CY, CZ, EE, ES, FR, GR, HR, HU, IT, LU, LV, MT, NL, PL, PT, RO, SI), the rest corresponding almost verbatim to the AVMSD definition (see table below for additional details).

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**Table 7. Definition of product placement**

| | Product placement |
|---|---|
| Identical to the text of the AVMSD: BE NL, BG, CY, CZ, EE, ES, FR, GR, HR, HU, IT, LU, LV (extends to radio), MT, NL, PL, PT, RO and SI | |
| Almost verbatim: BE FR, DK, LT, SK | |
| AT | Identical to the text of the AVMSD. Free provision of goods or services of insignificant value is excluded for the definition |
| DE | Free provision of goods or services of insignificant value is excluded from the definition, the rest corresponds to the text of the AVMSD |
| FI | Corresponds to the text of the AVMSD, and includes the provision of production props or product prizes of significant value provided free of charge. No reference is made to inclusion in user-generated videos |
| IE | Corresponds to the text of the AVMSD, but does not include reference to inclusion in user-generated videos |
| NO | Corresponds to the text of the AVMSD, but does not include reference to user-generated videos. Free placement of goods and services with no significant value excluded from the definition |
| SE | Corresponds to the text of the AVMSD. Free placement of goods and services with no significant value excluded from the definition |
| UK | Corresponds to the text of the AVMSD. Prop placements excluded from the definition |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.1.11. Other definitions

In addition to the main notions of commercial communications as described above, in 17 cases (BE FR, BG, ES, FR, GR, HU, IE, IT, LT, LV, MT, NL, NO, PL, PT, SI, UK) there are certain other definitions in place, both in legislation and self-regulatory instruments, the details of which are provided in the table below. These range from teleshopping and some more specific forms of television advertising (split-screen, pop-up, screen overlays) and digital marketing (interactive advertising, mobile advertising, advertising via e-mail, display advertising), to those that are especially relevant in the context of commercial communications on VSPs: targeted advertising, direct marketing, online behavioural advertising, including online political advertising.

**Table 8. Other definitions**

| | Other definitions |
|---|---|
| N/A: AT, BE NL, CY, CZ, DE, DK, EE, FR, HR, LU, RO, SE and SK. | |
| BE FR | Legislation provides for definitions of targeted advertising, interactive commercial communication, split-screen commercial communication and teleshopping |
| BG | Self-regulatory instrument defines direct marketing, online behavioural advertising, and consent in the context of the collection and use of data for online behavioural advertising purposes |

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| | Other definitions |
|---|---|
| ES | Legislation makes reference to screen overlays and hybrid advertising, to be regulated by means of special regulation |
| FR | Teleshopping |
| GR | Self-regulatory instrument in relation to digital marketing defines marketing communication, mobile advertising and display advertising |
| HU | Self-regulatory instrument defines digital advertisements and marketing communications, individually targeted communication and online behavioural advertising |
| IE | Legislation and self-regulatory instruments define direct marketing, commercial profiling, behaviourally targeted advertising, online political advertising, micro-targeting (with reference to political advertising during an electoral period) |
| IT | Self-regulatory instrument defines online behavioural advertising |
| LT | Protection of personal data legislation defines direct marketing |
| LV | Split-screen advertising, extended advertising spot (exceeding 90 seconds), advertising spot (not exceeding 90 seconds), interactive advertising |
| MT | Pop-up advertising |
| NL | Secondary legislation defines split-screen advertising |
| NO | Electronic commerce legislation defines information society services |
| PL | Media legislation contains references to online technique of commercial communications: direct marketing, commercial profiling and behaviourally targeted advertising |
| PT | Advertising legislation makes reference to direct marketing |
| SI | Self-regulatory instrument includes in its scope advertising on the Internet, including purchased online advertising space (e.g. banners, text ads...) and other forms of advertising in the unoccupied space (including viral messages of an advertising nature via e-mail and other channels, video and other advertising content on portals that are intended for socialising) |
| UK | Direct marketing, profiling, display advertising (banners, pop-ups, preferential and paid for search listing) and other forms |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.2. Restrictions regarding audiovisual commercial communications

According to Article 28b (1) of the revised AVMSD, member states must ensure that VSP providers under their jurisdiction take appropriate measures to protect minors from programmes, user-generated videos and ACCs which may impair their physical, mental or moral development; they must also take measures to protect the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter;, or containing content the dissemination of which constitutes an activity which is a criminal offence under Union law such as public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia.

Specific to commercial communications, Article 28b (2) sets out further obligations which depend on the nature of the VSP providers' role (content editor or content host) in

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the provision of commercial communications (obligation of compliance or to take appropriate measures).

As stipulated in Article 28b (3) c) and d), these measures covered by (1) and (2) may consist of including and applying in their terms and conditions the requirements set out in Article 9 (1) for ACCs they host, as well as setting up a notification system for users who upload videos to declare whether the video contains commercial communications.

Furthermore, VSP providers are required to clearly inform users where programmes and user-generated videos contain ACCs, provided that such communications are declared by users who upload the user-generated videos, or the provider has knowledge of that fact.

Generally, the above requirements are transposed verbatim into national legislations: VSP providers are responsible for ensuring compliance with the general commercial communication requirements and provisions on prohibited and restricted products where such commercial communications are marketed, sold or arranged by them; they must also take measures to ensure that commercial communications meet these requirements and restrictions when commercial communications are marketed, sold or arranged by the platform users.[7]

This section looks in particular into the general obligations regarding commercial communications stemming from Article 9 (1) of the AVMSD, which stipulates the requirements as detailed below.

### 3.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

According to Article 9 (1) (d) and (e) of the AVMSD,

> *all forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers shall be prohibited;*
> *audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;*

Restrictions regarding ACCs for alcoholic beverages are present in all national legislations, whether only in terms of not being aimed at minors and not encouraging immoderate consumption, as provided for in Article 9 (1) of the AVMSD, or by extending the requirements prescribed for television advertising in Article 22 (AT, BE FR, BE NL, EE, ES, FI

[7] For a detailed overview of measures required from VSP providers in national legislations, please refer to "Mapping of national rules applicable to video-sharing platforms and harmful content online" (https://rm.coe.int/mapping-on-video-sharing-platforms-2022-update/1680aa1b16).

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– for mild alcoholic beverages, HU, IT, LV, SI, SK). Some countries opted for a prohibition of audiovisual commercial communications for alcoholic beverages, either total prohibition (LT, NO, PL), or pertaining to certain categories of alcoholic beverages (FI). Interestingly, whereas rules for VSPs generally reflect those in force for other services, in France advertising for alcoholic beverages having alcohol content of more than 1.2% is forbidden on television and VoD, but not on VSPs.

Furthermore, in some cases there are additional requirements that such audiovisual commercial communications need to observe (see details in the table below). Again, in some cases there are provisions that apply specifically to VSPs (DE – VSPs shall remind their users it is forbidden to distribute unauthorised ACCs, HU – for alcoholic beverages ACCs, it is prohibited to place ads on home pages and age verification tools shall be used, SE – it is forbidden to use ACCs for alcoholic beverages before, during, or after user-generated videos or television programmes on the platform, and alcoholic beverages ACCs may not be explicitly aimed at or portray children or young people under the age of 25).

The prohibition of ACCs for tobacco and related products is established in all countries covered by the mapping, in some cases extending to certain additional categories of products (FI, LT, NO, IT, see table below for details). An exception is provided in one case (EE), for a trademark used to designate a tobacco product, but which does not express a tobacco product or its consumption in words or pictures and which also designates other products or services. VSP providers in Germany are obligated to require their users to agree (in general terms and conditions or in a similar way) that they are prohibited from distributing unauthorised ACCs, including those for tobacco and tobacco-related products.

**Table 9. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers**

| | ACC for alcoholic beverages | ACC for tobacco and tobacco-related products |
|---|---|---|
| AT | Restrictions established by the AVMSD apply, including those in relation to television advertising | Prohibited |
| BE FR, BE NL | Restrictions established by the AVMSD apply, including those in relation to television advertising | Prohibited |
| BG | Restrictions established by the AVMSD apply. Health legislation prohibits direct advertising and establishes restrictions for indirect advertising of alcoholic beverages, inclusive of a 22.00 watershed | Prohibited |
| CY | Restrictions established by the AVMSD apply | Prohibited |
| CZ | Restrictions established by the AVMSD apply | Prohibited |
| DE | Restrictions established by the AVMSD apply. VSPs not required to provide the functionality for labelling of user-generated videos for this type of commercial communications that are not marketed, sold or arranged by them | Prohibited, VSP providers obligated to agree with their users that they are prohibited from distributing unauthorised audiovisual commercial communications (such as tobacco) |
| DK | Restrictions established by the AVMSD apply | Prohibited |
| EE | Restrictions established by the AVMSD apply, including those in relation to television advertising | Prohibited, with the exception of trademark |

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| | ACC for alcoholic beverages | ACC for tobacco and tobacco-related products |
|---|---|---|
| ES | Restrictions established by the AVMSD apply, including those in relation to television advertising<br>Message of moderate and low risk consumption must be included | Prohibited |
| FI | Marketing of strong alcoholic beverages is prohibited, whereas for mild alcoholic beverages the restrictions established by the AVMSD apply, including those in relation to television advertising | Prohibited, including smoking accessories and tobacco imitations |
| FR | Advertising for alcoholic beverages having alcohol content of more than 1.2% is forbidden on television and VoD, but not on VSP | Prohibited |
| GR | Restrictions established by the AVMSD apply | Prohibited |
| HR | Restrictions established by the AVMSD apply | Prohibited |
| HU | Restrictions established by the AVMSD apply, including those in relation to television advertising<br>Further requirements include prohibition of ad placement on the home page of any website, age verification tools to prevent minors from accessing the websites of alcohol-producing companies | Prohibited |
| IE | Pending adoption | Pending adoption |
| IT | Restrictions established by the AVMSD apply, including those in relation to television advertising<br>Self-regulatory instrument, which is mandatory for all types of advertising and providers, establishes the same restrictions and develops them further | Prohibited, including indirect references |
| LT | Prohibited | Prohibited, including smoking herbal products |
| LU | Restrictions established by the AVMSD apply | Prohibited |
| LV | Restrictions established by the AVMSD apply, including those in relation to television advertising. Legislation requires that at least 10% of the amount of the particular advertisement for alcoholic beverages should contain mandatory information about the negative effects of the use of alcohol | Prohibited |
| MT | Restrictions established by the AVMSD apply | Prohibited |
| NL | Obligation to display an educational slogan saying no to alcohol under 18 | Prohibited |
| NO | Prohibited (all forms of advertising of alcoholic beverages) | Prohibited, including tobacco surrogates, imitations and equipment |
| PL | Prohibited | Prohibited, including products imitating tobacco products |
| PT | Restrictions established by the AVMSD apply | Prohibited |
| RO | Restrictions established by the AVMSD apply | Prohibited |
| SE | Prohibited for VSPs to provide commercial advertisements for alcoholic beverages and alcoholic beverage-like preparations before, during, or after user-generated videos or television programmes on the platform | Prohibited |

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| | ACC for alcoholic beverages | ACC for tobacco and tobacco-related products |
|---|---|---|
| | May not be explicitly aimed at or portray children or young people under the age of 25; may not be intrusive, solicitous, or encourage the use of alcohol | |
| SI | Restrictions established by the AVMSD apply, including those in relation to television advertising<br>Obligatory warning to be included in alcohol advertising | Prohibited |
| SK | Restrictions established by the AVMSD apply, including those in relation to television advertising | Prohibited |
| UK | Restrictions established by the AVMSD apply | Prohibited |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

According to Article 9 (1) (f) of the AVMSD,

> *audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the Member state within whose jurisdiction the media service provider falls shall be prohibited;*

This requirement is observed in all national legislations: VSPs shall not host or edit ACCs for medical products/treatments. In Ireland and Norway, it currently applies to audiovisual media service providers and is yet to be established for VSPs. Certain territories have extended the prohibition to additional categories of medicinal products, such as medicinal products for which a marketing authorisation has not been granted, or which have been the subject of a suspension or prohibition measure (BE FR), medicinal products and activities for which a marketing authorisation is required (BG), medicinal products containing psychotropic substances (DE, GR, SK) or those reimbursed by social security agencies (GR). Lithuania, on the other hand, allows advertising of medicinal products available on prescription only on specialised websites for medical professionals inaccessible to the general public. In one case (ES), there are further restrictions in place that apply to VSPs, and include the obligatory identification of products as medicine, the inclusion of essential information for the correct use of the medication, information that such advertising fulfils the accessibility conditions for people with disabilities, etc.

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### 3.2.3. Surreptitious audiovisual commercial communications

According to Article 9 (1) (a) of the AVMSD, "audiovisual commercial communications shall be readily recognisable as such" and "surreptitious audiovisual commercial communication shall be prohibited".

The prohibition of surreptitious commercial communications applies without exception. In Ireland and Norway, this obligation currently applies to audiovisual media service providers and is yet to be established for VSPs.

### 3.2.4. Subliminal techniques in commercial communications

According to Article 9 (1) (b) of the AVMSD, "audiovisual commercial communications shall not use subliminal techniques".

The prohibition of subliminal techniques applies universally, with the exception of Finland, where rules pertaining to this practice do not exist. In Ireland and Norway, this obligation currently applies to audiovisual media service providers and is yet to be established for VSPs.

### 3.2.5. Prejudice with regard to human dignity

According to Article 9 (1) (c) (i) of the AVMSD, "audiovisual commercial communications shall not: (i) prejudice respect for human dignity".

In the vast majority of cases (21) this requirement is transposed without further elaboration, although in some cases additional elements are added, such as respect for the dignity of children and young people (BE NL), respect for the image of women (FR), or respect for the piety or historical or cultural honour of deceased persons (HU). There are no restrictions in two cases: specific to VSPs (SE), and in general (GR).

### 3.2.6. Inclusion or promotion of any discrimination

According to Article 9 (1) (c) (ii) of the AVMSD, "audiovisual commercial communications shall not: (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation".

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It should also be noted that Article 21 of the Charter of Fundamental Rights of the European Union prohibits any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

The promotion of discrimination is indeed prohibited in ACCs in all the territories covered by the report, either in wording identical to the text of the revised AVMSD, or by extending the list of grounds for discrimination as described above (BE FR, BE NL, EE, ES, HR, SK). In some cases, the prohibition of discrimination is extended to incitement of hatred or violence (BE FR, PT). Respect for gender equality, i.e. the prohibition of discrimination based on gender, or specifically the portrayal of women in a discriminatory manner, is additionally emphasised in three cases (BE FR, BG, ES).

### 3.2.7. Encouragement of behaviour prejudicial to health or safety

According to Article 9 (1) (c) (iii) of the AVMSD, "audiovisual commercial communications shall not: (iii) encourage behaviour prejudicial to health or safety".

Generally, the national provisions follow the above requirement. In some cases, additional elements are highlighted, with e.g. prohibitions against: encouraging violent behaviour (BE FR); discouraging compliance with safety rules in certain areas such as traffic safety, domestic situations or medicinal products in commercial communications aimed at children and young people (BE NL); advertising weapons, ammunition or explosives (HU); promoting coercion or aggression, or causing panic (LT). On a self-regulatory level, there is a recommendation in one case (BG) that the potential risks for health and safety should be clearly communicated, especially if not easily recognisable.

Also, the above requirement is yet to be established for VSPs in Ireland and Norway, but the latter points out that the provisions of the penal code apply. Similarly, in Sweden, the provisions of criminal legislation deal with the unlawfulness of threats against another person or another person's property, liberty, peace, etc., and this is applicable to commercial communications as well.

### 3.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

According to Article 9 (1) (c) (iv) of the AVMSD, "audiovisual commercial communications shall not: (iv) encourage behaviour grossly prejudicial to the protection of the environment".

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Almost all observed legislations have transposed the above requirement into their national legislations, with the exception of Ireland and Norway where this process is still pending, but provisions of other instruments (e.g. penal legislation) apply. Additionally, in two cases (GR, SE), there are no restrictions on this matter specific to VSPs. In some territories, self-regulatory instruments provide for further requirements with regard to not condoning or encouraging actions which contravene the law, self-regulatory codes or generally accepted standards of environmentally responsible behaviour (BE FR) or not abusing consumers' concern for the environment and exploiting their possible lack of environmental knowledge (BG).

### 3.2.9. Causing physical, mental or moral detriment to minors

According to Article 9 (1) (g) of the AVMSD,

> *audiovisual commercial communications shall not cause physical, mental or moral detriment to minors; therefore, they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.*

The AVMSD requirements related to the prevention of physical, mental or moral detriment to minors can be found in almost all cases. However, in the Netherlands, the protection of minors by VSPs falls under the scope of self-regulation. The general obligation for VSPs to take appropriate measures to protect minors from harmful commercial communications, including criminal content, exists in three cases (DE, GR, SE). In addition to taking measures, there are certain more concrete restrictions in place (see table below).

Some other countries have introduced more detailed qualitative requirements in order to prevent any harmful impact of commercial communications on minors (BE NL, ES and HU) (see details in the table below).

There are two additional provisions of Article 28b of the revised AVMSD , that should be pointed out in the context of the protection of minors in commercial communications on VSPs, even though they are not included in Article 9 (1). The first regards the aim of effectively reducing the exposure of children to ACCs for HFSS foods and beverages, for which the use of co-regulation and the fostering of self-regulation through codes of conduct should be encouraged. Even though this issue is explored in greater detail under section 4.2., several countries highlighted this issue in connection with the obligatory measures aimed at preventing detriment to minors (AT – media service providers that offer children's programmes are obligated to create and follow guidelines with regard to ACCs for HFSS foods and beverages; BE FR, BE NL – including specific requirements for

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audiovisual commercial communications of candy which have to show a stylised image of a toothbrush; BG, DE and MT – including a prohibition against showing these products immediately before, after or during children's programmes).

The second issue, mentioned by several countries (BE FR, HR, LU, PT) in connection with the protection of minors, is the prohibition against the processing of personal data of minors collected or otherwise generated by VSP providers (e.g. in pursuance of the age verification and parental control tools) for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising.[8]

Finally, in one case (EE), VSPs are required to include in the terms of use of the service that a warning must be displayed during content – including commercial communication – that may impair the physical, mental or moral development of minors. VSPs that are aware of such programmes are obligated to display the warning or ensure technical protection measures.

**Table 10. Audiovisual commercial communications causing physical, mental or moral detriment to minors**

| | ACC causing physical, mental or moral detriment to minors |
|---|---|
| Rules follow the obligations of the revised AVMSD: AT, BE FR, BG, CY, CZ, FR, HR, IT, LT, LU, LV, PL, RO, SI, SK and UK | |
| BE NL | Rules follow the obligations of the revised AVMSD, and extend them to not undermining positive social behaviour, lifestyles and attitudes, or not undermining the authority, the responsibility or the judgement of parents and educators. Additional rules aim at protecting children from advertising that exploits their naivety and vulnerability by preventing commercial communications from pretending that the ownership or use of a given product will give them a benefit compared to other children, or that the fact that they do not own a given product will result in the opposite effect |
| DE | Rules follow the obligations of the revised AVMSD. Furthermore, youth protection legislation forbids advertising of content extremely harmful to minors (e.g., falling under provisions of criminal law), as well as stipulates that advertising content likely to impair the development of children or must be carried out separately from offers aimed at children or adolescents. Both restrictions concern advertisements that are marketed, sold, or composed by VSPs |
| DK | Rules follow the obligations of the revised AVMSD. Restrictions on trading practices directed at minors under 18 apply, stipulating that they must not take place on or via social media profiles belonging to or appearing to belong to children and young people under the age of 15 |
| EE | Rules follow the obligations of the revised AVMSD, extending them to advertising targeting children, and including the prohibition to create the impression that the acquisition of certain goods or the use of certain services will give the child an advantage over other children or that the lack thereof will have the opposite effect; or to create the feeling of inferiority in children |
| ES | Rules follow the obligations of the revised AVMSD and provide for further restrictions: incitement of conduct which favours gender discrimination or sexist and other stereotypes; incitement of violence towards and among minors, as well as minors towards themselves and others; promoting the cult of the body and rejection of self-image though slimming products, surgical interventions or aesthetic treatments; prohibition of misleading commercial communications of products especially aimed at minors such as toys |

[8] A detailed overview of measures regarding the processing of the personal data of minors for commercial purposes can be found in "Mapping of national rules applicable to video-sharing platforms and harmful content online" (https://rm.coe.int/mapping-on-video-sharing-platforms-2022-update/1680aa1b16).

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| | ACC causing physical, mental or moral detriment to minors |
|---|---|
| FI | Rules follow the obligations of the revised AVMSD, while stipulating that the age and level of development of minors reached by marketing need to be taken into account when assessing its impact |
| GR | VSPs should take appropriate measures to protect minors from programmes, user-generated videos and audiovisual commercial communications which may impar physical, mental or moral development |
| HU | Rules follow the obligations of the revised AVMSD, including prohibition of advertisements that present minors in situations with sexual connotations such as sexually dominated content and content that promotes the misuse of one's biological sex, sex change or homosexuality |
| IE | Pending adoption |
| MT | Rules follow the obligations of the revised AVMSD. It is prohibited to show commercial communications for products which are not suitable for children, immediately before, after or during children's programmes |
| NL | VSPs obligated to adopt a code of conduct on measures aimed at, *inter alia*, ensuring the protection of minors. In terms of advertising directed at children and minors, emphasis is put on ensuring the recognizability |
| NO | Pending adoption. Marketing control legislation, which applies also to VSPs, provides restrictions for commercial practices directed at children, as well as prohibits direct exhortations to children to purchase advertised products or to persuade their parents or other adults to buy the advertised products for them |
| PT | The rules follow the obligations of the revised AVMSD including conditions for the use of personal data of minors in relation to online commercial communications techniques |
| SE | General obligation of VSPs to take appropriate measures to protect minors apply. VSPs may not interrupt or insert commercial advertising immediately before or after user-generated videos or television programmes primarily aimed at children under 12 |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.2.10. Other relevant provisions

The questionnaire inquired about the existence of other provisions relevant to restrictions regarding ACCs and, while the majority of national experts did not report any other relevant provisions, in some instances additional requirements can be found. Some of these may fall under the more general requirements explored above, such as the protection of minors, the prohibition of illegal content, or content encouraging behaviour prejudicial to health or safety, but they are nevertheless presented in the table below for illustrative purposes.

**Table 11. Other relevant provisions**

| | Other relevant provisions |
|---|---|
| N/A: BE FR, CY, CZ, DK, EE, ES, FI, FR, GR, HR, HU, IE, LT, LU, MT, NL, NO, PL, PT, RO, SI, UK | |
| AT | Prohibition of encouragement of illegal practices of any kind, as well as misleading or harming the interests of consumers |
| BE NL | Prohibition of commercial communications concerning arms |
| BG | Prohibition of the use of the coat of arms, the flag and the anthem of the Republic of Bulgaria, as well as the voices and images of active journalists - news anchors in commercial communications |
| DE | Prohibition of thematic placement |

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| | Other relevant provisions |
|---|---|
| IT | Self-regulatory obligations regarding online behavioural advertising: transparency obligations (the obligation to adopt a proper icon issued by the European Interactive Digital Advertising Alliance – EDAA); enabling users to express a choice and to consent to such advertising practices; ban on online behavioural advertising segments being created for advertisements directed at minors under the age of 12 |
| LV | Prohibition of advertising of material of a pornographic nature in electronic environment; restrictions of advertising of credit services; requirements pertaining to labelling, presentation and advertising of food supplements; prohibition of advertising of energy drinks to children or using children in energy drinks advertisements |
| SE | Prohibition of processing personal data collected or otherwise generated by VSPs for commercial purposes |
| SK | Prohibition of commercial communication concerning the needs or availability of organs, tissues and cells in order to offer or obtain a financial gain or comparable advantage; infant formulas; weapons or ammunition |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 3.3.1. Sponsorship

Obligations stemming from the revised AVMSD vis-à-vis sponsorship and its applicability to VSP providers are twofold. As was elaborated above, Article 9(1) contains restrictions applicable to all ACCs (therefore including sponsorship), requiring VSPs to comply with them or take appropriate measures to comply with them. Furthermore, rules specific to sponsorship are contained in Article 10 of the AVMSD, which stipulates certain prohibitions against influencing the responsibility and editorial independence of the media service provider or making promotional references to a sponsor's goods or services, as well as sponsorship identification obligations and restrictions as to persons who may not be sponsors and programmes which may not be sponsored.

Only two countries explicitly refer to restrictions regarding commercial communications (that the VSPs are obligated to comply with or take appropriate measures to comply with) being applicable to sponsorship as well (DK, GR). However, since the obligations detailed under section 3.2. refer to ACCs in general, it is implied that sponsorship, as well as product placement, are included in their scope in other territories covered by this report, as well. Several of them highlight cases of forbidden or restricted sponsorship on VSPs: tobacco and tobacco-related products (CZ, DE, FR, SE), medicinal products and events (CZ, SE), alcohol (FR, SE) or gambling (SE).

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Sponsorship rules, as stipulated by the AVMSD, are applicable in 11 cases: AT, BE FR (if the video provided is considered to be an audiovisual media service), BE NL, DE (if the VSP can be regarded as telemedia), EE, FI, HU, LT (if the VSP provides audiovisual media services/programmes), NL (if they qualify as VoD), PL and PT.

There are no specific rules pertaining to sponsorship in relation to VSP providers in BG, CY, ES, HR, IE, IT, LV, MT, RO, SI, SK, UK, whereas in the case of Luxembourg it is explicitly stated that the AVMSD rules on sponsorship are not applicable to VSP providers. Finally, there are no rules applying to sponsorship on VSPs in Norway yet, since the transposition process is still pending at the time of drafting.

**Table 12. Sponsorship requirements**

| | Sponsorship requirements |
|---|---|
| No specific rules pertaining to sponsorship for VSPs: HR, IT, LV, MT, RO and SI | |
| The rules, also applicable to VSPs, follow the obligations of the revised AVMSD: AT, BE (NL), EE, ES, FI, PL, PT and SK | |
| BE FR | Rules follow the obligations of the revised AVMSD, and are applicable to VSPs if the video provided meets the conditions to be considered an audiovisual media service |
| BE NL | Rules, also applicable to VSPs, follow the obligations of the revised AVMSD |
| BG | No specific rules pertaining to sponsorship for VSPs. The general requirements for sponsored programmes follow the obligations of the revised AVMSD |
| CY | No specific rules pertaining to sponsorship for VSPs. The general requirements for sponsored media services or programmes follow the obligations of the revised AVMSD |
| CZ | Prohibited sponsorship of tobacco advertising, events or activities to promote electronic cigarettes; restrictions for sponsorship of pharmaceutical products and medical congresses |
| DE | Rules follow the obligations of the revised AVMSD, applying to VSPs only insofar as they can be regarded as 'telemedia'. i.e. all electronic information and communication services that are not broadcasting or telecommunications or telecommunications-based services, which may include both VSPs and the individual user channels distributed via VSPs |
| DK | Restrictions regarding commercial communications on VSPs are applicable to sponsorship as well |
| ES | Rules follow the obligations of the revised AVMSD |
| FR | Rules impacting VSPs include the prohibition of sponsorship by tobacco companies, as well as prohibition of sponsorship for alcohol on online sites aimed primarily at young people and those published by sports associations |
| GR | VSPs must clearly inform the users of any audiovisual commercial communications contained in user-generated programmes or videos, provided that these communications are either declared or the provider is aware of them |
| HU | Rules follow the obligations of the revised AVMSD, including the prohibition of sponsoring by entities related to political parties, gambling or tobacco industry |
| IE | Currently no rules pertaining to sponsorship for VSPs. Rules to be created by the regulatory authority following the adoption of implementing legislation |
| LT | VSP provider subject to requirements if it provides audiovisual media services and/or television programmes and/or individual programmes distribution services on the Internet |
| LU | No specific rules pertaining to sponsorship for VSPs. AVMSD rules on sponsorship are not applicable to VSP providers |

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| | Sponsorship requirements |
|---|---|
| NL | No specific rules pertaining to sponsorship for VSPs apply. AVMSD and other rules on sponsorship apply insofar as they qualify as commercial media services on demand |
| NO | Pending adoption. The rules for audiovisual media services follow the obligations of the revised AVMSD |
| SE | VSPs obligated to identify sponsors at the beginning or the end of the video or programme. Restrictions for sponsorship agreements for alcohol, tobacco, electronic cigarettes, gambling and medicinal products, apply |
| SK | No specific rules pertaining to sponsorship for VSPs. Rules for audiovisual media services follow the obligations of the revised AVMSD |
| UK | No specific rules for VSPs on sponsorship, apart from general rules and self-regulatory guidance for influencers |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.3.2. Product placement

In the same vein as sponsorship, restrictions applicable to ACCs also include product placement. Rules specific to product placement are contained in Article 11 of the AVMSD, which stipulates the requirements that programmes containing product placement must meet, as well as prohibited product placements and restrictions as to programmes which may not contain product placement.

Again, two countries explicitly refer to restrictions regarding commercial communications (that the VSPs are obligated to comply with or take appropriate measures to comply with) being applicable to product placement as well (DK and GR). Product placement rules, as stipulated by the AVMSD, are applicable in 11 cases: AT, BE FR (if the video provided is considered to be an audiovisual media service), BE NL, DE, EE, FI, HU, LT (if the VSP provides audiovisual media services/programmes), NL (if they qualify as VOD), PL and PT. An identification requirement is emphasised in the case of SE, where VSPs are obligated to label product placement at the beginning, at the end, and after an advertising break. In Croatia, draft secondary legislation which applies to user-generated content establishes identification requirements (i.e. a prohibition against surreptitious commercial communications), as well as requirements regarding editorial independence, promotional references and undue prominence.

There are no specific rules pertaining to product placement in relation to VSP providers in BG, CY, ES, FR, IT, LV, MT, SI, SK and the UK. In one case (LU) it is explicitly stated that the AVMSD rules on product placement are not applicable to VSP providers, whereas in another (RO) it is still unclear whether they apply to VSPs. Finally, there are no rules as yet applying to product placement on VSPs in Ireland and Norway, since additional rules should be enforced in Ireland by the future Media Commission, and the transposition process is still pending in Norway.

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**Table 13. Product placement requirements**

| | Product placement requirements |
|---|---|
| The rules, also applicable to VSPs, follow the obligations of the revised AVMSD: AT, BE (NL), DE, EE, ES, FI, PL and PT | |
| No specific rules pertaining to product placement for VSPs: CZ, FR, IT, LV, MT and SI | |
| BE FR | Rules follow the obligations of the revised AVMSD, and are applicable to VSPs if the video provided meets the conditions to be considered an AVM service |
| BG | No specific rules pertaining to sponsorship for VSPs. General restrictions for product placement follow the obligations of the revised AVMSD |
| CY | No specific rules pertaining to product placement for VSPs. General restrictions for product placement follow the obligations of the revised AVMSD |
| DK | Restrictions regarding commercial communications on VSPs are applicable to product placement as well |
| GR | VSPs must clearly inform the users of any audiovisual commercial communications contained in user-generated programmes or videos, provided that these communications are either declared or the provider is aware of them |
| HR | No specific rules pertaining to product placement for VSPs, but draft secondary legislation which applies to user-generated content establishes identification requirements i.e. prohibition of surreptitious commercial communications, as well as requirements of the revised AVMSD |
| HU | Rules follow the obligations of the revised AVMSD, including the prohibition of product placement provided by the entities from gambling or tobacco industry |
| IE | Rules pertaining to product placement for VSPs to be created by the regulatory authority following the adoption of implementing legislation |
| LT | VSP provider subject to requirements if it provides audiovisual media services and/or television programmes and/or individual programmes distribution services on the Internet |
| LU | No specific rules pertaining to product placement for VSPs. AVMSD rules on product placement are not applicable to VSP providers |
| NL | No specific rules pertaining to product placement for VSPs apply. AVMSD and other rules on product placement apply insofar as they qualify as commercial media services on demand |
| NO | Pending adoption. Rules for audiovisual media services follow the obligations of the revised AVMSD |
| RO | Rules for TV and VoD follow the obligations of the revised AVMSD, but it is still unclear whether they apply to VSPs |
| SE | VSPs obligated to provide information about the existence of product placement at the beginning, at the end, and after an advertising break. Restrictions for product placement for alcohol, tobacco, electronic cigarettes, gambling and medicinal products, or videos/programmes primarily aimed at children under 12, apply |
| SK | No specific rules pertaining to product placement for VSPs. The rules for audiovisual media services follow the obligations of the revised AVMSD |
| UK | No specific rules for VSPs on product placement, apart from general rules and self-regulatory guidance for influencers |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

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## 3.4. Obligations regarding (v)blogs and (v)blogging

As explained in the Report of the European Regulators Group for Audiovisual Media Services (ERGA) entitled "Analysis and recommendations concerning the regulation of vloggers",[9] a vlog is generally defined as a video blog or video log, a form of blog constituted by a video and uploaded to VSPs, where the videos are hosted and made available to the general public. In practice, other terms or labels are also used for such activities, such as "YouTubers", "YouTube channels", "influencers", "creators" or "uploaders".

In 12 cases covered by this report (AT, BE FR, BE NL, DE, ES, FR, HU, LT, NL, NO, PL, SE), (v)blogs may constitute an audiovisual media service on condition that they meet the relevant criteria as provided by the AVMSD. In some cases, these criteria are more specific (see table below). (V)blogs are not considered audiovisual media services in 10 jurisdictions (DK, EE, HR, FI, IT, LV, MT, PT, SK, UK). However, as user-generated content distributed on VSPs, they are covered by advertising and consumer protection regulations, such as provisions on misleading and surreptitious commercial communications (DK) or identifiability requirements (HR, IT). In Latvia, two decisions on administrative offences have been issued by the Consumer Rights Protection Centre regarding unmarked commercial communications on Instagram which were upheld by the administrative courts in the first instance. Also, in Poland, the Office of Competition and Consumer Protection is currently conducting several proceedings against (v)bloggers that disseminate surreptitious and misleading advertising.

No specific rules regarding (v)blogs or (v)bloggers apply in 7 cases (BG, CY, CZ, GR, LU, RO, SI). Finally, soft-law and self-regulatory instruments dealing with various aspects of online content creations and influencer advertising are mentioned in several cases.

**Table 14. Obligations regarding (v)blogs and (v)blogging**

| | Definitions | Scope and obligations |
|---|---|---|
| N/A: BG, CY and GR | | |
| No specific rules apply: LU and RO | | |
| AT | Considered an audiovisual media service if they meet the AVMSD criteria | Provisions applicable to VoD apply. Obligation to notify regulatory authority no later than two months after starting the activity |
| BE FR | Considered an audiovisual media service if they meet the AVMSD criteria. Channels hosted on VSPs are AVMS under the responsibility of the vloggers who created and uploaded them | Provisions applicable to VoD apply<br><br>Recommendations on influencer advertising |
| BE NL | Can qualify as providers of a "broadcasting service" in their own right | Content Creator Protocol (CCP) applicable to content creators, (v)bloggers and influencers established in Flanders around three main themes: commercial communication on social media; commercial communication and content |

[9] https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Vloggers.pdf

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| | Definitions | Scope and obligations |
|---|---|---|
| | | aimed at minors; and the prohibition of hate speech and incitement to violence<br>Recommendations on influencer advertising; Best practices with regard to advertising by content creators or influencer; Self-regulatory influencer code |
| CZ | No specific rules concerning (v)blogs | May be subject to advertising legislation as processors or distributors of advertising, most notably with regard to obligations of labelling and provisions on prohibited advertising |
| DE | No specific rules concerning (v)blogs. May meet the definition of the broadcast-like telemedia in terms of offering a catalogue of qualified programmes such as radio plays, films, series, documentaries, entertainment programmes etc. | Since they are distributed online as telemedia and communications services, certain advertising rules apply: recognizability, prohibition of subliminal techniques, identification of person on whose behalf commercial communications are made, and protection of minors<br>Stricter rules (as for VoD and other television-like media) may apply only if the (v)blog meets the definition of the broadcast-like telemedia |
| DK | Not considered to be audiovisual media services | Advertising on (v)blogs on social media must comply with the marketing practices legislation, including provisions on misleading and surreptitious commercial communications |
| EE | Not considered to be audiovisual media services, nor are they subject to advertising rules | |
| ES | Defined as 'users of special relevance' who use VSPs' and considered as providers of the audiovisual communication service. AVM criteria apply, e.g. in order to fulfil the economic activity criterion, the user must obtain a significant income derived from its activity on the VSP | Regulation on influencers planned to be adopted in early 2023 |
| FI | (V)bloggers covered by advertising and consumer protection regulations | Guidelines on influencer marketing in social media instruct companies and influencers on how commercial cooperation should be communicated to consumers, including labelling advertisements on social media platforms |
| FR | Can qualify either as VoD or VSP | Subject to the rules applicable to VoD if AVMSD criteria are me |
| HR | Not considered audiovisual media services, but information society services | Electronic commerce legislation requires service providers to ensure identifiability of commercial communication, the person on whose behalf it is made, identifiability of promotional offers and clarity of conditions for accepting these offers |
| HU | No specific rules apply. May qualify as an audiovisual media service provider | If qualified as media service providers, restrictions on commercial communications apply |
| IE | The Online Safety and Media Regulation (OSMR) Act 2022 does not include | |

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| | Definitions | Scope and obligations |
|---|---|---|
| | explicitly (v)blogs into definition (see the phrasing of section 2(b)) | |
| IT | Not considered audiovisual media services | (V)blogs are subject to the general rules under consumer protection code (e.g. prohibition of misleading commercial practices), as well as the self-regulatory instrument on the identifiability of commercial communications disseminated online, which requires (v)blogs of commercial nature to include written warnings in the description of the video and the initial scenes so as to make the promotional purpose clear; and (v)blogs not resulting from a commission but showcasing gifted or modest-value products to include an introductory disclaimer about this fact |
| LT | Considered an audiovisual media service if they meet the AVMSD criteria. In particular, the video content should constitute a programme (show) similar to that broadcast on television. In order to fulfil the economic/commercial activity criterion, the vlogger needs to be registered with the tax authority. The services provided need to have an impact on the target audience with significant followings/number of views | Guidelines on the qualification and requirements of audiovisual media service providers providing services using video-sharing platforms |
| LV | Not considered audiovisual media service | Guidelines for content creators/influencers published by the Consumer Rights Protection Centre set down basic principles for advertising on social networks: prohibition of unmarked commercial communications, use of hashtags to indicate commercial content, respect for industry-specific advertising regulations, obligation to provide truthful information |
| MT | Currently not covered by legislation; future interpretation by the regulatory authority might address this issue | |
| NL | Qualifies as a commercial VoD when:<br>- it is distributed through a VSP and in the past 12 months 24 or more videos have been published<br>- the company is registered at the Chamber of Commerce and an economic advantage is gained with the publication of the videos and<br>- the videos generate more than 500 000 followers | Self-regulatory Advertising Code for Social Media & Influencer Marketing applies if there is a 'relevant relationship' established between the advertiser and the distributor directed at distribution of advertising through social media in return for payment or other benefit. The advertiser is responsible to require from the distributor to comply with the code, which stipulates provisions in disclosure and recognizability of a relevant relationship, ban on manipulation, ban on encouraging children aged 12 or under to advertise on social media |
| NO | Some vloggers may be considered as on-demand audiovisual media service | Non-binding guidelines issued by the regulatory authority provides for principles of advertising recognizability and labelling |

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| | Definitions | Scope and obligations |
|---|---|---|
| | | Vloggers that are not considered VoD services must comply with the general rules under marketing control legislation |
| PL | Considered VoD providers when vloggers act within the scope of their business activity and present their content in the catalogue comparably to other VoD providers | Rules on commercial communications for VoD, as well as consumer protection rules, apply |
| PT | Not considered audiovisual media service | Good practices in commercial communication in digital media |
| SE | Not specifically mentioned, but implicitly included in the scope, as the legislation refers to inclusion of all economic activities except services without economic purpose that do not compete with television/VoD | Covered by the constitutional protection regulations applicable to online publications |
| SI | No specific rules apply. Subject to self-regulation | Recommendations for influencer marketing issued by the self-regulatory body for advertising include guidelines aimed at ensuring that influencers understand the concepts of paid advertising and ensure compliance with relevant regulations, especially recognizability, identification and visibility of labelling, as well as rules around prohibited and restricted advertising |
| SK | Vlogs fall into the category of user-created video, whereas blogs are considered as 'publication' which falls outside od scope of implementing legislation | Rules and restrictions regarding commercial communications apply to vlogs as user-generated videos |
| UK | Not considered audiovisual media services | Self-regulatory advertising body provides guidance for influencers on how to ensure compliance with the code<br>Guidance for influencers issued by the competition authority refer to the rules of identifiability, recognizability and honesty about sponsored or advertised content, refraining from misleading practices |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.5. Content-related rules regarding commercial communications for VSP providers

This part deals with the less explored notions, such as rules pertaining to the advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith

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and other belief systems (introduced by 6 countries), as well as gambling (introduced by 27 countries) and environmental claims (introduced by 14 countries) vis-à-vis products and services.

### 3.5.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

Specific rules pertaining to advertising concerned with religion, faith or other belief systems exist in only a small number of the territories covered (6), although it can be argued that these notions fall under the general prohibition on advertising that prejudices human dignity and promotes discrimination on the grounds of religion or belief, as several experts responding to the questionnaires pointed out.

The rules in place range from the prohibition of advertising promoting religious or belief systems (IE, NO, PT, SK) or specific restrictions such as only showing such advertising in religious programmes (HU), to rules on transparency (i.e. identification of the advertiser or client (DE)).

**Table 15. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems**

| | Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems |
|---|---|
| No specific provisions in place: AT, BE (FR), BE (NL), BG, CY, CZ, DK, EE, ES, FI, FR, HR, IT, LT, LU, LV, MT, NL, PL, RO, SE, SI and UK | |
| DE | Obligation to clearly indicate the advertiser or client in an appropriate manner |
| GR | No specific provisions deal with this issue, subject to possible inclusion in the envisaged national code of conduct on commercial communications in VSPs |
| HU | Commercial communications should not express religious, philosophical or similar beliefs, unless shown in media services specialising in religion. Religious symbols and motifs may only be used in advertising within the limits of good taste and in such a way that their use is appropriate to the subject matter |
| IE | No specific rules in place for VSPs. Advertising in media services which addresses the issue of the merits or otherwise of adhering to any religious faith or belief, or of becoming a member of any religion or religious organisation, is prohibited |
| NO | No specific provisions in place for VSPs yet. Advertisements for belief systems or political messages are prohibited on television and teletext services |
| PT | Advertising of trade union ideas, political or religious content is forbidden |
| SK | Broadcasting of announcements promoting religion or atheism is prohibited |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

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### 3.5.2. Gambling, betting, betting tipsters, etc.

The revised AVMSD makes reference to the promotion or advertising of gambling in relation to consumer protection and the protection of minors. In this regard, Recital (10) reiterates the possibility of restricting the freedom to provide services guaranteed under the Treaty for overriding reasons in the general public interest, such as obtaining a high level of consumer protection, provided that such restrictions are justified, proportionate and necessary. When dealing with the protection of minors, Recital (30) refers to self- and co-regulatory mechanisms.

As can be seen from the table below, gambling advertising is generally subject to specific rules (i.e. gambling codes, sometimes self-regulatory instruments), and is usually not covered under the legislations transposing the AVMSD. References can be found in general requirements for commercial communications dealing with the protection of minors (AT, BE FR, MT, SK). These specific rules do not address VSPs explicitly, but they do apply to online advertising which includes VSPs. Only three countries indicate that there are no provisions in place regarding gambling advertising on VSPs (DK, LU, RO).

The protection of minors from exposure to ACCs relating to the promotion of gambling is widely ensured through various avenues, primarily by prohibiting gambling advertising aimed at or targeting minors (e.g. BG, CZ, FI, HU, PT, SI). In some cases, specific instruments are in place in order to prevent minors' access to gambling sites (DE, MT). In some cases (ES, GR) there is an obligation to establish access control mechanisms for minors. Influencing minors to participate or suggesting gambling to minors is mentioned in two cases (CY, FR).

As far as the protection of consumers is concerned, the rules revolve around preventing harm and ensuring responsible commercial communication practices such as prohibitions against denying the gambling character of the game (AT); glorifying or presenting gambling in a positive way (FI, NL); promoting excessive gambling or exaggerating the chances of winning (AT, BE NL, DE, FR, HU, SI); claiming that winnings may depend on knowledge or other factors that the consumer can influence (SI); linking gambling to social acceptance, success, or the resolution of financial and other problems (CY, EE, HU, PT); or giving the impression that a game of chance could be a legitimate source of income (CZ, FR, HU). Other responsible commercial communication practices stipulate that gambling advertising should be socially responsible and should not mislead or prey upon people's vulnerabilities (HU, NL, UK). Obligatory warnings as to the risks of gambling (CZ, FR, LT, PL) and responsible behaviour (EE, ES) are prescribed in some instances, including warnings aimed at preventing the access of minors such as an indication of the legal age for gambling (BE NL). In Croatia, VSPs are obligated to indicate to minors that they are using a game of chance.

Finally, in some instances, bans on gambling advertising apply as in the case of games of chance whose operation has not been authorised (BE FR, SE), or a general prohibition against advertising gambling including in online media/VSPs (IT – except for promotional and/or informative activities related to gambling and LT – except for names

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and trademarks, LV, NO, PL – except for sports bets). In Croatia, the advertising of games of chance from foreign countries is prohibited.

An interesting case in relation to gambling advertising on a VSP provider is reported by Italy, where the legislation prohibits direct and indirect gambling advertising (advertising for games with cash prizes) and provides for several levels of liability, depending on the actor involved (client, owner of the medium where the advertisement is disseminated, or the organiser of the event). Based on this provision, in August 2022, the regulatory authority Agcom sanctioned a company for having disseminated prohibited gambling advertising on its website and its five related YouTube channels with a EUR 700 000 administrative fine[10]. In addition, the regulator established a precedent by sanctioning the VSP YouTube,[11] which was held responsible for not removing the illegal content in question, as the holder of a specific partnership contract with the content creator (a "verified partner"). In addition to a EUR 750 000 administrative fine, YouTube was issued a notice and take-down order for the removal of 625 illegal pieces of content, as well as a notice and stay-down order for similar content from the same creator, intended to prohibit the future dissemination and uploading of similar unlawful content.

**Table 16. Gambling, betting, tipsters, etc.**

| | Gambling, betting, tipsters, etc. |
|---|---|
| No specific provisions in place: DK, LU and RO | |
| AT | Gambling legislation provides for requirements of responsible advertising |
| BE FR | VSPs obligated to comply with gambling legislation, which prohibits advertising for games of chance whose operation has not been authorised, and sets out conditions for advertising of gambling operated by means of information society instruments |
| BE NL | VSPs obligated to comply with legislation for advertising for gambling and betting via information society instruments. Self-regulatory instruments also apply, containing rules for a responsible gambling policy that informs players and prevents excessive gambling |
| BG | Ban on gambling advertising aimed at minors from the gambling legislation applies. General rules regarding commercial communications for gambling laid down by a self-regulatory instrument |
| CY | General restrictions under betting legislation e.g. not connecting betting to social acceptance, success or resolution of problems, influencing minors to participate, exceeding the limits of honesty and decency, etc. |

[10] See press release at https://www.agcom.it/documents/10179/27565255/Comunicato+stampa+02-08-2022/30ce2d6c-cf87-48d2-9794-d27e54e4b540?version=1.1

[11] It should be noted that Article 41 (7) of the AVMS Code provides Agcom with powers with regard to commercial communications disseminated by VSPs which are operating in Italy but are subject to the jurisdiction of another member state. These limitations are provided for the following purposes: a) the protection of minors from content that may harm their physical, mental or moral development (pursuant to Article 38, paragraph 1; b) the fight against incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity; and c) the protection of consumers, including investors. As this provision is not stipulated by the revised AVMSD, Italy has notified this provision to the European Commission (n.2021/676) before its entry into force without exceptions being raised by the European Commission. Further details are available at:
https://ec.europa.eu/growth/tools-databases/tris/it/search/?trisaction=search.detail&year=2021&num=676.

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| | Gambling, betting, tipsters, etc. |
|---|---|
| CZ | Advertising legislation contains restrictions in terms of responsible gambling and protection of minors. Obligatory statement prohibiting participation for minors and display of a prominent warning about possible addiction |
| DE | VSPs obligated to comply with provisions of gambling legislation which prescribes restrictions in terms of responsible gambling and protection of minors and other vulnerable target groups, with and a watershed between 6 a.m. and 9 p.m. for Internet advertising of virtual slot machine games, online poker and online casino games |
| EE | Gambling legislation provides for restrictions in terms of responsible gambling. Display of a textual warning about gambling not being a suitable means for solving financial problems and responsible behaviour is obligatory |
| ES | Permitted only for accounts or channels whose main activity is the offering of information or content on gaming activities, provided that they establish access control mechanisms for minors, as well as the periodic dissemination of messages on safe and responsible gaming |
| FI | Gambling legislation provides for the prohibition of gambling marketing targeted at minors, and stipulates conditions in terms of responsible gambling |
| FR | Obligation to include warning about the risks of gambling and a clickable link to the website of the gambling help line; restrictions in terms of responsible gambling and protection of minors |
| GR | Commercial communication for games of chance offered over the Internet permitted only on the provider's own social media accounts, provided that the access is blocked for persons under the age of 21 |
| HR | General ban on commercial communications of games of chance from foreign countries apply. Product placement of gambling and betting products is prohibited. VSPs obligated to indicate to minors that they are using games of chance |
| HU | Prohibited for children and minors and without the authorisation of the state tax authority. Self-regulatory instrument stipulates restrictions in terms of responsible gambling and misleading information |
| IE | No specific rules in place for VSPs yet. Self-regulatory instrument requires that all marketing communications for gambling services or products contain a message to encourage responsible gambling and direct people to a source of information to this end |
| IT | General ban on commercial communications for gambling apply, except for the use of the gambling brand's distinctive signs or domain names of online websites for promotional purposes |
| LT | General prohibition of gambling advertising, with the exception of the names, trademarks and types of gambling. Prohibition to publish any information related to gambling on websites intended for persons under the age of 18. Obligatory warning notice about dangers of addiction or pathological gambling |
| LV | General prohibition of advertising of gambling outside of gambling premises, including in online media, apply |
| MT | General prohibition of commercial communications which might cause physical, mental or moral detriment to minors apply. Product placement of gambling products is prohibited between 06 a.m. and 7 p.m. |
| NL | Self-regulatory instrument applying to advertising by the operators of online games of chance stipulates requirements in terms of responsible gambling |
| NO | General prohibition of marketing of gambling services, including on VSPs, applies |
| PL | General prohibition of commercial communications for gambling and hazardous games applies for all types of media services and VSPs, except for sports mutual bets under the conditions related to protection of minors and responsible betting, with obligatory warning displays |
| PT | Advertising legislation stipulates conditions under which gambling and betting advertising is permitted, in terms of protection of minors and responsible gambling |

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| | Gambling, betting, tipsters, etc. |
|---|---|
| SE | VSPs are prohibited from entering into or facilitating an agreement on sponsorship or product placement in user-generated content or TV programmes if they relate to, *inter alia*, gambling products offered by a company without the necessary licence |
| SI | Advertising legislation provides rules in relation to advertising of games of chance including online gambling, in terms of protection of minors and responsible gambling |
| SK | No specific provisions in place, general prohibition of commercial communications which might cause physical, mental or moral detriment to minors apply |
| UK | Self-regulatory instrument, drawing on the provisions of gambling legislation, and applying to online advertising including on VSPs, provides rules aimed at ensuring that gambling advertising is socially responsible, protects minors, and does not prey upon vulnerabilities |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.5.3. Environmental or “green” claims for products

The expressions "environmental claims" or "green claims" refer to the practice of suggesting or otherwise creating the impression (in the context of a commercial communication, marketing or advertising) that a product or a service is environmentally friendly (i.e. it has a positive impact on the environment) or is less damaging to the environment than competing goods or services. This may be due, for example, to its composition, the way it has been manufactured or produced, the way it can be disposed of or the reduction in energy or pollution which can be expected from its use. When such claims are not true or cannot be verified this practice can be described as "greenwashing".[12]

The principles and standards pertaining to the use of environmental claims in advertising are contained in the Unfair Commercial Practices Directive, which provides for the obligation to present green claims in a clear, specific, accurate and unambiguous manner, to ensure that consumers are not mislead, as well as to provide the evidence to support such claims. Requirements for self-declared environmental claims (including statements, symbols and graphics) regarding products are furthermore contained in the ISO 14021:2016 standard.[13]

The rules applicable to, *inter alia*, VSP advertising containing environmental or “green” claims for products, are based on the above documents. Such rules exist in 14 territories covered by the report, and range from self-regulatory instruments to rules contained in advertising legislation or legislation on unfair commercial practices. France has introduced an obligation for a media regulatory authority to promote codes of conduct (climate contracts) with an objective to reduce commercial communications that have a negative effect on the environment, including preventing commercial communications that contain greenwashing.

[12] EC Guidance for the implementation/application of Directive 2005/29/EC on unfair commercial practices, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016SC0163.
[13] ISO 14021:2016 Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling), https://www.iso.org/standard/66652.html

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Generally, false or exaggerated environmental claims fall within the scope of misleading advertising or commercial practices (BE NL, BG, EE, NL, PL), including being misleading by omitting or concealing information on environmental impact (DK). In addition, there are requirements for environmental claims to be clear, understandable and justified (HU, UK) as well accurate, relevant and verifiable (IT, LV), including the obligation to provide evidence for such claims (BE NL, BG, EE, HU).

In two instances (AT, DE), there are no specific provisions on environmental claims, but the general rules on misleading advertising and advertising prejudicing the interests of consumers apply. No specific provisions on this issue exist in 16 cases (BE FR, CY, CZ, ES, FI, GR, HR, LT, LU, MT, NO, PT, RO, SE, SI, SK).

**Table 17. Environmental or "green" claims for products**

| | Environmental or "green" claims for products |
|---|---|
| No specific provisions in place: CY, CZ, ES, FI, LT, LU, MT, NO, PT, RO, SE and SI | |
| AT | Prohibition of providing misleading information under legislation against unfair competition apply |
| BE FR | No specific provisions in place, subject to self-regulation |
| BE NL | Covered by self-regulatory instruments in relation to misleading advertising through false environmental claims, and prohibition to use claims referring to environmental effects |
| BG | Covered by self-regulatory instrument in relation to misleading advertising through false or exaggerated environmental claims without convincing evidence |
| DE | No specific provisions in place; provisions on misleading advertising and advertising prejudicing the interest of consumers apply |
| DK | Covered by provisions on misleading actions in commercial communications in the marketing practices legislation that applies to environmental or "green" claims |
| EE | Advertising legislation prescribes that expressions such as 'environment-friendly', 'ecologically safe' and similar may not be used if there is no evidence to support them. Restrictions regarding misleading advertising also apply |
| FR | Regulatory authority is in charge of promoting codes of conduct (climate contracts) with an objective to reduce commercial communications that have a negative effect on the environment, including preventing commercial communications that contain greenwashing |
| GR | No specific provisions deal with this issue, subject to possible inclusion in the envisaged national code of conduct on commercial communications in VSPs |
| HR | No specific provisions in place, subject to self-regulation |
| HU | Self-regulatory instrument stipulates requirements for environmental claims to be clear, understandable and justified and to refer to environmental benefits only based on environmental impact assessment |
| IE | No specific rules in place for VSPs yet. Self-regulatory instrument requires that marketing communications do not mislead consumers about the environmental benefit of a product |
| IT | Rules on unfair commercial practices prohibit the use of environmental claims that are based on misleading information or are not strongly substantiated |
| LV | Greenwashing is prohibited by law as an unfair commercial practice. Non-binding guidelines provide for a list of requirements for environmental claims such as being accurate, verifiable, evidence-based, etc. |

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| | Environmental or "green" claims for products |
|---|---|
| NL | Self-regulatory instrument on environmental advertising requires it not to be misleading vis-à-vis the environmental aspects of products and not to use environmental designations and symbols unless the origin of the designation or symbol is clear |
| PL | Self-regulatory instrument for advertising requires commercial communications referring to environmental protection not to be misleading |
| SK | No specific provision in place. Legislation on environmental labelling of products stipulates the conditions under which a product may receive an environmental mark |
| UK | Self-regulatory instrument, applying to online advertising including on VSPs, contains provisions aimed at ensuring that green claims are clear and justified |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.6. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of bodies in charge of self-regulatory, co-regulatory and enforcement powers with regards to commercial communications and VSPs, as well as the scope of their activities with regards to commercial communications and VSPs.

### 3.6.1. Context of establishment and legal background

The role of self- and co-regulation in delivering a high level of consumer protection is well-recognised by the revised AVMSD, as pointed out in its Recital (13):

> *…Measures aimed at achieving general public interest objectives in the emerging audiovisual media services sector are more effective if they are taken with the active support of the service providers themselves.*

According to Article 4a (1), member states

> *shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct adopted at national level in the fields coordinated by the directive, to the extent permitted by their legal systems.*

According to Article 28b (2), member states

> *[…] shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in Article 4a(1) aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended. Those codes shall aim to provide that such audiovisual commercial*

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*communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.*

Areas in which self- and co-regulation are particularly encouraged include inappropriate ACCs for alcoholic beverages and ACCs for HFSS foods and beverages, where the regulation is aimed at effectively reducing the exposure of minors to such ACCs, as highlighted by Article 28b when dealing with VSPs. Furthermore, it is stipulated that co-regulation should be encouraged for the purposes of implementing the measures that VSPs are required to ensure in terms of the protection of minors and the general public; co-regulation should also be encouraged for the purposes of compliance with the requirements with respect to ACCs, whether or not marketed, sold or arranged by those VSPs.

The above, however, should not be understood as obliging member states to set up self- or co-regulation regimes, or both, nor to disrupt or jeopardise current co-regulation initiatives which are already in place in member states and which are functioning effectively (Recital 14).

The table below offers an overview of the legal background for the establishment of self- and co-regulatory body(ies) as regards self- and co-regulatory codes, , showing that the territories covered in this report have indeed applied the AVMSD's strong emphasis on these mechanisms. Whereas self- and co-regulation are merely encouraged in some instances (e.g. BG, CY, GR, HR, LU, MT, PT, RO), other countries have introduced an obligation for VSP providers to engage in self-regulation, as for example in the Netherlands where VSPs are required to adopt and apply a code of conduct based on the measures laid down in the revised AVMSD, as well as to respect the obligations stemming from the self-regulatory Advertising Code. In the same vein, the role of regulatory authorities is in some cases seen to involve encouraging, promoting, initiating or facilitating self-regulation, whereas in others the regulators have a legal obligation to do so. The level of regulatory engagement, however, differs, and covers the obligation to facilitate the development of self-regulation and to cooperate with self-regulatory bodies (CZ), the obligation to financially support their proper development and functioning (AT), to foster the development of codes of conduct (FR, IT) and, ultimately, to give designation powers in a fully-fledged co-regulatory system (UK). Finally, some legal frameworks do not include self- or co-regulatory measures regarding commercial communications on VSPs, such as in Germany where self-regulation related to commercial communications is not enshrined in law and is driven by the private sector.

**Table 18. Context of establishment and legal background**

| | Context of establishment and legal background |
|---|---|
| AT | Media service providers obligated to establish and adhere to guidelines regarding audiovisual commercial communications related to alcoholic beverages and HFSS products.<br><br>Regulatory authority tasked with promoting self-regulation in commercial communications: upon request, it must grant a recognised institution of self-regulation in the field of commercial |

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| | Context of establishment and legal background |
|---|---|
| | communication in the media or in the field of protection of minors an annual subsidy to cover the costs incurred |
| BE FR,<br>BE NL | Self-regulatory body is responsible for examining whether commercial communication complies with the relevant legislation and self-regulatory codes |
| BG | Self- and co-regulation are to be encouraged through codes of conduct and standards, where appropriate and relevant, including in areas of protection of children in advertising, as well as other standards related to the AVMSD implementation |
| CY | Regulatory authority to encourage media service providers to promote the use of co-regulation and the fostering of self-regulation through codes of conduct at a national level.<br>For the purposes of the implementation of the measures that the VSPs should apply, the use of co-regulation is encouraged, as well as co-regulation and self-regulation aimed at effectively reducing the exposure of children to unhealthy foods on VSPs |
| CZ | Regulatory authority to facilitate the development of self-regulation and to cooperate, within the scope of its competence, with self-regulatory bodies |
| DE | There are no explicit or specific references to systems of self- and co-regulation in the context of commercial communication on VSPs. Co-regulatory systems enshrined in law concern telemedia in relation to due diligence obligations and youth media protection, and not commercial communications. Self-regulation related to commercial communications is not enshrined in law and is driven by the private sector |
| DK | The legal framework does not include self- or co-regulatory measures regarding commercial communications on video-sharing platforms |
| EE | Implementing legislation stipulates that media services and VSPs can enter into self-regulatory schemes establishing content requirements as a code of conduct |
| ES | There are no clearly designated self- or co-regulatory bodies in this area at this stage |
| FI | Self-regulatory bodies established to protect and support media freedoms and responsible advertising |
| FR | Regulatory authority required by law to foster the elaboration of a “Code of Good Administrative Behaviour”, the climate contracts, and the charter on the commercial use of children’s images by VSPs with regard to the obligatory measures – all currently in preparatory phase |
| GR | VSPs encouraged to adopt national codes of conduct in order to further protect consumers and minors, as well as public health and fair competition. Regulatory authority is given the competence to initiate the process for the drafting of a code with regard to matters relating to the implementation of the obligatory VSP measures |
| HR | Regulatory authority encouraged to use co-regulation and promote self-regulation through codes of conduct to effectively prevent excessive consumption by minors of food and beverages that are not recommended for them |
| HU | Regulatory authority may authorise the self-regulatory body, under an administrative agreement, to perform self-management tasks. It is envisaged that self-regulation is recognised by the Hungarian Parliament in the preamble to the Act on fundamental conditions of economic advertising activities and the Act on prohibiting unfair commercial practices towards consumers |
| IE | Legislation provides for a system of co-regulation by providers of on-demand audiovisual media services, including the creation of codes of conduct. This applies to VSPs only when they provide an on-demand service. The OSMR Act 2022 allows for regulatory authority to cooperate with, or |

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| | Context of establishment and legal background |
|---|---|
| | give assistance to in establishment or administration of a self-regulatory system, including the preparation of standards |
| IT | Regulatory authority, upon consulting the committee for the application of the self-regulatory code on media and minors, must promote forms of co-regulation and self-regulation through the adoption of codes of conduct. It is also responsible for adopting guidelines and setting out principles on which said codes of conduct should be based |
| LT | The need for the codes of conduct in relation to commercial communications is recognised in implementing legislation, in particular with reference to exposure of children to commercial communications for HFSS foods and beverages. Advertising legislation also establishes the requirements for the use and responsibilities of advertising activities, and defines relevant self/regulatory measures, including codes of conduct |
| LU | Regulatory authority is to encourage co-regulation and self-regulation, based on codes of conduct prepared by audiovisual media service providers, video-sharing platform service providers or organisations representing them |
| LV | VSPs must draw up a publicly available code of conduct in which they indicate the basic principles of the activity, the accepted conditions of ethical activity, and the regulations on inappropriate audio and audiovisual commercial communications |
| MT | Regulatory authority to encourage the use of co-regulation and the fostering of self-regulation through codes of conduct aiming at effectively reducing the exposure of children to audiovisual commercial communications for HFSS |
| NL | VSPs obligated to adopt a code of conduct on the measures laid down in the revised AVMSD and to apply this code of conduct and these measures to the VSP. In addition, VSPs are obligated to respect the obligations stemming from the self-regulatory Advertising Code |
| NO | Revision of legislation concerning VSPs is pending |
| PL | Media service providers and VSPs can create or access codes of conduct vis-à-vis unfair market practices. Regulatory authority, in cooperation with the relevant minister, initiates, supports and promotes the creation of codes of conduct |
| PT | Regulatory authority to encourage the adoption of co-regulation, self-regulation and cooperation mechanisms between the various television operators, on-demand audiovisual services and VSP providers |
| RO | The use of co-regulation and self-regulation through codes of conduct is encouraged for VSPs in relation to HFSS foods and beverages |
| SE | Regulatory authority has a general obligation to cooperate with other relevant authorities. It is further tasked with contributing to and assisting with systems for co-regulation regarding the appropriate measures VSP providers must take |
| SI | Self-regulatory instrument does not refer to VSPs, but this mechanism should be updated in 2023 to include VSPs |
| SK | Implementing legislation provides for the possibility that the supervision over the observance of obligations may also be carried out by means of a code enforced by a self-regulatory body and registered by the regulator |
| UK | Regulatory authority to encourage and promote self-regulation and give it designation powers.<br>Ofcom has designated the Advertising Standards Authority (ASA) to carry out duties related to the regulation of audiovisual commercial communications including on VSPs. This includes |

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| | Context of establishment and legal background |
|---|---|
| | drawing up guidance and rules, handling complaints, and referring non-compliance to Ofcom. This co-regulatory arrangement covers all advertising sold or arranged by VSPs, or audiovisual media service providers. Ofcom retains direct oversight over the appropriateness of the measures taken by VSPs to ensure commercial communications not sold or arranged by the VSP also complies with the law and standards. |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.6.2. Stakeholders involved

Self-regulation in the field of advertising has long been established and functioning in many of the territories covered, as the overview of stakeholders presented below illustrates. Some of the existing self-regulators have extended their field of operation to VSPs – such as the ASA in the UK, the German Advertising Council, or the Advertising Council in PL. In some instances, the VSPs do not affiliate formally with the self-regulator, but state that they will respect its decisions (NL), whereas in other territories (e.g. ES, RO, SK) the existing self-regulatory bodies do not cover VSP obligations.

The identified stakeholders for the purposes of ensuring compliance with AVMSD requirements, in addition to regulatory authorities and VSP providers themselves, include the health and food safety authority (AT), the consumer protection authority (LT), child protection authorities and associations (AT, IT, FR), food industry companies and advertisers (FR).

**Table 19. Stakeholders involved**

| | Stakeholders involved |
|---|---|
| AT | Werberat (Advertising Standards Council)<br>Association for self-regulation of audiovisual media for the protection of minors in commercial communications<br>Agency for Health and Food Safety |
| BE FR,<br>BE NL | The Communication Centre , the professional organisation that unites and represents the various actors of the communication sector and organises the self-regulation of advertising in Belgium.<br>The Jury on Ethical Practices in Advertising (JEP), the independent self-regulatory organisation of the Belgian advertising industry established within the Centre |
| BG | The National Council for Self-Regulation (NCSR), an independent body for the self-regulation of advertising and commercial communications |
| CY | N/A |
| CZ | Representatives of AVMS providers, on-demand AVMS providers, self-regulatory bodies and regulatory authority |

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| | Stakeholders involved |
|---|---|
| DE | German Advertising Council |
| DK | N/A |
| EE | Estonian Broadcasting Union (ERL), representing the interests of radio and television organisations<br>Estonian Media Enterprises Association (EML), an organisation acting in the common interest of the media, whose members include newspapers, magazines, portals, TV and radio channel |
| ES | Confianza Online, a self-regulatory organisation which aims to ensure a trusted and transparent e-commerce, including interactive advertising, but is currently not identified as a self or co-regulatory body in relation to VSPs |
| FI | The Finnish Council for Mass Media (CMM) and the Council of Ethics in Advertising, as well as industry representatives |
| FR | Regulatory authority (Arcom), Child Protection Associations, VSPs, food industry companies and advertisers |
| GR | SEE, an independent national self-regulatory organisation of the Greek advertising industry, gathering free-to-air radio and TV stations, pay-TV platforms as well as the Association of Advertising Companies of Greece, the Association of Advertisers of Greece and any other representative organisation of advertisers |
| HR | The Croatian Association of Communications Agencies (HURA), a self-regulatory body in the field of advertising and market communications |
| HU | The two Hungarian VSP services are members of the Association of Hungarian Content Providers, signatories to the Co-regulatory Code of the Association of Hungarian Content Providers and the Advertising Ethics Code |
| IE | On-Demand Audiovisual Services Group (ODAS) under the auspices of the Irish Business and Employers Confederation (IBEC), comprising the Advertisers Association of Ireland (AAI), the Institute of Advertising Practitioners in Ireland (IAPI), the Advertising Standards Authority of Ireland (ASAI), and a representative group of broadcasters, telecommunication companies and other service providers |
| IT | The Committee for the Application of the Self-regulatory Code on Media and Minors<br>Italian Childhood and Adolescence Authority<br>Providers of VSP services |
| LT | The State Consumer Rights Protection Authority, responsible for the enforcement of consumer policy and protection<br>The Ethics Commission on Public Information<br>The Lithuanian Marketing Association (LiMA) |
| LU | Not identified yet |
| LV | Not identified yet |
| MT | The media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations |
| NL | The Advertising Code Foundation deals with the self-regulation system of advertising in the Netherlands, representing both the advertising industry and consumers. VSPs do not affiliate |

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| | Stakeholders involved |
|---|---|
| | formally with them, but the main VSPs have stated that they will respect the decisions of the Advertising Code Committee |
| NO | The Norwegian Advertisers' Association, an interest organisation for advertisers and marketers<br>The Norwegian Media Businesses' Association, the media trade and tariff organisation<br>The Food and Drink Industry Professional Practices Committee (MFU), a self-regulatory body which consists of representatives of food manufacturers and food suppliers |
| PL | The Advertising Council comprises entities active in the advertising market. Following implementation of the revised AVMSD, the Code of Ethics in Advertising now refers to commercial communications made available on VSP platforms. Therefore, more and more VSP providers will be invited to take part in the Council's activities |
| PT | Various television operators, on-demand audiovisual services and VSP providers |
| RO | There are no self-regulatory bodies involved in self-regulatory mechanisms pertaining to obligations of VSPs<br>Romanian Advertising Council (RAC) |
| SE | The Media Ethics Board (MEB), composed of representatives of the public and industry stakeholders |
| SI | Advertisers and advertising agencies |
| SK | Currently there are no self-regulatory bodies for VSPs operating in Slovakia, because the Act on Media Services was only approved in 2022. Implementing regulations regarding self-regulatory mechanisms and self-regulatory bodies are currently under preparation<br>IAB Slovakia, a self-regulatory association for online advertising, whose membership includes publishers, media agencies, tech platforms, advertisers and other important online market subjects.<br>The Commission for the Protection of Minors, established as a special body of co-regulation for the protection of minors |
| UK | The ASA, the independent authority set up by industry that administers the self-regulatory codes related to advertisement and commercial communications.<br>The Committee of Advertising Practice (CAP), the self-regulatory body that creates, revises and enforces the applicable codes – in this respect, the CAP Code. CAP's members include organisations that represent the advertising, sales promotion, direct marketing and media businesses, which agree to comply with the CAP Code |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.6.3. Scope and objectives

Besides the general standards of commercial communication, which include ethical principles, principles regarding the protection of minors and consumer protection, that are usually covered by self-regulatory instruments in the field of advertising, many countries have envisaged measures aimed at effectively reducing the exposure of minors to ACCs for HFSS foods and beverages (AR, CY, CZ, FR, HR, IT, LV, MT, NO, RO, SK). Self-regulation concerning inappropriate ACCs for alcoholic beverages is mentioned in three cases (AT, CZ, SK), whereas the implementation of measures will be dealt with by the VSPs themselves in

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four cases (CY, HU, IT, UK). Some other areas to be targeted by self-regulation in connection with commercial communications on VSPs are mentioned: influencer marketing (BE FR, BE NL, NO), negative impact on the environment and the prevention of greenwashing (FR), and consumer protection (LT, PT).

**Table 20. Scope and objectives**

| | Scope and objectives |
|---|---|
| AT | - Inappropriate audiovisual commercial communications for alcoholic beverages<br>- Audiovisual commercial communications for HFSS foods and beverages |
| BE FR, BE NL | - Supervision of compliance with the guidelines on influencer marketing (apply to influencers insofar as they are engaged in a commercial relationship)<br>- Determining whether commercial communication is in conformity with legislation and relevant self-regulatory codes |
| BG | Protection of children in advertising, as well as other standards related to the AVMSD implementation |
| CY | - Implementation of measures by VSPs<br>- Audiovisual commercial communications for HFSS foods and beverages |
| CZ | - Inappropriate audiovisual commercial communications for alcoholic beverages<br>- Audiovisual commercial communications for HFSS foods and beverages |
| DE | Self-regulation in the field of commercial communications applies across all media and thus also to VSPs |
| DK | N/A |
| EE | N/A |
| ES | The Code of Ethics for e-commerce and Internet advertising includes the element of "labelling", i.e. providing a stamp on websites indicating ethical and professional conduct, as well as arbitration and dispute resolutions |
| FI | - Interpreting good professional practice and defending freedom of speech and publication<br>- Good marketing practices |
| FR | - To reduce children's exposure to commercial communications for HFSS foods and beverages<br>- To reduce commercial communications that have a negative impact on the environment, particularly in terms of greenhouse gas emissions, damage to biodiversity and use of natural resources, as well as those that contain "greenwashing"<br>- To protect children under 16 from commercial use that could harm their rights and dignity |
| GR | Protection of consumers, minors, public health and fair competition |
| HR | - Prevention of excessive consumption by minors of HFSS foods and drinks<br>- Direct marketing and digital market communications (e.g. separation of commercial, editorial, and user-generated content) |
| HU | - Control of measures taken by VSP providers regarding commercial communications organised, marketed by the platform providers and disseminated by users |
| IE | - The Code for On-demand Services: sponsorship, product placement, community standards, protection of minors, accessibility, rights, and European works<br>- The ASAI's Code of Standards for Advertising and Marketing Communications in Ireland asserts that marketing communications in the media and sales promotions should be legal, decent, honest and truthful and should not mislead the consumer |
| IT | - Effectively reducing the exposure of minors under the age of 12 to audiovisual commercial communications relating to HFSS foods and beverages |

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| | Scope and objectives |
|---|---|
| | - Protecting minors from content which may impair their physical, mental or moral development; and the general public from content containing incitement to hatred, violation of human dignity, constituting an activity which is a criminal offence<br>- Compliance with the rules on advertising |
| LT | Ethical norms, protection of consumer rights and fair competition |
| LU | Not identified yet |
| LV | Audiovisual commercial communications for HFSS foods and beverages |
| MT | Audiovisual commercial communications for HFSS foods and beverages |
| NL | Rules for the content of advertisements, applicable to all types of advertising offline, online and outdoor advertising |
| NO | - To contribute to good and responsible marketing practices by those who work with influencer marketing. The aim is to reduce undue attention to body, beauty and outward appearance<br>- Audiovisual commercial communications for HFSS foods and beverages |
| PL | To create, promote and protect the principles that should be followed by entrepreneurs engaged in advertising activities |
| PT | Protection of human rights and the protection of children and youth, consumer protection |
| RO | Audiovisual commercial communications for HFSS foods and beverages |
| SE | The rules apply to VSPs when they provide their own content or edit the content of the content providers |
| SI | Providing for the respect of creative freedoms in advertising, within the framework of abidance by professional principles |
| SK | - Inappropriate audiovisual commercial communications for alcoholic beverages<br>- Audiovisual commercial communications for HFSS foods and beverages |
| UK | To ensure compliance with the general advertising requirements and provisions on prohibited and restricted products, as well as general advertising and transparency requirements for advertising which is (or not) marketed, sold or arranged by VSPs |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.6.4. Code(s) of conduct

Article 4a (1) sets out the criteria that codes of conduct should fulfil:

> *(a) be such that they are broadly accepted by the main stakeholders in the Member states concerned;*
> *(b) clearly and unambiguously set out their objectives;*
> *(c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and*
> *(d) provide for effective enforcement including effective and proportionate sanctions.*

As mentioned previously, self-regulation in the field of advertising has long been established and functioning in many of the territories covered, with codes of conduct in place that relate to ethical rules to be respected by a wide range of stakeholders across the advertising industry (see also under 4.1.1.). Some of the instances in which the already existing self-regulatory instruments have been extended to VSP providers have been mentioned above (DE, PL), and there are additional examples such as the Croatian Code of

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Advertising and Marketing Communications, applicable to all marketing actors (influencers, bloggers, vloggers, tech companies, etc.), and all media and communications platforms, including social networks. In terms of the scope of existing codes of conduct, these are either general (i.e. setting broad standards for advertising and commercial communications), or sector-specific such as those relating to food or alcoholic drinks (BE FR, BE NL, FR, NO), environmental aspects (BE FR, BE NL, FR), or the commercial use of the image of children (FR). Other soft-law instruments should also be mentioned in this regard such as recommendations and guidelines (BE FR and BE NL – on influencer marketing; EE – advertising on social media).

However, many territories are still in the early stages of establishing self-regulation for VSP providers and no codes of conduct apply to them specifically yet (e.g. CY, CZ, DK, LU, LV, MT, PT, SK).

**Table 21. Codes of conduct**

| | Codes of conduct |
|---|---|
| No codes of conduct applying to VSPs yet: CY, CZ, DK, LU, LV, MT, PT and SK | |
| AT | The code of conduct of a self-regulatory body in the field of commercial communication in the media must contain provisions on inappropriate audiovisual commercial communications for alcoholic beverages and audiovisual commercial communications inappropriate for children for HFSS products |
| BE FR, BE NL | - International Chamber of Commerce (ICC) Advertising and Marketing Communications Code<br>- The other codes can be divided into sectoral (e.g. relating to food or alcoholic drinks) and intersectoral codes (e.g. the Environmental Advertising Code), as well as recommendations (e.g. on influencer marketing or advertising for weight loss products) |
| BG | - National ethical rules for advertising and commercial communication. The code should be observed by all operators in the advertising industry in Bulgaria, whether as advertisers, marketers, advertising practitioners or agencies, in the media, or in related functions. The code applies to all forms of advertising and other commercial communications and sets the standards of ethical conduct<br>- Codes of conduct to be drawn up by VSPs envisaged in legislation |
| DE | The Advertising Code of the German Advertising Council |
| EE | - The Estonian Consumer Protection and Technical Regulatory Authority (TTJA) has issued universal guidelines for ad delivery that apply to all platforms. These are detailed explanations of how the rules in the Advertising Act should be implemented. Also, guidelines for advertising on social media are introduced, clarifying that all requirements and restrictions arising from the Advertising Act also apply to advertising published on social media<br>- The legal requirements for the codes of conduct follow those prescribed by the AVMSD |
| ES | The Code of Ethics deals with protection of personal data, e-commerce with consumers, digital advertising, protection of minors and adolescents |
| FI | Basic Agreement of the Council for Mass Media |
| FR | - "Code of good behaviour" by the VSPs with regard to the measures they are required to undertake by law<br>- Charter for VSPs on the commercial use of the image of children under 16 on online platforms<br>- Code of Good Administrative Behaviour by VSPs, which also applies to VOD and TV services, concerning the reduction of children's exposure to commercial communications for HFSS foods and beverages |

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| | Codes of conduct |
|---|---|
| | - Climate contracts with the objective to reduce commercial communications that have a negative effect on the environment |
| GR | - Codes of conduct to be adopted by VSPs. The legal requirements for the codes of conduct follow those prescribed by the AVMSD<br>- Greek Best Practice Guide on Digital Marketing, adopted by SEE |
| HR | The Code for advertising and market communications, applicable to all marketing actors (influencers, bloggers, vloggers, tech companies ...), and all media and communication platforms, including social networks. The legal requirements for the codes of conduct follow those prescribed by the AVMSD |
| HU | - Hungarian Advertising Ethics Code<br>- Co-regulatory Code of the Association of Hungarian Content Providers |
| IE | - Code for On-demand Services<br>- Code of Standards for Advertising and Marketing Communications |
| IT | The Advertising Standards Authority (IAP) Code |
| LT | - Code of Ethics in providing information to the public of Lithuania<br>- Code of Ethics for Advertising |
| NL | Dutch Advertising Code |
| NO | Code for marketing of food and drink aimed at children |
| PL | The Code of Ethics in Advertising refers broadly to all commercial communications, inclusive of the communications disseminated on VSPs |
| RO | Code of Advertising Practice |
| SE | Self-regulatory measures include ethical rules for the press monitored by the Public Media Ombudsman (PMO) and the Media Ethics Board (MEB) as well as the Swedish Advertising Ombudsman |
| SI | The Slovenian Advertising Code, covering all types of advertising |
| UK | The CAP Code is the rule book for non-broadcast advertisements, sales promotions and direct marketing communications |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.6.5. Role of the (self-)regulatory bodies

The roles of different bodies in the self-regulatory system are diverse across the territories covered by the report and range from ensuring representation and lobbying for members' interests, drawing up codes of conduct, handling complaints and issuing decisions in out-of-court redress procedures, etc., as presented in greater detail in the table below.

The first concrete examples of decisions issued by a self-regulatory body come from the UK: in 2022, the ASA banned an advertisement on Twitch livestream for misleading advertising[14] and upheld six complaints about commercial communications on YouTube for a number of different reasons. The ASA has also banned multiple posts on Instagram Reel

[14] ASA Ruling on Gamer Advantage LLC, available at https://www.asa.org.uk/rulings/gamer-advantage-llc-a22-1147415-gamer-advantage-llc.html

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and Story for not being identifiable advertising[15], and posts on both TikTok[16] and Instagram[17] for alcohol advertising.

**Table 22. Role of the (self-)regulatory bodies**

| | Role of the (self-)regulatory bodies |
|---|---|
| N/A: CY, DE, DK, FR, LU, LV, MT, PT and RO | |
| AT | Ensures a broad representation of the providers concerned; provides a code of conduct and procedures that are generally accepted by key stakeholders and clearly define self-regulatory objectives; ensure effective handling of complaints and enforcement of its decisions, including the imposition of effective and proportionate sanctions in the event of violations of the Code of Conduct, etc. |
| BE FR, BE NL | The JEP is primarily responsible for overseeing the correctness and fairness of commercial messages to the public and can serve as an out-of-court redress mechanism for consumers against advertisers. Recommendations of the JEP apply to influencer marketing as well |
| BG | The NCSR, after consultations with distinguished professionals, creates, revises and ensures the voluntary application of ethical standards and good practices in the advertising industry |
| CZ | Self-regulatory bodies are responsible for the cultivation of the services they provide in a form conducive to their development and, to this end, undertake in writing to comply with the rules set out in the code of conduct which they publish |
| EE | Adoption of related self-regulatory mechanisms, as well as in lobbying for the interests and rights of members |
| ES | Mediation and arbitration between consumers and businesses. There is an online dispute resolution system implemented by the Autocontrol Advertising Jury, an independent advertising self-regulatory organisation, responsible for resolving disputes and complaints in advertising, and the National Consumer Arbitration Council, responsible for claims relating to consumer issues with e-commerce |
| FI | Council of Ethics in Advertising issues statements on whether an advertisement or advertising practice is ethically acceptable, and deals with issues like discrimination, decency and social responsibility |
| GR | To provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives set up under the relevant codes of conduct, as well as to ensure effective compliance by their members |
| HR | HURA represents its members in lobbying, negotiations on legislation, advocacy, research and other matters. It has also established the Court of Honour, which is authorised to conduct proceedings and decide on complaints regarding violations of the Code |
| HU | The legal responsibilities of VSPs in self-regulatory bodies include: cooperation and entering into administrative agreements with the regulator National Media and Infocommunications |

[15] See for instance ASA Ruling on Next Retail Ltd (https://www.asa.org.uk/rulings/next-retail-ltd-a22-1155318-next-retail-ltd.html), ASA Ruling on Charlotte Dawson t/a charlottedawsy (https://www.asa.org.uk/rulings/charlotte-dawson-a21-1122943-charlotte-dawson.html), ASA Ruling on Myleene Klass (https://www.asa.org.uk/rulings/myleene-klass-a22-1160222-myleene-klass.html)

[16] See for instance ASA Ruling on Wild Drinks Group Ltd t/a Whisp Drinks (https://www.asa.org.uk/rulings/wild-drinks-group-ltd-a22-1145995-wild-drinks-group-ltd.html) or ASA Ruling on Montpeliers (Edinburgh) Ltd (https://www.asa.org.uk/rulings/montpeliers--edinburgh--ltd-a22-1158777-montpeliers--edinburgh--ltd.html)

[17] See for instance ASA Ruling on Au Vodka Ltd (https://www.asa.org.uk/rulings/au-vodka-ltd-a21-1108779-au-vodka-ltd.html) or ASA Ruling on Halewood International Ltd t/a Tequila Rose (https://www.asa.org.uk/rulings/halewood-international-ltd-A19-1019153.html).

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| | Role of the (self-)regulatory bodies |
|---|---|
| | Authority (NMHH), preparing codes of conduct, settling disagreements and disputes amongst members, supervising the operations and conduct of entities covered by the code; encouraging members to introduce measures aimed at effectively reducing children's exposure to commercial communication for HFSS foods and beverages |
| IE | ASAI processes complaints about the content of an advertisement or promotion that appeared in the media (including online and digital media), how a promotion was run or in relation to the receipt of online behavioural advertising without consent, publishing the decisions on its website |
| IT | Although the IAP Code is binding on a voluntary basis, the breach of its rules (also by companies which did not adhere to it) may be deemed as constituting unfair competition, as behaviour which does not meet market standards of professional ethics |
| LT | The legislation stipulates that the audiovisual media service providers or their associations must adopt codes of conduct regarding inappropriate commercial communications for HFSS products that are inserted into programmes for children. When audiovisual media service providers or their associations do not adopt the codes or do not undertake to comply with them, or the regulatory authority determines that the codes or their parts are not sufficiently effective, it may establish mandatory requirements for such commercial communications |
| NL | The Advertising Code Foundation, besides upholding the applicable self-regulatory instruments, has also established the Advertising Code Committee, an independent body that decides after a transparent and swift procedure whether an advertisement conflicts with the Advertising Code |
| NO | The Professional Committee for Influence Marketing and the MFU receive complaints and make decisions, which are published in the press and on social media |
| PL | The Ethical Advertising Committee acts upon complaints to deliberate the potential non-abidance by the Code of Ethics in Advertising, and adopt resolutions in such cases |
| SE | The Public Media Ombudsman (PMO) handles complaints about the editorial content of newspapers, magazines, broadcast media and their websites and social media, and the Media Ethics Board (MEB), cover all media publication within the scope of self-regulation, regardless of the platform used – thus also radio, TV broadcasts and web publications |
| SI | The Advertising Tribunal, which operates under the auspices of the Advertising Chamber, assesses the compliance of advertising with the Slovenian Advertising Code, and makes decisions upon complaints |
| SK | A self-regulatory body shall enforce a self-regulatory mechanism applied on the basis of a code of conduct. AVMSD criteria apply |
| UK | The ASA exercises powers: to determine, following a complaint or otherwise, whether a Notified Service Provider is contravening or has contravened any of the rules; to draw up, and review and revise as appropriate, interpretive guidance concerning the rules; and to carry out, commission or support (financially or otherwise) research in connection with its Designated Duty. For commercial communication that is controlled by the VSP Ofcom acts as the statutory backstop for the ASA, which is primarily responsible |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.6.6. Period of activity

None of the self-regulatory mechanisms or bodies mentioned above have a time-limited period of activity.

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## 3.6.7. Role of the regulatory authority in the co-regulatory system

### 3.6.7.1. Regulatory body

The national authority in charge of the regulation of VSPs remains, for the most part, in the hands of public authorities which have been and are entrusted with regulation of audiovisual media services, i.e. national media/communications regulatory agencies and/or relevant government ministries/departments. In some cases (IE, FR, SK) there has been a shift towards the establishment of new regulatory bodies. In Ireland, for example, the legislation proposes a comprehensive online safety and media regulation package, which also envisages the dissolution of the existing national regulatory authority (the Broadcasting Authority of Ireland) and the establishment of a Media Commission, which will oversee the regulation of VSPs, including the responsibilities related to measures which must be adopted by VSPs. Similarly, the amended legislation in France provided for a merger between the current media regulatory authority, the Audiovisual Superior Council (*Conseil supérieur de l'audiovisuel*, CSA) and the High Authority for the dissemination of works and the protection of rights on the Internet (*Haute autorité pour la diffusion des œuvres et la protection des droits d'auteur sur internet*, HADOPI) forming a new institution, the Audiovisual and Digital Communication Regulatory Authority (*Autorité de régulation de la communication audiovisuelle et numérique*, Arcom).

The role of regulatory authorities vis-à-vis self- and co-regulation, beyond the general requirement to encourage or promote these schemes, includes, in some cases, more substantial involvement in assisting in their establishment and functioning, such as affording financial support to self-regulatory schemes (AT, HU), or cooperating with a self-regulatory body and adopting positions or recommendations on their internal rules and codes of conduct, at their request (CZ). In other cases, the regulatory authority has a role in the approval and oversight of the self-regulatory mechanisms by means, for example, of assessing the codes of conduct and providing recommendations on their effectiveness (AT), reporting on their implementation to the parliament (FR), monitoring their implementation (IT, SK), or reviewing the effectiveness of the co-regulatory system and exercising backstop powers (UK).

Notwithstanding the revised AVMSD's general support for self- and co-regulation, according to Article 4a (3), member states are free to require media service providers under their jurisdiction to comply with more detailed or stricter rules, "including where their national independent regulatory authorities or bodies conclude that any code of conduct or parts thereof have proven not to be sufficiently effective". Some territories covered have opted for including this provision in their legislations (BG).

In a few cases, national regulatory authorities are not assigned a specific role in self-regulation, meaning that self-regulatory bodies operate completely independently (BE FR, BE NL), or their role is focused on issuing guidance documents that clarify the existing

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legal framework (DE). In one case (ES), promotion of self-regulation and co-regulation is the role of the competent ministry.

**Table 23. Role of the regulatory authority vis-à-vis self- and co-regulation**

| | Regulatory body | Role vis-à-vis self- and co-regulation |
|---|---|---|
| AT | The Austrian Communications Authority (KommAustria) | KommAustria is given an annual budget to promote self-regulation in commercial communication. A prerequisite for the granting of the full amount of the funds available to promote self-regulation is that the behavioural guidelines of a self-regulation institution regulate inappropriate audiovisual commercial communication for alcoholic beverages and HFSS foods/beverages<br>KommAustria is to be informed annually about the effectiveness of the rules of the code of conduct as well as about the type, number and resolution of complaints. KommAustria must present its assessment and recommendations on effectiveness in its activity report |
| BE FR, BE NL | | Both the Communications Centre and the JEP operate completely independently from the government and from political, social and religious organisations |
| BG | The Council for Electronic Media (CEM) | CEM may, after considering evidence of the insufficient effectiveness of a code of conduct or parts of a code of conduct require media service providers under their jurisdiction to comply with the relevant rules |
| CY | The Radio Television Authority (CRTA) | Besides encouragement for establishment of self- and co-regulatory codes, CRTA is in charge of keeping and updating a list with video-sharing platform providers and assessing the measures adopted by VSPs |
| CZ | The Council for Radio and Television Broadcasting (RRTV) | RRTV is responsible for facilitating the development of self-regulation and, upon request, cooperating with a self-regulatory body, in particular in the establishment of effective self-regulatory systems. It maintains and publishes a list of self-regulatory bodies. At the request of self-regulatory bodies, it adopts positions and makes recommendations on their internal rules and codes of conduct |
| DE | The competent regulatory bodies for VSPs are organised on a level of individual states | Regulatory authorities issue guidance documents that clarify and explain the existing legal framework, e.g. guidance for the creators of user-generated content |
| DK | The Radio and Television Board | The Radio and Television Board is the competent regulatory body vis-à-vis VSPs |
| EE | The Consumer Protection and Technical Regulatory Authority (ECTRA) | ECTRA is currently not involved in the co-regulatory system, but it could have a role in the co-regulatory system in the future, should the self-regulatory mechanisms not be established or be considered insufficiently effective. In this case, the ECTRA will have a role in the supervision of the implementation of relevant provisions |
| ES | | Promotion of self-regulation and co-regulation is the role of the Ministry of Economic Affairs and Digital Transformation |

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| | Regulatory body | Role vis-à-vis self- and co-regulation |
|---|---|---|
| FI | The Finnish Transport and Communications Agency (Traficom) | Traficom has a duty to promote co-regulation or self-regulation |
| FR | The regulatory authority for audiovisual and digital communication (Arcom) | Arcom will be responsible for promoting the codes and charters to be applied and respected by VSPs. It is also obligated to publish a report on the implementation of these codes of conduct, as well as to present the reports to the French Parliament |
| GR | The National Council of Radio and Television (NCRTV) | The codes of conduct to be adopted by VSPs can be adopted in cooperation with the NCRTV and/or consumer associations |
| HR | The Electronic Media Council | Encouraged to use co-regulation and promote self-regulation through codes of conduct |
| HU | The Office of the National Media and Infocommunications Authority (NMHH) | Oversight of the self-regulatory bodies' activities through legally defined responsibilities, including: cooperation with and support (incl. financial) to self-regulatory bodies in carrying out their tasks, authorising them to perform self-management tasks towards members and VSPs, access to the register kept by the self-regulatory body on the commercial entities<br>The NMHH is planning to cooperate with the Association of Hungarian Content Providers, with a view to extending the co-regulatory Code to include the regulations pertaining to VSPs |
| IE | Broadcasting Authority of Ireland (BAI) / to be replaced by the proposed Media Commission | The Code for On-Demand Services is prepared in cooperation with the BAI and is subject to BAI's approval<br>In the future, it is anticipated that the proposed Media Commission (which will replace the BAI as per the OSMR Act 2022 will be empowered to assist this self-regulatory scheme and engage in co-regulatory agreements relative to the regulatory matters pertaining to VSPs |
| IT | The Italian Communications Authority (Agcom) | Agcom must verify the conformity of the codes of conduct with the law and Agcom's regulations. It approves stakeholders' codes of conduct and monitors their implementation |
| LT | The Radio and Television Commission of Lithuania (RTCL) | Regulation of the activities of public information providers and disseminators are performed by the RTCL and the Inspector of Journalist Ethics. In relation to commercial communication, the State Consumer Rights Protection Authority is responsible for the enforcement of consumer policy and protection |
| LU | The Luxembourg Independent Media Authority (ALIA) | Not identified yet |
| LV | The National Council for Electronic Mass Media (NEPLP) | N/A |
| MT | The Malta Broadcasting Authority (BA) | To encourage self and co-regulatory mechanisms |
| NL | The Dutch Media Authority (CvdM) | Supervises compliance with the obligation on the part of VSPs vis-à-vis commercial communications |
| NO | The Norwegian Media Authority (NMA) | No specific role related to co-regulation |
| PL | The National Broadcasting Council (KRRiT) | To initiate, support and promote the creation of codes of conduct, in cooperation with the relevant minister |

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| | Regulatory body | Role vis-à-vis self- and co-regulation |
|---|---|---|
| PT | The regulatory authority for the media (ERC) | To encourage co-regulation, self-regulation and cooperation mechanisms |
| RO | The National Audiovisual Council (CAN) | To encourage self- and co-regulation and evaluate the measures taken by VSPs to respect legal obligations. The full mechanisms of the implementing measures will be established by the Council. These mechanisms should be easy to access and use and allow for the transmission of notifications by electronic means |
| SE | The Swedish Press and Broadcasting Authority (SPBA) | The SPBA is tasked with contributing to / assisting with systems for co-regulation regarding the appropriate measures VSP providers must take |
| SI | The Agency for Communication Networks and Services (AKOS) | AKOS and the competent ministry need to be sent a copy of the code of conduct within 15 days of their adoption, as well as informed of any changes thereof |
| SK | Council for Media Services | The regulator must make an entry in the register based on a written request submitted by the self-regulatory body. The applicant must notify the regulator of any change in the application, the code or the list of persons who have undertaken to comply with the code within 30 days of the change<br>The Council for Media Services is also empowered to monitor and evaluate the activities of self-regulatory mechanisms and self-regulatory bodies that enforce these mechanisms |
| UK | The Office of Communications (Ofcom) | For commercial communication controlled by VSPs, Ofcom is in charge of passing on complaints it receives, approving changes to the codes, informing notifying services and handling appeals or cases of non-compliance with ASA decisions referred by the ASA using its powers of enforcement<br>ASA has to report to Ofcom by April of each year. This includes qualitative and quantitative data on complaints and actions taken. Ofcom reviews the effectiveness of the system |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

### 3.6.7.2. Co-regulatory scheme

Co-regulatory schemes are established or envisaged in six jurisdictions. At the time of writing this report, only the UK has established a functioning co-regulatory scheme: its regulatory authority Ofcom has designated the ASA to be part of a co-regulatory system for VSPs for commercial communication that is controlled by the VSP, with Ofcom acting as the statutory backstop for the ASA. As detailed in previous sections, the co-regulatory mechanisms have not yet been enacted, but are provided for in legislation in France (Arcom will be responsible for promoting the codes and charters to be applied and respected by VSPs, and to report on the implementation of these codes of conduct); Hungary (the NMHH may authorise a self-regulatory body to perform self-management tasks for members and VSPs); Ireland (the OSMR Act 2022 provides for the Media Commission to engage in co-regulatory agreements relative to regulatory matters pertaining to VSPs); Italy (Agcom must verify the conformity of the codes of conduct with the law and Agcom's regulations, promulgate them and monitor their implementation); and Slovakia (the Council for Media

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Services is tasked with establishing co-regulatory mechanisms, and with monitoring and evaluating the activities of self-regulatory bodies that enforce these mechanisms).

#### 3.6.7.3. Relationship and roles of stakeholders

Much has already been said on the relationship and roles of stakeholders, in particular with regard to the obligation for self-regulatory bodies to notify the regulatory authorities or to obtain their approval for the codes of conduct (e.g. IT, SI, SK). In addition, there are responsibilities in terms of reporting on the effectiveness of these codes (AT).

In Hungary, the self-regulatory body needs to report to the regulator its activities and the tasks carried out within the framework of the administrative agreement. The regulator has compliance and sanctioning powers over the self-regulator; this means that it may open an administrative procedure against it if, on the basis of the audit, the NMHH finds procedures or decisions of the self-regulatory organisation which are contrary to the relevant legislation or to the provisions of the administrative agreement or the code of conduct. Furthermore, it may terminate the administrative agreement if the self-regulatory organisation seriously and/or repeatedly violates the provisions of the administrative agreement or has performed its tasks in a way that does not comply with the terms and conditions of the agreement or the terms of the code of conduct.

### 3.6.8. Monitoring/evaluation, compliance and sanctioning powers

As stipulated in Article 28b (5) of the revised AVMSD, member states are to establish the necessary mechanisms to assess the appropriateness of the measures taken by VSP providers, entrusting this task to the national regulatory authorities or bodies. To this end, monitoring/evaluation, compliance and sanctioning powers are necessary.

Whereas reliance on self-regulatory mechanisms in this regard is clearly identified in some cases (e.g. DE, NL), the majority of territories covered have indeed entrusted enforcement powers to national regulatory authorities (e.g. AT, CY, DK, ES, FR, GR, HU, IE, IT, LT, LU, MT, PL, PT, RO, SI, SK, UK – for commercial communication not controlled by the VSPs). These concern the assessment of measures undertaken by VSPs and sanctioning in the case of non-compliance. Sanctioning powers generally relate to financial fines, but there are cases in which other sanctions can also be imposed (e.g. GR – recommendations, temporary cessation or permanent suspension of activities; HU – suspending a VSP's services for a period of up to one week, withdrawing the registration; RO – requesting the removal of illegal content or restricting access to it, requiring a hosting service provider to remove, disable or restrict access to a VSP, requiring registry operators to remove the domain name; SK – issuing a notice of violation of the law, publishing a notice of violation

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of the law, suspending the broadcasting or provision of the programme or part thereof, revoking the authorisation for a serious breach of duty).

Finally, there are instances in which different authorities deal with different aspects of commercial communications, the enforcement of consumer policy and protection being entrusted to consumer protection authorities (e.g. LT and SE – in this country, the regulatory authority exercises supervision over the provisions on product placement, sponsorship and advertising, whereas the Consumer Ombudsman exercises supervision with regard to the provisions on advertising and children, as well as the prohibition on advertisements for medical treatments which are available only on prescription).

**Table 24. Monitoring/evaluation, compliance and sanctioning powers**

| | Monitoring/evaluation, compliance and sanctioning powers |
|---|---|
| N/A: BE NL, DE, HR and NO | |
| AT | KommAustria can review the adequacy of the measures taken by the platforms and, in case of violation, issue a fine. It can also exempt some platforms from some measures if the imposition of these measure would be unjustified or disproportionate |
| BE FR | CSA can assess whether the VSPs apply obligatory measures for commercial communications not organised by the video-sharing service provider and it can invite VSPs to adopt appropriate corrective measures or impose sanctions |
| BG | VSPs obligated to respect the self-regulatory code in place for advertising and commercial communication |
| CY | CRTA may impose administrative sanctions to VSPs in case of non-compliance |
| CZ | RRTV cannot impose or require the self-regulatory bodies concerned to undertake self-regulatory activities |
| DK | The Radio and Television Board has the authority to: decide on measures and regulations concerning the identification and content of advertisements, sponsorship and product placement on VSPs; issue notices of infringements; decide on the suspension of the undertaking |
| EE | The self-regulatory authority deals with citizens' complaints related to media content, from the perspective of professional journalistic standards |
| ES | CNMC controls fulfilment by VSPs of the obligations established, supervises the compliance of audiovisual content and commercial communications with legislation and the codes of conduct |
| FI | The self-regulatory body CMM can issue a notice on the breach of good professional practice, and the Council of Ethics in Advertising can issue statements on whether an advertisement or advertising practice is ethically acceptable |
| FR | Arcom will be assessing the application and effectiveness of the commitments made under the charters and codes, through periodic reports. For the climate contracts, the environmental impacts of commercial communication will be communicated to consumers via an environmental display |
| GR | NCRTV is to ensure compliance with VSPs' obligations to take appropriate measures to protect minors and the general public from inappropriate commercial communications, including imposing sanctions ranging from recommendations, administrative fines, temporary cessation or permanent suspension of activities |

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| | Monitoring/evaluation, compliance and sanctioning powers |
|---|---|
| HU | NMHH's compliance and sanctioning powers include prohibiting unlawful conduct and ordering the VSP provider to cease the infringement by imposing a fine or suspending its services for a period of up to one week, or even withdrawing the registration of a VSP service |
| IE | It is anticipated that the proposed Media Commission will be empowered to monitor activity, draw up codes, oversee compliance and where necessary sanction bodies in breach of codes |
| IT | Agcom is to adopt the monitoring procedure for the follow-up and periodic evaluation of the compliance with codes of conduct. It also has sanctioning powers |
| LT | Self and regulatory bodies are expected to perform monitoring and evaluation activities. Regulatory authority has the power to issue sanctions in cases of violations. In relation to commercial communications, the State Consumer Rights Protection Authority is responsible for the enforcement of consumer policy and protection |
| LU | ALIA is to evaluate the measures taken by a VSP provider |
| LV | NEPLP assesses the compliance of the service with the nature of a VSP |
| MT | The Broadcasting Authority must assess the appropriateness of the measures taken by VSPs and has the right to issue all directives which it considers necessary or expedient for the proper execution of the obligations set for VSPs |
| NL | In addition to the CvdM's role in supervising the affiliation of media service providers with the Dutch Advertising Foundation, the advertising industry is committed to compliance with the decisions of the Advertising Code Committee |
| PL | KRRiT is entitled to control the compliance of activity of VSP providers with provisions of law, impose sanctions (administrative fines and in case of notorious and grave irregularities delete the provider from the register, resulting in a cessation of the legal conduct of business by a VSP provider) |
| PT | The ERC assesses the adequacy and effectiveness of the measures adopted by VSPs |
| RO | The regulatory authority may request:<br>- VSP providers to remove or restrict access to illegal content or to display a warning to users when accessing such content<br>- service providers that provide storage for VSPs to remove, disable, or restrict access to a video-sharing platform<br>- registry operators, which assign domain names to VSPs, to remove the domain name of the video-sharing platform |
| SE | At the request of the SPBA, a VSP provider must provide the information needed for supervision. The SPBA may also decide on orders necessary to ensure that a VSP provider complies with the obligation to register with the SPBA<br>The Swedish Broadcasting Commission exercises supervision over the provisions on product placement, sponsorship and advertising. Failure to comply with the conditions set out in these provisions may result in the imposition of a special fee<br>The Consumer Ombudsman exercises supervision with regard to the provisions on advertising and children, as well as the prohibition on advertisements for medical treatments which are available only after prescription |
| SI | AKOS determines compliance with programme requirements and restrictions. VSPs are obligated to keep recordings of published videos, if these are the subject of a user complaint |
| SK | Council for Media Services may impose the following sanctions: notice of violation of the law, publication of a notice of violation of the law, suspension of the broadcasting or provision of the programme or part thereof, a fine, and revocation of the authorisation for a serious breach of duty |
| UK | For commercial communication controlled by VSPs, Ofcom is in charge of passing on complaints it receives, approving changes to the codes, informing notifying services and handling appeals or cases of non-compliance with ASA decisions referred by the ASA using its powers of |

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| | Monitoring/evaluation, compliance and sanctioning powers |
|---|---|
| | enforcement. Ofcom has the power to impose financial sanctions or even interruption of service in case of breaches of applicable rules, while the ASA does not have the power to sanction<br>For commercial communication not controlled by the VSPs, Ofcom assesses the appropriateness of measures they take based on its Guidance for providers on control of advertising, where Ofcom considers a range of information (e.g. advertising models, information from VSPs, commercial arrangements) in order to distinguish between the two categories |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.7. Cross-sector and cross-border collaboration

The importance of collaboration in regulating VSPs activities is well-recognised in the revised AVMSD which, in connection to fostering self-regulation refers to codes of conduct being drawn up by

> *media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations.*

Indeed, the spheres of obligations stemming from the revised AVMSD inevitably require cooperation between different and differing actors, which requires flexibility and adaptability, in the light of new challenges. There are several examples where the obligation of cooperation among relevant authorities has been enshrined in law: DE – state media authorities are to cooperate with the Regulatory Authority for Telecommunications, the Federal Cartel Office, as well as competition and gaming supervisory authorities; FI – cooperation among the competent ministry, regulatory authority, data protection, competition, consumer, market surveillance and product safety authorities; LT – self- and co-regulatory bodies are to cooperate with the police, other national and international institutions, representing the media industry, professional organisations and consumer rights; SK – ministries and other state administration bodies cooperate with the regulator on issues related to broadcasting, retransmission, on-demand provision of audiovisual media services and the provision of content-sharing platforms, etc.

In the Netherlands, cooperation between the Authority for Consumers and Markets (ACM), the Commissariaat voor de media (CvdM) and the Dutch Advertising Code Committee was established via a memorandum of understanding. A Digital Regulation Cooperation Platform was launched, with the aim to further cooperation between the actors. An excellent example of a formalised cooperation scheme is the UK's Digital Regulation Cooperation Forum that was formed in July 2020 by the Competition and Markets Authority (CMA), the Information Commissioner's Office (ICO), the Financial Conduct Authority (FCA) and the Office of Communications (Ofcom). The aims of the Forum are to promote greater coherence in regulation, to work collaboratively in areas of common interest, and to enhance capacity.

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Examples of international collaboration among national regulatory authorities can be seen particularly in the ERGA Memorandum of Understanding, as well as the European Platform of Regulatory Authorities (EPRA), which has been a forum for sharing information and working collaboratively on, *inter alia*, VSP issues.

Self-regulatory bodies (BE, SI) have also established international collaboration through membership of the European Advertising Standards Alliance (EASA). This Alliance established, *inter alia*, a referral procedure for resolving international complaints in the EASA member states.

**Table 25. Cross-sector and cross-border collaboration**

| | Cross-sector and cross-border collaboration |
|---|---|
| N/A: AT, BG, CY, CZ, DK, EE, ES, FR, GR, HR, HU, IT, LU, LV, MT, NL, NO, PL and PT | |
| BE FR, BE NL | The JEP is a member of the European Advertising Standards Alliance (EASA).<br>In practice, complaints about commercial communications distributed in Belgium by foreign media can be handled by the competent self-regulatory body through a referral procedure established within the EASA |
| DE | In fulfilling their tasks, the state media authorities shall cooperate with the Regulatory Authority for Telecommunications and with the Federal Cartel Office. In response to an enquiry by the Regulatory Authority for Telecommunications or the Federal Cartel Office, the state media authorities shall provide findings which are required for these authorities to fulfil their tasks. This applies accordingly to the cooperation with the state competition authorities and the gaming supervisory authorities |
| FI | The Act on Electronic Communications Services specifies cooperation among relevant authorities, such as the Ministry of Transport and Communications, Traficom, the Data Protection Ombudsman, competition authorities, consumer authorities, market surveillance authorities and product safety authorities, as a means to fulfilling the duties under the act<br>The Council of Ethics in Advertising is part of the ICC, and the CMM is a member of The Alliance of Independent Press Councils of Europe |
| IE | The OSMR Bill 2022 provides for the Media Commission to engage in cooperation with other bodies and enter into cooperation agreements |
| LT | Self and regulatory bodies monitoring public information and advertising are encouraged by the law to cooperate with the police, other national and international institutions, representing media industry, professional organisations and consumer rights |
| NL | The Authority for Consumers and Markets (ACM) is a convergent body in charge of competition oversight, consumer protection as well as sector-specific regulation of several sectors (such as telecoms). The cooperation between ACM, the Dutch media NRA (CvdM) and the Dutch Advertising Code Committee was established through a Memorandum of Understanding (regular meetings of boards, central contact points, sharing of technical and legal knowledge, creation of a common data scientists pool). On 13 October 2021, the ACM, the CvdM, the DPA and the authority for financial markets announced they would intensify cooperation through the launch of the Digital Regulation Cooperation Platform (Samenwerkingsplatform Digitale Toezichthouders, SDT). SDT aims to exchange knowledge and experiences in areas such as AI, algorithms, data processing, online design, personalization, manipulation, and misleading practices. They committed to joint investments in knowledge, expertise, and skills. They will explore how to strengthen each other's work in enforcement procedures, e.g. by dealing with digital market problems collectively. |

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| | Cross-sector and cross-border collaboration |
|---|---|
| RO | The CNA, in the activity of supervision and control, may request of the National Institute for Research and Development in Informatics – ICI Bucharest, in the case of the registering of domains and subdomains in the ".ro" area, data related to the service provider (audiovisual services, VSPs or user-generated content). It can consult with the National Authority for Protection of Consumers and the Ministry of Finance with regard to misleading advertising |
| SE | The SPBA has a general obligation to cooperate with other relevant authorities (e.g., the Swedish Media Council on media literacy and the Swedish Consumer Agency on market law obligations) |
| SI | The Slovenian Advertising Chamber is a full member of the European Advertising Standards Alliance (EASA), so the provisions of the Code are also used in the procedure for resolving international complaints in the EASA member states |
| SK | Ministries and other state administration bodies cooperate with the regulator on issues related to broadcasting, retransmission, on-demand provision of audiovisual media services and the provision of content-sharing platforms<br>In terms of international cooperation, the regulator is given a mandate to cooperate actively with partner supervisors in the member states and their associations and organisations, the Commission, to participate in the exchange of information and cooperate with international organisations or bodies of other states operating in the areas regulated by this Act, to participate in the work of the ERGA, as well as to cooperate with the supervisory authorities of another member state in proceedings against a content service which does not fall within the competence of the regulator or other state bodies of the Slovak Republic, even though it operates in the territory of the Slovak Republic |
| UK | The UK has a Digital Regulation Cooperation Forum that was formed in July 2020 by the Competition and Markets Authority (CMA), the Information Commissioner's Office (ICO) and the Office of Communications (Ofcom). The Financial Conduct Authority (FCA) joined fully just less than a year later. The aims of the Forum are to promote greater coherence in regulation, to work collaboratively in areas of common interest, and to enhance capacity. Among its objectives is also to strengthen international engagement with regulatory bodies to share information and best practice. The Forum devises annual workplans and reports publicly on its activities |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

## 3.8. Update on plans and practices relative to new obligations of VSPs

The plans and practices in relation to VSPs' obligations are still predominantly related to the application of all the recent national transpositions, the contours of which are still to be defined by regulators' acts. An example of this is Italy, where Agcom is required to adopt implementing provisions on the protection of minors, the general public and consumers from VSPs whose provider is established in another member state but whose activity is directed at the Italian public; it is also required to adopt procedures for alternative dispute resolutions and guidelines for the codes of conduct to be adopted by VSPs.

As mentioned, the adoption of implementing legislation is still pending in Norway, whereas several other countries are awaiting the adoption of further legislation (BE NL, FI, IE, UK).

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**Table 26. Plans and practices relative to new obligations of VSPs**

| | Plans and practices relative to new obligations of VSPs |
|---|---|
| N/A: AT, BE FR, BG, CY, DK, EE, ES, FR, GR, HR, HU, LT, LU, LV, MT, NL, PT, RO, SE and SK | |
| BE NL | The Flemish Government will lay down further rules in relation to the obligations of VSPs |
| DE | The state media authorities are to establish a joint body for the settlement of disputes between complainants, or users and providers of video-sharing services affected by the complaint about measures that the providers of video-sharing services have implemented or omitted |
| FI | Revision of the Act on Audiovisual Programmes pending |
| IE | The new Media Commission shall develop online safety codes |
| IT | Agcom to issue several regulations in connection with VSPs, among others those on:<br>- implementing provisions on the limitation of the free circulation of programmes, user-generated videos and audiovisual commercial communications conveyed by a VSP whose provider is established in another member state and directed to the Italian public to protect (i) minors from content which may impair their physical, mental or moral development; (ii) the general public from content containing incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity; and (iii) consumers<br>- procedures for alternative dispute resolutions between users and VSPs; and<br>- appropriate guidelines for the codes of conduct to be adopted by VSPs |
| NO | Legislation adoption still pending |
| PL | KRRiT adopted the regulation on classification of content available on VSPs that may be harmful for minors. KRRiT has not prepared the proposal of secondary legislation concerning commercial communications on VSPs. In the scope of commercial communications on VSPs, self-regulation is planned as the first step |
| SI | The Slovenian Advertising Chamber is in the process of reviewing its code, which dates from 2009. A new version of the code should be ready in 2023 |
| UK | The UK Government has introduced a draft Online Safety Bill that would replace section 4b (on VSPs) in the Communications Act and radically change Ofcom's role in relation to all online platforms including VSPs, with implications for commercial communications as well |

*Source: Analysis of the responses to the European Audiovisual Observatory standardised questionnaire*

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# 4. National legal summaries

## 4.1. AT – Austria – National legal summary[18]

### 4.1.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Audiovisuelle Mediendienste-Gesetz*; AMD-G[19] (Audiovisual Media Services Act –
- AMD-G[20])
- Arzneimittelgesetz[21] (Medicines Act)
- *Medizinproduktegesetz* 2021[22] (Medical Devices Act 2021)
- Tabak- und Nichtraucherinnen- bzw. Nichtraucherschutzgesetz[23] (Tobacco and Non-Smoker Protection Act)
- *Glücksspielgesetz*[24] (Gambling Act )
- Bundesgesetz gegen den unlauteren Wettbewerb[25] (Act against Unfair Competition)
- *KommAustria-Gesetz*[26] (Law on KommAustria – KommAustria-G[27])

Self and co-regulatory instruments:

- Richtlinien der KommAustria für die Vergabe von Mitteln aus dem Fonds zur Förderung der Selbstkontrolle bei der kommerziellen Kommunikation (Guidelines for the allocation of funds from the Fund for Promotion of Self-Regulation in Commercial Communications by KommAustria)[28]

[18] The factsheet on Austria incorporates feedback received from Stefan Rauschenberger, Director of the Legal Department at Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH) during the checking round with the national regulatory authorities.
[19] https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001412.
[20] https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_84/ERV_2001_1_84.html.
[21] https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010441.
[22] https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20011580.
[23] https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10010907.
[24] https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10004611.
[25] https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002665.
[26] https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20001213.
[27] https://www.ris.bka.gv.at/Dokumente/Erv/ERV_2001_1_32/ERV_2001_1_32.html.
[28] https://www.rtr.at/medien/was_wir_tun/foerderungen/selbstkontrolleinrichtungen/kommerzielle_kommunikation/Richtlinien/Richtlinien_KK2021.pdf.

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- Förderung der Selbstkontrolle zum Schutz Minderjähriger: Richtlinien der KommAustria für die Vergabe von Förderungen (Guidelines for awarding grants to promote self-regulation to protect minors by KommAustria)[29]

## 4.1.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also definitions of supplementary and/or related concepts, such as advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.1.2.1. Definitions

**Table 27. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Under the definition of surreptitious commercial communication. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

[29] https://www.rtr.at/medien/was_wir_tun/foerderungen/selbstkontrolleinrichtungen/schutz_minderjaehriger/richtlinien/2021.de.html.

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| | |
|---|---|
| **Other:** | / |

*Source: Austrian response to European Audiovisual Observatory standardised survey*

#### 4.1.2.1.1. Audiovisual commercial communications

Section 2, item 2 of the AMD-G defines audiovisual commercial communications as:

> *Images with or without sound that*
> *a) are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity, or*
> *b) are designed to support a cause or idea.*
> *Such images accompany or are included in a programme or, in the case of (a) also in a user-generated video, in return for payment or for similar consideration or, in the case of a), for self-promotional purposes. In any event, audiovisual commercial communication includes product placement, the representation of production props of insignificant value, sponsorship announcements and advertising pursuant to item 40*

#### 4.1.2.1.2. Television advertising

The AMD-G, in section 2, item 40, provides the following definition of television advertising:

> *Any form of announcement broadcast or provided on television channels by the provider (television advertising) or as part of an on-demand audiovisual media service by the provider whether in return for payment or for similar consideration or for self-promotional purposes in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment. Furthermore, advertising includes any form of announcement broadcast whether in return for payment or for similar consideration in order to support a cause or idea (advertising for causes).*

#### 4.1.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.1.2.1.4. Surreptitious commercial communication

Section 2, item 29, of the AMD-G defines surreptitious commercial communication by literally transposing the text of the revised AVMSD, as:

> *The representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider or one of its subsidiaries to serve as advertising and might mislead the public as to the nature of such representation. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.*

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#### 4.1.2.1.5. Misleading commercial communication

The AMD-G, in Section 2, item 29, includes the definition of misleading commercial communications in the definition of surreptitious commercial communications (see under 4.1.2.1.4. above)

#### 4.1.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.1.2.1.7. Sponsorship

Section 2, item 32, defines sponsorship as:

> *Any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platforms or in the production of audiovisual works for the financing of audiovisual media services, video-sharing platforms, user-generated videos or programmes with a view to promoting their name, trademark, image, activities or products.*

#### 4.1.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.1.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.1.2.1.10. Product placement

Section 2, item 27, of the AMD-G defines product placement as:

> *Any form of commercial communication consisting of the inclusion of or reference to a product, a service or a trademark thereof, in return for payment or for similar consideration, so that it is featured within a programme or a user-generated video. The provision of goods or services free of charge, such as production props or prizes, with a view to their inclusion shall not be considered to be product placement if the goods or services involved are of insignificant value.*

#### 4.1.2.1.11. Other definitions

N/A.

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#### 4.1.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, the AMD-G, in section 54e para 4 item 1 to 4, extends the following requirements to VSPs:

> *In the case of audiovisual commercial communications contained in or added to programmes or user-generated videos (§ 2(3), first sentence (a) and second and third sentences), platform providers shall ensure that*
> *1. at least the conditions laid down in § 31, § 33 to § 35(1) and § 36(1) and (2) are satisfied if these were marketed, sold or assembled by the platform providers themselves;*
> *2. through the General Terms and Conditions required under (2) point 1, where possible platform users are also required to comply with §§ 31, § 33 to § 35(1) and § 36(1) and (2) in the content they upload to the video-sharing platform;*
> *3. users uploading content have at their disposal a function enabling them to indicate whether, to the best of their knowledge, the content contains such communication;*
> *4. where content contains such communication, that is clearly indicated, provided that the platform provider is aware of it from an indication under (3) or for another reason.*

Restrictions and prohibitions of the aforementioned related provisions are provided below.

##### 4.1.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Section 33 of the AMD-G prohibits audiovisual commercial communications related to tobacco and tobacco-related products:

> *Any form of audiovisual commercial communication for tobacco products and related products, including devices for the purpose of consumption, shall be prohibited (§ I Tobacco and Non-Smoker Protection Act, TNRSG, Official Gazette No 431/1995[30])*

The AMD-G, in section 35, paragraphs 1 and 2, provides for certain restrictions vis-à-vis alcohol, including a prohibition on audiovisual commercial communications being specifically aimed at or showing minors consuming alcohol, associating alcohol consumption with improved physical performance, including while driving, sexual success or suggesting alcohol as therapeutic, stimulating, etc. Paragraph 2 deals with the requirements and content of self-regulatory mechanisms vis-à-vis alcoholic beverages:

[30] *Tabak- und Nichtraucherinnen- bzw. Nichtraucherschutzgesetz* (Tobacco and Non-Smoker Protection Act), http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Erv&Dokumentnummer=ERV_1995_431.

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*All media service providers shall draw up and comply with guidelines on audiovisual commercial communications relating to alcoholic beverages. The guidelines shall specify which forms and contents of audiovisual commercial communications are inappropriate and shall be aimed at reducing the impact of audiovisual communications on minors effectively. The guidelines shall be published in an easily, directly and permanently accessible form. The experience and recommendations of a recognised self-regulation body shall be taken into account in assessing what is inappropriate (§ 33(3b) Austrian Communication Authority Act, KOG).*

#### 4.1.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Section 34, paragraph 1, of the AVMSD Act prohibits commercial communications for medicinal products and treatments available only on prescription:

*Any form of audiovisual commercial communication for medicines or therapeutic treatments that are only available on prescription as well as for medical devices that are subject to a prescription pursuant to a regulation according to § 100 of the Act on Medical Devices, Federal Law Gazette No. 657/1996, shall be prohibited.*[31]

Related advertising restrictions of the Medicines Act, regulated in sections 50-56a, and those of the Medical Devices Act 2021, regulated in sections 70-76, remain the same.

#### 4.1.2.2.3. Surreptitious audiovisual commercial communications

The AMD-G, in section 31, paragraphs 1 and 2, stipulates mandatory identifiability of commercial communications and prohibits surreptitious techniques:

*1. Audiovisual commercial communications shall be readily recognizable as such.*
*2.Surreptitious advertising, audiovisual commercial communication that is below the limit of perception and comparable practices shall be prohibited.*

#### 4.1.2.2.4. Subliminal techniques in commercial communications

Section 31 paragraphs 1 and 2 of the AMD-G prohibits subliminal marketing techniques, and stipulates mandatory identifiability of audiovisual commercial communications:

*1. Audiovisual commercial communications shall be readily recognizable as such.*
*2. Surreptitious advertising, audiovisual commercial communication that is below the limit of perception and comparable practices shall be prohibited.*

[31] Although the Medical Devices Act 1996 has already expired and been replaced by the Medical Devices Act 2021, section 34 AVMSD-Act still refers to the provision of the Medical Devices Act 1996.

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#### 4.1.2.2.5. Prejudice with regard to human dignity

The AMD-G, section 31, paragraph 3 item 1, prohibits prejudice with regard to human dignity: "Audiovisual commercial communications shall not prejudice respect for human dignity."

#### 4.1.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Section 31, paragraph 3 item 2, of the AMD-G stipulates that: "Audiovisual commercial communication shall not contain or encourage any discrimination on the grounds of sex, race or ethnic origin, nationality, religion or belief, disability, age or sexual orientation."

#### 4.1.2.2.7. Encouragement of behaviour prejudicial to health or safety

The AMD-G, in section 31, paragraph 3 item 3: "Audiovisual commercial communication shall not encourage behaviour prejudicial to health or safety."

#### 4.1.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

The AMD-G, in section 31, paragraph 3 item 4: "Audiovisual commercial communication shall not encourage directives that are highly prejudicial to the protection of the environment."

#### 4.1.2.2.9. Causing physical, mental or moral detriment to minors

The AMD-G, section 36, stipulates that audiovisual commercial communication must not lead to physical, mental or moral impairment of minors and provides for the following criteria to be respected in relation to the protection of minors, in addition to stipulating the establishment of relevant self-regulatory mechanisms:

> *(1) Audiovisual commercial communications shall not cause physical, mental or moral harm to minors*
> *(2)Therefore, an audiovisual commercial communication shall comply with the following criteria for the protection of minors:*
> *1. It shall not directly exhort minors to buy or hire a product or a service by exploiting their inexperience or credulity.*
> *2. It shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised.*
> *3. It shall not exploit the special trust minors place in parents, teachers or other persons.*
> *4. It shall not unreasonably show minors in dangerous situations. All media service providers whose service also includes children's programmes shall draw up and comply with guidelines regarding audiovisual commercial communications on foods and beverages*

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*containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended. The guidelines shall specify which forms of audiovisual commercial communications are inappropriate before, after and during children's programmes and stipulate that positive characteristics of the foods and beverages concerned may not be emphasised. The guidelines shall be published in an easily, directly and permanently accessible form. The experience and recommendations of a recognised self-regulation body for commercial communications shall be taken into account in assessing what is inappropriate (§ 33(3b) Austrian Communication Authority Act, KOG)*

#### 4.1.2.2.10. Other

Section 31, paragraph 3, of the AMD-G prohibits encouragement of illegal practices of any kind (item 5) and misleading or harming the interests of consumers (item 6). Furthermore, persons who regularly present news programmes and programmes on political current affairs are not allowed to appear, neither in imagery nor in sound, in audiovisual commercial communications, which must not compromise the editorial independence of the media service provider (section 32 of the AMD-G).

## 4.1.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.1.3.1. Sponsorship

Sponsorship rules are contained in section 37 of the AMD-G, applicable to VSPs as well, in terms of respect for the prohibition on influencing the responsibility and editorial independence of the media service provider, mandatory identifiability of sponsorship, as well as the requirement that sponsorship not:

*3. …directly encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.*

In addition to a prohibition on sponsorship of news and political information programmes, audiovisual media services and programmes may not be sponsored by natural or legal persons whose main activity is the manufacture or sale of products or the provision of services for which audiovisual commercial communication is prohibited under section 33 (see under 4.1.2.2.1. and 4.1.2.2.2.). In cases involving sponsorship of audiovisual media services or programmes by companies whose business involves the manufacture or sale of

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medicines and therapeutic treatments, only the name or image of the company may be used. There can be no mention of medicines or therapeutic treatments that are only available with a doctor's prescription.

#### 4.1.3.2. Product placement

While section 38, applicable to VSPs as well, of the AMD-G permits product placement in general (except in news, political information programmes, consumer programmes, religious and children's programmes), certain requirements do apply, such as identifiability of product placement, a prohibition on influencing the editorial responsibility and independence of the media service provider or direct solicitation of a purchase, hiring or leasing of any goods or services: "especially not by specifically promoting such goods or services by means of promotional notices"(Paragraph 2). Also, as stipulated in paragraph 3 of the said provision, product placement must not: "overemphasise the product in question".

Broadcasts may also not contain any product placements in favour of companies whose main activity is the manufacture or sale of tobacco products and related products, including devices intended for consumption.

### 4.1.4. Obligations regarding (v)blogs and (v)blogging

According to section 2 item 3 of the AMD-G, an audiovisual media service is: "a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose or a dissociable section of the service is devoted to providing programmes, under the editorial responsibility of a media service provider, in order to inform, entertain or educate, to the general public by electronic communications networks" and is inclusive of on-demand television programming – a service provided by a media service provider for reception at the time chosen by the user and on their individual request from a program catalogue specified by the media service provider (section 2 item 4).

If they cumulatively meet all requirements in the aforementioned provision, vlogs may be considered on-demand audiovisual media services (e.g., if a channel has been set up on YouTube, TikTok etc. and it contains a number of videos.)

In case a vlog is considered an audiovisual media service, the aforementioned provisions and restrictions of the AMD-G are applicable. Besides, on-demand service providers established in Austria must notify the Austrian regulatory authority KommAustria[32] of their activity no later than two months after starting the activity (Section 9 paragraph 1 AMD-G).

[32] Die Kommunikationsbehörde Austria, https://www.rtr.at/medien/wer_wir_sind/KommAustria/KommAustria.de.html

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## 4.1.5. Other relevant information

N/A.

## 4.1.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.1.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

N/A.

### 4.1.6.2. Gambling, betting, betting tipsters, etc.

The AMD-G does not contain any explicit provisions specific to gambling, but the general provisions regarding the requirements for commercial communication apply, such as, e.g section 36 AMD-G (see under 4.1.2.2.) which prohibits audiovisual commercial communication from leading to physical, mental or moral impairment of minors, hence prohibiting direct solicitations to minors to buy or rent goods or services, taking advantage of their inexperience and gullibility, etc.

Furthermore, the concessionaires and license-holders of games of chance must maintain a responsible standard in their advertising in section 56 paragraph 1 of the Gambling Act. According to the literature,[33] responsible behaviour is probably violated when particularly high stakes, gambling with borrowed capital or progressive gaming to compensate for any losses is advertised. In addition, it may not be suggested that increased gaming increases the chances of winning, chances of winning must generally not be exaggerated, and the gambling character of the game must not be denied. Gambling advertising also may not suggest that gambling could help with financial difficulties.

[33] Strejcek/Bresich, Kommentar zum Glücksspielgesetz, 2012, 374 (Commentary on the Gambling Act).

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#### 4.1.6.3. Environmental or "green" claims for products

According to section 2 of the Act against Unfair Competition, advertising must not contain any misleading information. Furthermore, the international standards within the DIN EN ISO 14020[34] contain requirements regarding product-related environmental information (for example: statements about a product's environmental aspects must be accurate, verifiable and true; statements about the environmental aspects of a product must be based on scientifically verifiable methods that are as widely accepted and accessible as possible).

The Act against Unfair Competition aims to ensure fair competition in general by providing legal remedies against practices that allow companies to gain an unfair advantage over their competitors. Therefore, it is not tied to a certain medium and includes, for example, actions carried out on VSPs that are questionable under fair competition law.

#### 4.1.6.4. Other

N/A.

### 4.1.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.1.7.1. Self- and co-regulatory bodies

##### 4.1.7.1.1. Context of establishment and legal background

Media service providers are obliged to establish and adhere to guidelines regarding audiovisual commercial communications related to alcoholic beverages, as well as audiovisual commercial communications for food and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, of which excess intake as part of the overall diet is not recommended.

KommAustria is tasked with promoting self-regulation in commercial communication – for which it receives an annual budget.

[34] https://www.iso.org/standard/34425.html.

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#### 4.1.7.1.2. Stakeholders involved

N/A.

#### 4.1.7.1.3. Scope and objectives

N/A.

#### 4.1.7.1.4. Code(s) of conduct

According to Section 35 paragraph 2 of the AMD-G, each media service provider is required to establish and adhere to guidelines regarding audiovisual commercial communications related to alcoholic beverages. The guidelines must include provisions on what forms and content of audiovisual commercial communications are inappropriate and aim to effectively reduce the exposure of minors to audiovisual communications. The guidelines are to be published in a way that makes them easily, immediately and permanently accessible. In the assessment of what is inappropriate, the findings and recommendations of a recognised institution for self-regulation are considered.

Section 32a paragraph 1 (KommAustria-G) foresees the establishment of self-regulation bodies:

> *To provide support in achieving the objective of ensuring the observance of European minimum standards by providers of content, the activities of recognized self-regulation bodies may be subsidised.*

According to Section 32a paragraph 2 (KommAustria-G) a recognised self-regulatory body is a body with a legal personality that:

> *1.guarantees broad representation of the providers concerned and comprehensive transparency in respect of the basis of decisions, the proceedings and the implementation of decisions,*
> *2.stipulates conduct guidelines and procedural guidelines that are broadly accepted by the main stakeholders and clearly define the objectives of self-regulation,*
> *3.ensures regular, transparent and, in any event, external as well as independent monitoring and evaluation of the objectives aimed at,*
> *4.provides for the effective handling of complaints and the enforcement of its decisions including effective and proportionate sanctions in the case of infringements of the conduct guidelines, and*
> *5.prepares an annual report on its activities, the objectives set and the measures and decisions taken pursuant to sub-paras. 3 and 4 and publishes the report in an appropriate manner.*

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When it comes to the self-regulation of media and VSPs for commercial communications, the Werberat Association[35] is of relevance.

Another (more specific) example is the Association for Self-Regulation of Audiovisual Media for the Protection of Minors[36] (Section 32b KommAustria-G). While this association may tackle some relevant aspects of commercial communication, it mainly focuses on the protection of minors.

Upon request, KommAustria must grant a recognised institution of self-regulation in the field of commercial communication in the media or in the field of protection of minors an annual subsidy to cover the costs incurred. This is intended to ensure the independence of these institutions and to ensure the performance of their statutory tasks and to ensure the effective enforcement of their decisions and resolutions. In order for the full amount of the available funds to be granted, the code of conduct of a self-regulatory body in the field of commercial communication in the media must contain provisions on:

- inappropriate audiovisual commercial communications for alcoholic beverages and
- audiovisual commercial communications inappropriate for children for foods and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, excessive intake of which is not recommended as part of the total diet.

The Codes of Conduct should aim to effectively reduce the exposure of minors to audiovisual communications for alcoholic beverages and to effectively reduce children's exposure to audiovisual communications for the above-mentioned foods and beverages (foods and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, excessive intake of which is not recommended as part of the total diet). For these foods and beverages, the code of conduct must provide that their positive nutritional properties should not be emphasised. The code of conduct must also acknowledge the relevant recommendations of European consumer protection associations, taking into account the recommendations of European self-regulatory bodies in the advertising sector in an appropriate balance of interests. These behavioural guidelines should also take recognised nutritional guidelines into account. They are to be drawn up with the assistance of the Agency for Health and Food Safety.

Furthermore, according to Section 36 paragraph 2 of the AMD-G, any media service providers that also offers children's programmes have to create and follow guidelines with regard to audiovisual commercial communications for food and beverages containing nutrients or substances with a nutritional or physiological effect, such as in particular fat, trans fats, salt/sodium and sugars, of which excess intake as part of the overall diet is not recommended. The guidelines must include provisions on what forms of audiovisual commercial communication are inappropriate before, after and in/during children's programmes. Furthermore, they must include provisions stipulating that positive qualities

[35] Werberat, https://www.werberat.at/
[36] Verein zur Selbstkontrolle audiovisueller Medienangebote zum Schutz von Minderjährigen, https://www.jugendmedienschutz.at/#:~:text=Der%20hierf%C3%BCr%20gegr%C3%Bcndete%20%E2%80%9Everein%20zur,im%20Sinne%20der%20gesetzlichen%20Bestimmungen.

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of the food and drink in question must not be emphasised. The guidelines have to be published in a way that makes them easily, immediately and permanently accessible. To assess what is inappropriate, the findings and recommendations of a recognised institution for self-regulation in commercial communication (Section 33 paragraph 3b KommAustria-G) must be used.

Codes of conduct should take into account the recommendations of European institutions for self-regulation in the advertising sector, as well as the relevant recommendations of European consumer protection associations in an appropriate balance of interests. These guidelines should also consider recognised nutritional guidelines, particularly with regard to audiovisual commercial communication for food and beverages. They are to be drawn up with the assistance of the Agency for Health and Food Safety.

#### 4.1.7.1.5. Role of the (self-)regulatory bodies

VSPs have to ensure, as far as possible, in the case of audiovisual commercial communications included in or attached to broadcasts or user-generated videos, that the users of the platform are required to comply with the requirements for the content they upload to the video-sharing platform (see 4.1.2.2)

#### 4.1.7.1.6. Period of activity (if limited)

N/A.

#### 4.1.7.1.7. Role of the regulatory authority in a co-regulatory system

##### *4.1.7.1.7.1. Regulatory body*

KommAustria is given EUR 75 000 annually to promote self-regulation in commercial communication (section 33 paragraph 1 of the KommAustria-G), and these funds must be invested and managed profitably in a money account. On request, KommAustria must grant a recognised self-regulatory body an annual grant to cover the costs incurred in the amount specified in section 33 paragraph 1 of the KommAustria-G, plus any reserves and interest. The request must contain evidence of the costs incurred in fulfilling the tasks. KommAustria has to draw up guidelines that contain, in particular, more detailed regulations on the form and content of applications as well as deadlines for submitting such applications.

A prerequisite for the granting of the full amount of the funds available to promote self-regulation is that the behavioural guidelines of a self-regulation institution regulate inappropriate audiovisual commercial communication for alcoholic beverages and audiovisual commercial communication for food and beverages that contain nutrients or substances with nutritional or physiological effects, such as fat, trans fatty acids, salt / sodium and sugar, the excessive intake of which is not recommended as part of the overall diet, for children (section 33 paragraph 3a of KommAustria-G).

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KommAustria is to be informed annually by 31 March of the following year about the effectiveness of the rules of the code of conduct as well as about the type, number and resolution of complaints. KommAustria must present its assessment and recommendations on effectiveness in its activity report (section 33 paragraphs 3a-c KommAustria-G).

##### *4.1.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.1.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.1.7.2. Monitoring/evaluation, compliance and sanctioning powers

Video-sharing-platform providers must notify KommAustria of their activities no later than two months after they have started. In addition to the name, address and any representatives and process agents, the notification must also provide evidence of the facts relevant for determining the jurisdiction. The platform providers must update the data mentioned annually and submit it to the regulatory authority by December 31 of each year (Section 54c, paragraph 4 AMD-G).

According to these provisions, and in accordance with the provisions of the revised AVMSD, VSP providers have to operate a system through which users can use easily findable, always available and easy-to-use functions on the video-sharing platform, which allow them a) to rate the content available there for third parties to view and b) to report content to the platform provider together with the information required for an assessment. Furthermore, the platform provider has to explain to its users how their report will be dealt with and what the result of the process in question was. VSPs are obliged to remove/block access to content, such as pornographic depictions of minors, incitement to commit terrorist offenses and approval of terrorist offenses, hate speech, etc. as well as run a proper user notification system related to this, all covered under the general terms and conditions, in addition to explanations or warnings for users.

KommAustria can, for certain reasons, review the adequacy of the measures taken by the platforms and, in the case of violation, fine them up to EUR 150 000 Euros (sections 54g and 54h AMD-G). KommAustria can also exempt some platforms from most of the regulations described above by regulation if the imposition of these measure would be unjustified or disproportionate, because of low sales and user numbers or because of the content type and orientation of the platform.

## 4.1.8. Cross-sector and cross-border collaboration

N/A.

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### 4.1.9. Update on plans and practices related to new obligations of VSPs

N/A.

### 4.1.10. Studies, reports and research

N/A.

### 4.1.11. Data compilation

This factsheet is based on data compiled by Dr. Harald Karl and Samuel Schuber of Pepelnik&Karl Rechtsanwälte GmbH.

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# 4.2. BE (FR) – French Community of Belgium – National legal summary[37]

## 4.2.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Décret du 4 février 2021 relatif aux services de médias audiovisuels et aux services de partage de vidéos[38] (Decree of 4 February 2021 on audiovisual media services and video-sharing services – the Decree)
- *Code de droit économique*[39] (Code of Economic Law – the CEL)
- Loi du 25 mars 1964 sur les médicaments[40] (Law of 25 March 1964 on medicines)
- Loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs[41] (Law of 7 May 1999 on gambling, betting, gambling establishments and the protection of players)

Secondary legislation:

- Arrêté royal du 25 octobre 2018 relatif aux modalités d'exploitation des jeux de hasard et des paris exploités au moyen des instruments de la société de l'information[42] (Royal Decree of 25 October 2018 on the modalities of operation of gambling and bets operated by means of information society)
- Arrêté royal du 7 avril 1995 relatif à l'information et à la publicité concernant les médicaments à usage humain[43] (Royal Decree of 7 April 1995 on information and advertising concerning medicines for human use)

Self- and co-regulatory instruments:

- *Code de la publicité écologique*[44] (Jury d'éthique publicitaire - JEP) (JEP Ecological Advertising Code)

[37] The factsheet on Belgium (French Community) incorporates feedback received from Anahi Vila, Director of European Affairs, and Coraline Burre, Advisor for Information and Commercial Communication, at the CSA during the checking round with the national regulatory authorities.
[38] https://etaamb.openjustice.be/fr/decret-du-04-fevrier-2021_n2021020568.html.
[39] http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel.
[40] https://www.ejustice.just.fgov.be/eli/loi/1964/03/25/1964032508/justel.
[41] http://www.ejustice.just.fgov.be/eli/loi/1999/05/07/1999010222/justel.
[42] https://www.ejustice.just.fgov.be/eli/arrete/2018/10/25/2018014587/justel.
[43] https://www.ejustice.just.fgov.be/eli/arrete/1995/04/07/1995025096/justel.
[44] https://www.jep.be/sites/default/files/rule_reccommendation/milieu_fr.pdf.

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BE (FR)

- *Conseil de la Publicité: Recommandations du Conseil de la Publicité en matière d'influenceurs en ligne*[45] (Communications Centre, Recommendations from the Communications Centre on Influencer Marketing, April 2022)
- Code de publicité éthique et responsable de la Loterie Nationale[46] (National Lottery Code for ethical advertising)

Soft law:

- *Position publique de la Commission des Jeux de Hasard relative à l'application de l'Arrêté Royal du 25 Octobre 2018*[47] (Public Position of the Gambling Commission on the application of the Royal Decree of 25 October 2018 on the modalities of operation of gambling and bets operated by means of information society)

## 4.2.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.2.2.1. Definitions

**Table 28. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |

[45] https://www.jep.be/wp-content/uploads/2022/04/influencers_FR.pdf.
[46] https://www.jep.be/sites/default/files/rule_reccommendation/code_voor_ethische_reclame_fr.pdf.
[47] https://gamingcommission.paddlecms.net/sites/default/files/2021-10/Position-publique-arrete-royal-25-octobre-2018-approuvee.pdf.

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| | |
|---|---|
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | Yes. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

*Source: French-speaking community of Belgium response to European Audiovisual Observatory standardised survey*

#### 4.2.2.1.1. Audiovisual commercial communications

Article 5.1-1, 1° of the Decree defines audiovisual commercial communications as being inclusive of:

> *any type of message designed to promote or sell, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity. Such messages are included in an audiovisual media service or video-sharing service in return for payment or for similar consideration or for self-promotional purposes. Commercial communications include, in particular, interactive commercial communications, split-screen commercial communications, targeted advertising, virtual advertising, sponsorship, teleshopping, self-promotion and product placement;*

#### 4.2.2.1.2. Television advertising

Article 5.1-1, 7° of the Decree defines television advertising as:

> *any form of message inserted in an audiovisual media service or video-sharing service in return for payment or for similar consideration by a public or private institution or undertaking or natural person in the course of a commercial, industrial or craft activity or in the course of a liberal profession, with the aim of promoting the supply of goods or services, including immovable property, rights and obligations, against payment;*

This definition applies to television and on-demand services (Article 1.3-1, 39° of the Decree).

Also, advertising and commercial practices in general terms are found in Article I.8, 13° of the CEL, which defines advertising as:

> *Any communication with the direct or indirect aim of promoting the sale of products, irrespective of the place or means of communication used*

and commercial practice as:

> *Any commercial action, omission, conduct, undertaking or communication, including advertising and marketing, on the part of an undertaking, directly related to the promotion, sale or supply of a product.*

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#### 4.2.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.2.2.1.4. Surreptitious commercial communication

Articled 5.1-1, 4° of the Decree defines surreptitious commercial communication as:

> *the verbal or visual presentation of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes or user-generated videos where such presentation is made intentionally by the service provider or video-sharing service provider for advertising or sales purposes and is likely to mislead the public as to the nature of such presentation.*
> *A presentation shall be deemed to be intentional in particular where it is made in return for payment or other consideration.*

#### 4.2.2.1.5. Misleading commercial communication

Articles VI.94 to VI.103 of the CEL extensively regulate unfair and misleading practices and define commercial practices of undertakings towards consumers as unfair if they:

> *VI.94 1° are misleading within the meaning of Articles VI.97 to VI.100, or*
> *2° are aggressive within the meaning of Articles VI.101 to VI.103*
> *…*
> *VI.97: A commercial practice is considered misleading if it contains false information and is therefore deceptive or in any way, including its general presentation, misleads or is likely to mislead the average consumer … even if the information presented is factually correct, and in either case causes or is likely to cause the average consumer to take a transactional decision that (s)he would not have taken otherwise…*

A set of requirements is provided further in the CEL, with detailed referencing as to when and under which conditions a commercial practice is deemed to be misleading, prohibiting such practices.

#### 4.2.2.1.6. Virtual advertising

Article 5.1-1, 9° of the Decree defines virtual advertising as:

> *Image-embedded advertising or advertising replacing an advertisement present at the venue of an event, by means of an electronic imaging system modifying the broadcast signal.*

It is not covered by duration restrictions pertaining to advertising in linear and non-linear television services (Article 5.3-3, §3 of the Decree), nor distinguishability of commercial communication from other content (Article 5.2-4, § 6 of the Decree).

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Article 5.8-2 of the Decree prohibits virtual advertising, except during live or deferred transmission of sports competitions, under certain conditions (must not alter the quality of the programme, hinder the perception of the site of the sports competition, etc.)

#### 4.2.2.1.7. Sponsorship

Article 5.1-1, 5° of the Decree provides for the definition of sponsorship as:

> *any contribution in the form of payment or similar consideration, from a public or private institution or company, or from a natural person not engaged in broadcasting, providing video-sharing services or producing programmes, to the financing of audiovisual media services, video-sharing services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities, output or products;*

#### 4.2.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.2.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.2.2.1.10. Product placement

Article 5.1-1, 6° of the Decree defines product placement as:

> *inclusion of or reference to a product, service or trade mark thereof within a programme or a user-generated video in return for payment or for similar consideration;*

#### 4.2.2.1.11. Other definitions

Additional concepts are defined by the Decree, such as:

- Targeted advertising: "Advertising offered to a specific recipient or group of recipients on the basis of personal data processing" (Article 5.1-1, 1° and 8°)
- Interactive commercial communication: "Any commercial communication inserted in an audiovisual media service or in a video-sharing service which, by means of a return channel, refers users – who individually request it by means of an insertion in the service of an electronic means of access – to a new advertising, promotional or commercial environment" (in Article 5.2-1, 2° of the Decree)
- Split-screen commercial communication: "Any commercial communication broadcast in parallel with the broadcast of a television programme or user-generated video by spatial division of the screen" (Article 5.2-1, 4° of the Decree)
- Teleshopping (also included offers to public in user-generated videos in Article 1.3-1, 60° of the Decree): "The broadcasting of direct offers to the public, in the form of

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programmes or spots or user-generated videos, with a view to the supply of goods or services, including immovable property, or of rights and obligations, in return for payment", Self-promotion: "Any message broadcast at the initiative of a service provider or video-sharing service provider and intended to promote its own services, programmes or related products directly derived from its own programmes."

#### 4.2.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general remark, it should be noted that Article 2.3-1 of the Decree provides for a prohibition of programmes or commercial communications:

*Service providers shall not transmit any programmes or commercial communications which:*
*1) are in violation of any laws, decrees, regulations or go against the general interest;*
*2) undermine human dignity;*
*3) contain public provocation to commit a terrorist offence as referred to in Article 137 of the Criminal Code;*
*4) promote a line of thinking, belief or opinion which threatens democracy, fundamental rights and freedoms guaranteed by the Constitution or by the European Convention for the Protection of Human Rights and Fundamental Freedoms, or seek to abuse public credulity;*
*5) seek to deny, downplay, justify or condone the genocide committed by the German National Socialist regime during the Second World War, or any other form of genocide;*
*6) constitute offences concerning racism and xenophobia as referred to in the Act of 30 July 1981 on suppressing certain acts of racism or xenophobia;*
*7) constitute offences concerning child pornography within the meaning of Article 383a of the Criminal Code.*

Article 2.3-2 adds that VSP providers "must take appropriate measures to protect the user from programs and user-generated videos in the circumstances described in Article 2.3-1."

Further, Article 5.5-1 § 1 of the Decree stipulates rules regarding commercial communication "which is organised by the video-sharing service provider":

*it "…must be easily identifiable as such" and must comply with the provisions of the decree, details of which are presented below.*

In addition to restrictions vis-à-vis audiovisual commercial communications, Article 5.2-1 of the Decree stipulates that commercial communications may not be contrary to laws, decrees, regulations and directives as well as to the regulations of the regulatory authority,

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the Superior Audiovisual Council (CSA),[48] referred to in Article 9.1.2-1, § 1, 2° of the Decree, and approved by the government, which regulate advertising in general or advertising for certain products or services.

Also, Article XII.12 of the CEL stipulates that advertisements which are part of or constitute an information society service must respect the principles of mandatory identifiability, inclusive of (natural or legal) persons on whose behalf the advertising is made, promotional offers (e.g., price reductions, joint offers, etc.) and competitions or games.

Where the commercial communication is not organised by the video-sharing service provider, the latter must take appropriate measures to comply with the requirements presented below. If, following this assessment, the CSA concludes that inappropriate measures have been taken, it shall invite the video-sharing service provider to adopt appropriate corrective measures within a period of time which it shall determine. In the event of non-compliance with the decision of the CSA, the latter may impose one of the sanctions provided for in Article 9.2.2-1. of the Decree.

#### 4.2.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 5.1-2 of the Decree provides that audiovisual media service providers and video-sharing service providers may broadcast commercial communications for alcoholic beverages, with the exceptions of ads targeting minors, or presenting or providing alcoholic beverages as increasing physical performance, especially while driving, or suggesting therapeutic beneficial qualities of alcohol, while also prohibiting encouragement of immoderate, reckless or illegal consumption of alcohol, cigarettes and other tobacco products, including electronic cigarettes and their refills …

#### 4.2.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 9 of the Law of 25 March 1964 on medicines states that:

> *§ 1. Any advertising relating to a medicinal product which is not registered (for which a marketing authorisation has not been granted) or which has been the subject of a suspension or prohibition measure taken pursuant to Articles 7 and 8 (7bis and 8bis) is prohibited. Any advertising intended for the public is prohibited when it relates to a medicinal product which can only be supplied on presentation of a medical prescription or to a medicinal product intended for the treatment of a disease or condition designated by the King on the advice of the Higher Council of Public Health.*

[48] Conseil supérieur de l'audiovisuel, https://www.csa.be/.

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General Rules relative to advertising, as well as the Royal Decree of 7 April 1995 on information and advertising concerning medicines for human use, in addition to the Law of 25 March 1964 on medicines, extensively regulate in general and specifically commercial communications for medicinal products and treatments.

The aforementioned provisions are applicable to VSPs as well, as the rules relate to any advertising and all commercial communications.

#### 4.2.2.2.3. Surreptitious audiovisual commercial communications

Article 5.1-1, 4° of the Decree defines surreptitious audiovisual communications as:

> *the verbal or visual presentation of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes or user-generated videos where such presentation is made intentionally by the service publisher or video-sharing service provider for advertising or sales purposes and is likely to mislead the public as to the nature of such presentation.*
>
> *A presentation shall be deemed to be intentional in particular where it is made in return for payment or other consideration;*

Article 5.2-4, §5 of the Decree stipulates that:

> *Surreptitious commercial communication is forbidden.*

#### 4.2.2.2.4. Subliminal techniques in commercial communications

Article 5.5-1, §1st, 3° of the Decree prohibits the use of subliminal techniques:

> *Commercial communications shall comply with the provisions of Titles III and IV of Book II. In addition, they shall not:*
> ...
> *3) use subliminal techniques;*

#### 4.2.2.2.5. Prejudice with regard to human dignity

In accordance with Article 5.5-1 of the Decree, any video-sharing service provider shall take appropriate measures to protect the user from programmes and user-generated videos including commercial communication offending human dignity.

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#### 4.2.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Article 5.5-1 of the Decree states that any provider of video-sharing services must take appropriate measures to protect the user from programmes and user-generated videos including discriminatory commercial communication.

Article 2.4-1 of the Decree, applicable to VSPs, notes that the prohibition includes:

> *…1° undermining respect for equality between women and men or containing or promoting discrimination or incitement to discrimination, hatred or violence based on sex or assimilated criteria such as pregnancy, maternity, gender reassignment, gender expression, gender identity or containing incitement to violence against women and domestic violence; 2° containing or promoting discrimination or inciting discrimination, hatred or violence, in particular on the grounds of nationality, alleged race, colour, descent or national or ethnic origin, age, sexual orientation, religious or philosophical conviction, disability, marital status, birth, property, political conviction, language, current or future state of health, physical or genetic characteristic, social origin or trade union conviction.*

#### 4.2.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 5.5-1, §1st 1° of the Decree prohibits commercial communication organised by the video-sharing service provider to:

> *Encourage behaviour prejudicial to health or safety, in particular by highlighting violent behaviour.*

#### 4.2.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

As stipulated by the Article 5.5-1, §1st 2° of the Decree, commercial communications organised by the video-sharing service provider may not:

> *encourage behaviour prejudicial to the protection of the environment.*

#### 4.2.2.2.9. Causing physical, mental or moral detriment to minors

Article 5.5-1, §1st 5° prohibits commercial communication organised by the video-sharing service from: "Causing physical, mental or moral detriment to minors and it must in particular comply with the criteria of Article 5.2-3 of the Decree".

The criteria from Article 5.2-3 include a prohibition on encouraging excessive use of food and drink products containing trans-fatty acids, salt, sodium or sugars, the regular consumption of which is inadvisable for health reasons – with regard to which the Advisory Committee of the CSA will draw up and update one or more codes of conduct allowing for the establishment of guidelines based on best practices designed to ensure compliance with this point, as well as a prohibition on directly exhorting minors to buy or rent a product

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or service by exploiting their inexperience or credulity or inciting then to persuade their parents or third parties to buy the products or services concerned, etc.

Additionally, Article 2.5-2, §3 of the Decree stipulates conditions for the use of personal data of minors in relation to online commercial communications techniques, such as canvassing, profiling and advertising based on behavioural targeting:

> *Personal data of minors collected or generated by video-sharing service providers under measures as referred to in § 2 shall be processed in accordance with the conditions and obligations laid down in applicable European Union and Belgian law and shall not be processed for commercial purposes such as direct marketing, profiling or behaviourally targeted advertising.*

#### 4.2.2.2.10. Other

N/A.

## 4.2.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.2.3.1. Sponsorship

Requirements regarding sponsorship in linear and non-linear media services are stipulated by Article 5.2-4, §6 and 5.2-5 of the Decree, exempting sponsorship from the rules regarding distinguishability of commercial communications, and the requirement that commercial communication not be restricted to goods or services from a single commercial or financial group and that it does not grant exclusivity to the advertising of a particular product or service. Article 5.6-1 of the Decree further stipulates that sponsorship of audiovisual media services, programmes and clearly identifiable sequences of a programme (except in news and children's programmes and teleshopping) is permitted under the following conditions:

> *1° their content and, in the case of a linear service, their scheduling may in no circumstances be influenced by the sponsor in such a way as to affect the editorial responsibility and independence of the service provider;*
> *2° the sponsorship must be clearly identified…;*
> *3° the sponsored services, programmes and sequences must not encourage the purchase or rental of the products or services of the sponsor or of a third party, in particular by making specific promotional references to those products or services*
> …

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*5° sponsorship by natural or legal persons or undertakings whose principal activity is the manufacture or sale of products or the provision of services the advertising of which is prohibited by Articles 5.2-1 and 5.2-2 shall be prohibited;*

Article 5.6-2 of the Decree further allows occasional references to sponsorship in television services, on the occasion of live or deferred transmission of sporting events, while Article 5.6-3 of the Decree refers to usage of distinctive sound or visual signs for sponsorship. It is also provided that the government may lay down additional rules, in particular on the duration of sponsorship contracts and the sponsorship of games programmes (Article 5.6-4 of the Decree).

These rules are applicable to VSPs if the video provided meets the conditions to be considered as an audiovisual media service (communication to the public of a non-linear television programme; see Article 5.1-1,5° of the Decree).

#### 4.2.3.2. Product placement

Articles 5.2-4, §6 and 5.3-3, §3 of the Decree exclude product placement from the duration restrictions and the rules regarding distinguishability of commercial communications and the prohibition on the restriction of commercial communication to the goods or services of a single commercial or financial group or and the granting of exclusivity to the advertising of a particular product or service. Article 5.3-4 of the Decree further prohibits product placement in news programmes, consumer information programmes, non-confessional religious and philosophical programmes and children's programmes and further provides conditions for programmes which include product placement for programmes produced after 19 December 2009:

*1) their content and structure within a schedule in the case of linear services, or within a catalogue in the case of non-linear services, shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster;*
*2) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;…*

4) they shall be clearly identified as containing product placement by visual means at the start and end of their broadcast, and when they resume after an advertising break, in order to avoid any confusion on the part of the viewer. The latter condition shall only apply to programmes produced or commissioned by the service provider, by a company which is directly or indirectly a shareholder in the broadcaster, or by a company in which the broadcaster is directly or indirectly a shareholder. These rules are applicable to VSPs if the video provided meets the conditions to be considered as an audiovisual media service (communication to the public of a non-linear television programme); see Article 5.1-1,6° of the Decree.

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## 4.2.4. Obligations regarding (v)blogs and (v)blogging

A video-sharing service is, in accordance with Article 1.3-1, 54° of the Decree:

> *a service where the principal purpose, a dissociable section thereof, or an essential functionality is to share with the public, by means of electronic communications networks, television or audio programmes, user-generated videos, or both, for which the video-sharing service provider does not have editorial responsibility, in order to inform, entertain or educate, and the organisation of which is determined by the video-sharing service provider, including by automatic means or algorithms, in particular by displaying, tagging and sequencing;*

A vlog falls within the definition of "user-created video", and while considering the elements necessary to satisfy the requirement that the service be defined as an audiovisual media service (e.g., a service under the editorial responsibility of a service provider), and also bearing in mind that the service provider is "the natural or legal person who assumes editorial responsibility for the choice of content of the audiovisual media service and who determines the manner in which it is organised" (Article 1.3-1, 13° of the Decree), vlogs can be considered an audiovisual media service. It follows that the specific rules for video-sharing services, as provided in this factsheet, also apply to cases of dissemination of commercial communication via vlogs.

In addition, and as mentioned in an ERGA Report,[49] the Government of the French community of Belgium stated in its explanatory memorandum of the decree transposing the AVMSD:

> *The Government of the French-speaking community of Belgium endorsed in the explanatory memorandum of its decree transposing directive 2018/1808 the interpretation according to which channels hosted on VSPs are AVMS under the responsibility of the vloggers who created and uploaded them.*

It should also be noted that on 25 April 2022, recommendations in light of (disclosing/recognising) influencer advertising were published by the Communication Centre.[50]

[49] See ERGA Report "Analysis and recommendations concerning the regulation of vloggers", pages 32-36: https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Vloggers.pdf.

[50] I.e. the professional organisation gathering advertisers, media, communication agencies and actors from the digital sector in Belgium. The Communication Centre dedicates a large part of its resources to the JEP, which is the independent supervisory body.

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## 4.2.5. Other relevant information

N/A.

## 4.2.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.2.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.2.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue.

However, as mentioned previously, VSPs must not directly incite minors to buy or rent a product or service by exploiting their inexperience or credulity (see under 4.1.2.2.9.). For commercial communications not organised by the VSP, the latter must take appropriate measures to comply with the above requirements (see under 4.2.2.2.).

Furthermore, pursuant to Articles 5.5-1, 2.3-1 and 2.3-2 of the Decree, VSPs are required to comply with the provisions of Article 4,§2 of the Law of 7 May 1999 on gambling, betting, gambling establishments and the protection of players, which states that: “Advertising for games of chance whose operation has not been authorised is prohibited”.[51]

In addition, the Royal Decree of 25 October 2018 on the modalities of operation of gambling and bets operated by means of information society instruments sets out the conditions imposed on advertising for gambling operated by means of information society instruments, while the Public Position of the Gambling Commission on the application of this law provides more details.

[51] This prohibition applies to gambling authorised abroad but unauthorised in Belgium.

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Finally, a self-regulatory instrument related to gambling, in the form of the Code for ethical advertising, issued by the National Lottery,[52] regulates in detail gambling-related advertisements.

VSPs must take appropriate measures to ensure that commercial communications related to online gambling comply with the legislation in force, including the Royal Decree of 25 October 2018 (Article 5.5-1, §2 and Article 5.5-1, §1 of the Decree). Furthermore, the Gambling Commission is competent to impose a sanction on any person who commits an infringement of the Royal Decree.

#### 4.2.6.3. Environmental or "green" claims for products

No specific provisions deal with this issue.

However, on a more general level, the Jury on Ethical Practices in Advertising JEP,[53] an independent self-regulatory body for advertising, adopted and applies the code texts, some provisions of which may apply to advertisers in relation to greenwashing, such as those from the International Chamber of Commerce Marketing Code,[54] and codes related to specific sectors, such as automobile and cosmetics.

It should also be mentioned that the JEP Ecological Advertising Code,[55] a self-regulatory instrument setting out guidelines for the advertising of various products, applies to all advertising that refers to the environmental effects of a product, including packaging, or service, regardless of the medium used, during its life-cycle.

#### 4.2.6.4. Other

N/A.

### 4.2.7. Self- and co-regulation and enforcement

- This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as

[52] Loterie Nationale, https://loterie-nationale.be.
[53] Jury d'ethique publicitaire, https://www.jep.be/fr/.
[54] https://cdn.iccwbo.org/content/uploads/sites/3/2011/08/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-French.pdf.
[55] https://www.jep.be/sites/default/files/rule_reccommendation/milieu_fr.pdf.

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well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.2.7.1. Self- and co-regulatory bodies

##### 4.2.7.1.1. Context of establishment and legal background

The Communications Centre (previously Council of Advertising) is the professional organisation that unites and represents the various actors of the communication sector and organises the self-regulation of advertising in Belgium. It aims at improving, valorising and defending commercial communication and commercial freedom of expression. Since 1974, the Communication Centre has devoted a large part of its resources to the JEP, the independent self-regulatory organisation of the Belgian advertising industry established within the Centre. JEP was founded and is funded via the voluntary cooperation of the advertising industry and is responsible for examining whether commercial communication complies with the relevant legislation and self-regulatory codes.

On 25 April 2022, the Communication Centre published Recommendations on Influencer Marketing, which are in fact an update of the Recommendations from the Council of Advertising on Online Influencers of October 2018.

##### 4.2.7.1.2. Stakeholders involved

N/A.

##### 4.2.7.1.3. Scope and objectives

N/A.

##### 4.2.7.1.4. Code(s) of conduct

The JEP does not only supervise compliance with the guidelines on influencer marketing, it examines whether commercial communication is in conformity with (1) legislation (including the Media Decree and the Code of Economic Law) and (2) relevant self-regulatory codes.

The most relevant self-regulatory code is the aforementioned ICC Code as most other codes are based on this one. The other codes can be divided into sectoral (e.g. food or alcoholic drinks) and intersectoral codes (e.g. the environmental advertising code), as well as recommendations (e.g. on influencer marketing or advertising for weight-loss products). These codes are not medium-based and should also be applied to VSPs, where possible.

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#### 4.2.7.1.5. Role of the (self-)regulatory bodies

The JEP is primarily responsible for overseeing the correctness and fairness of commercial messages to the public and can serve as an out-of-court redress mechanism for consumers against advertisers.

Within its scope, the JEP can also be in charge of assessing the content of communication through the prism of applicable advertising legislation and ethical codes.

Also, recommendations of the Jury on Ethical Practices in Advertising apply to influence marketing, that is to say marketing that meets two conditions: consideration given to the influencer and control exercised by the advertiser over the commercial message delivered by the influencer. Where there is a situation of influence marketing and the commercial communication is not clearly identifiable as such, a complaint can be made to the JEP. These recommendations are self-regulatory in nature and are binding on those who have committed to them.

#### 4.2.7.1.6. Period of activity (if limited)

N/A.

#### 4.2.7.1.7. Role of the regulatory authority in a co-regulatory system

Both the Communication Centre and the JEP operate completely independently from the government and from political, social and religious organisations.

##### *4.2.7.1.7.1. Regulatory body*

N/A.

##### *4.2.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.2.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.2.7.2. Monitoring/evaluation, compliance and sanctioning powers

As provided under 4.2.2.2.1., the CSA can assess whether the obligatory VSP measures regarding commercial communications have been applied by the video-sharing service provider, and, if deemed inappropriate, can invite VSPs to adopt appropriate corrective measures, or can impose sanctions.

Also, the JEP operates on the basis of complaints and *a priori* requests for advice. It does not proactively monitor compliance with the law and self-regulatory codes.

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Specifically, the JEP can make three types of decisions: not formulate any comments; order the advertiser to change or stop the advertisement (in the absence of compliance, a recommendation of suspension is sent to the media); issue a recommendation of reservation, leaving the responsibility with the advertiser, the advertising agency and the media. Decisions of the JEP are non-binding and based on the voluntary commitment of advertisers, communications agencies and advertising media.

### 4.2.8. Cross-sector and cross-border collaboration

The JEP is a member of the European Advertising Standards Alliance (EASA).[56] The purpose of this organisation is to promote and support the current systems of self-regulation, to coordinate the actions of the EASA members on the handling of cross-border complaints, to conduct research among members in order to draw up the European balance of compliance with certain principles in advertising and to act as an interlocutor with the European policy authorities.

In practice, complaints about commercial communication distributed in Belgium by foreign media can be handled by the competent self-regulatory body through a referral procedure established within the EASA.

### 4.2.9. Update on plans and practices related to new obligations of VSPs

N/A.

### 4.2.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- CSA Analyse du décret du 4 février 2021 relatif aux services de medias audiovisuels et aux services de partage de vidéos (Analysis of the Decree of 4 February 2021 on audiovisual media services and video-sharing services 2021)[57]

[56] European association which brings together the advertising self-regulatory bodies of 25 European and some non-European countries, https://www.easa-alliance.org/.
[57] https://www.csa.be/wp-content/uploads/2021/10/Note-danalyse-du-nouveau-decret-SMA-du-4-fevrier-2021.pdf.

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## 4.2.11. Data compilation

This factsheet is based on data compiled by Pierre-Emmanuel Mouthuy and Alexandra Moyen Attorneys-at-law at Mouthuy Avocats sprl.

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# 4.3. BE (VL) – Flemish Community of Belgium – National legal summary[58]

## 4.3.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Decreet van 27 maart 2009 betreffende radio-omroep en televisie*[59] (Decree of 27 March 2009 on radio broadcasting and television).[60]
- Decreet van 19 maart 2021 tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie, wat betreft de gedeeltelijke omzetting van richtlijn (EU) 2018/1808 van het Europees Parlement en de Raad van 14 november 2018 tot wijziging van Richtlijn 2010/13/EU betreffende de coördinatie van bepaalde wettelijke en bestuursrechtelijke bepalingen in de lidstaten inzake het aanbieden van audiovisuele mediadiensten (richtlijn audiovisuele mediadiensten) in het licht van een veranderende marktsituatie[61] (Decree of 19 March 2021 amending the decree of 27 March 2009 on radio and television broadcasting, as regards the partial transposition of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive – AVMSD) in view of changing market realities – Media Decree).
- *Wetboek van economisch recht, BS 29 maart 2013, 19975*[62] (Code of Economic Law, Belgian Official Gazette 29 March 2013, 19975).
- Koninklijk besluit betreffende de voorwaarden voor het uitbaten van kansspelen en weddenschappen via informatiemaatschappij-instrumenten[63] (Royal Decree on the conditions for operating games of chance and betting via information society instruments).

[58] The factsheet on Belgium (Flemish Community) incorporates the feedback received from Dirk Peereman, Registrar at the Flemish Regulatory Authority for the Media (VRM) during the checking round with the national regulatory authorities.
[59] https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_27_maart_2009_18b.pdf.
[60] https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_-_engelse_vertaling_bijgewerkt_tot_8_mei_2020.pdf.
[61] https://codex.vlaanderen.be/PrintDocument.ashx?id=1035496&datum=&geannoteerd=false&print=false.
[62] https://www.ejustice.just.fgov.be/eli/wet/2013/02/28/2013A11134/justel.
[63] https://etaamb.openjustice.be/nl/koninklijk-besluit-van-25-oktober-2018_n2018015153.html#:~:text=Het%20voorliggende%20besluit%20bevat%20diverse,met%20betrekking%20tot%20de%20reclame.

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Secondary legislation:

- Memorie van toelichting bij ontwerp van decreet tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie, 12 februari 2021, 644 (2020-2021) – Nr. 1.[64] (Explanatory Memorandum to the draft decree amending the decree of 27 March 2009 on radio and television broadcasting, 12 February 2021, 644 (2020-2021) - No 1).

Self- and co-regulatory instruments:

- *Communicatie Centrum, Aanbevelingen van het Communicatie Centrum inzake Influencer Marketing, april 2022*[65] (Communications Centre, Recommendations from the Communications Centre on Influencer Marketing, April 2022).
- *Convenant voor Ethische en Verantwoorde Reclame voor en marketing van Kansspelen*[66] (Covenant on Ethical and Responsible Advertising and Marketing of Games of Chance).
- International Chamber of Commerce (ICC) Advertising and Marketing Communications Code, 2018 edition.[67]
- European Gaming and Betting Association (EGBA), Code of Conduct on Responsible Advertising for Online Gambling.[68]
- *Raad voor het Verbruik, Milieureclamecode, 1998*[69] (The Consumer Council, Environmental Advertising Code).
- Content Creator Protocol (CCP), Flemish Media Regulator (Vlaamse Regulator voor de Media), December 2021.[70]

### 4.3.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised

[64] This memorandum is part of a more general document from the Flemish Parliament relating to the draft decree amending the 2009 decree on radio and TV broadcasting, available at: https://docs.vlaamsparlement.be/pfile?id=1659775.
[65] https://www.jep.be/wp-content/uploads/2022/04/influencers_NL.pdf.
[66] https://bago.be/wp-content/uploads/2020/08/Final_Convenant-Advertising-NL.pdf.
[67] https://iccwbo.org/content/uploads/sites/3/2018/09/icc-advertising-and-marketing-communications-code-int.pdf.
[68] https://www.egba.eu/uploads/2020/04/200625-EGBA-Code-of-Conduct-on-Responsible-Advertising-for-Online-Gambling.pdf.
[69] https://www.jep.be/sites/default/files/rule_reccommendation/milieu_nl.pdf.
[70] https://www.vlaamseregulatormedia.be/nl/content-creator-protocol.

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AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

#### 4.3.2.1. Definitions

**Table 29. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

*Source: Flemish community of Belgium's response to European Audiovisual Observatory standardised survey*

##### 4.3.2.1.1. Audiovisual commercial communications

Article 2, 5° of the amended Media Decree defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim, as follows:

> *Commercial communication: Images, whether or not accompanied by sound, or sounds which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity. Such images or sounds accompany or are included in a programme or in user-generated content in return for payment or for similar compensation or for self-promotional purposes. Types of commercial communication include, inter alia, advertising, sponsoring, teleshopping and product placement.*

##### 4.3.2.1.2. Television advertising

While there is no definition of television advertising, Article 2, 35° of the amended Media Decree defines advertising as follows:

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*Advertising: the audiovisual or audio message transmitted by a public or private company or natural person – in any form – related to the exercise of a commercial, industrial, or trading activity or of a profession to promote the supply of goods or services in return for payment, including immovable goods, rights and duties, which are then broadcast in the frame of a linear broadcasting service, in return for payment or similar compensation or for self-promotional purposes in a linear broadcasting service.*

#### 4.3.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.3.2.1.4. Surreptitious commercial communication

The second paragraph of Article 54 of the amended Media Decree defines surreptitious commercial communications as follows:

*Surreptitious advertising, as referred to in the first section, should be taken to mean any form of commercial communication which consists of mentioning or representing goods, services, the name, trademark or activities of a manufacturer of goods or a service provider in programmes, when such representation is intended by the broadcaster to serve as advertising and the general public can be misled as regards the nature of the representation. This intention is, in particular, deemed to be present if the mentioning or representation occurs in return for payment or other compensation.*

#### 4.3.2.1.5. Misleading commercial communication

Article 60, paragraph 2 of the Media Decree used to define misleading commercial communications as follows:

*Misleading commercial communication should be taken to mean any type of advertising which misleads or may mislead the people that it targets or reaches, in any manner, including by its layout, and which can influence their economic behaviour due to its misleading character, or which harms or may harm a competitor for the above reasons.*

However, this article was deleted by the amending Decree and there is currently no longer a definition of misleading commercial communication included in the amended Media Decree because Article 60 of the Media Decree was considered to already be covered by Articles 4 and 5 of ICC Advertising and Marketing Communication Practice Code (hereinafter: the ICC Code), while Article 61 of the Media Decree has been covered by Article 9 of the ICC Code. However, Article. VI.97-VI.100 of the Belgian Code of Economic Law provide for a definition of "misleading commercial practices:

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*A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct…*

In addition, some Articles of the ICC Code, referred to in the Explanatory to the draft decree amending the decree of 27 March 2009 on radio and television broadcasting, provide further clarification by listing recommendations on how marketing communication should be formulated so as not to mislead the public:

*Article 4 – Honesty*
*Marketing communications should be so framed as not to abuse the trust of consumers or exploit their lack of experience or knowledge.*
*Relevant factors likely to affect consumers' decisions should be communicated in such a way and at such a time that consumers can take them into account.*

*Article 5 – Truthfulness*
*Marketing communications should be truthful and not misleading.*
*Marketing communications should not contain any statement, claim or audio or visual treatment which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead the consumer, in particular, but not exclusively, with regard to:*
*- characteristics of the product which are material, i.e. likely to influence the consumer's choice, such as: the nature, composition, method and date of manufacture, range of use, efficiency and performance, quantity, commercial or geographical origin or environmental impact*
*- the value of the product and the total price to be paid by the consumer*
*- terms for the delivery, provision, exchange, return, repair and maintenance*
*- terms of guarantee*

*Article 9 – Use of technical/scientific data and marketing communications should not:*
*- misuse technical data, e.g. research results or quotations from technical and scientific publications*
*- present statistics in such a way as to exaggerate the validity of a product claim*
*- use scientific terminology or vocabulary in such a way as to falsely suggest that a product claim has scientific validity.*

#### 4.3.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.3.2.1.7. Sponsorship

Sponsorship is defined in Article 2, 41° of the amended Media Decree:

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*Sponsorship: every contribution by a public or private company or a natural person not engaged in providing broadcasting services or video-sharing platform services, or producing audiovisual or audio works, to the financing of broadcasting services, video-sharing platform services, user-generated content or programmes, with the aim of raising awareness of its name, trademark, image, activities or products.*

#### 4.3.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.3.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.3.2.1.10. Product placement

Article 2, 30° of the amended Media Decree defines product placement by transposing the text of the revised AVMSD verbatim, as follows:

*Product placement: any form of audiovisual commercial communication, which consists of integrating or referring to a product or service or related trademark within the frame of a programme or user-generated content, in return for payment or similar consideration.*

#### 4.3.2.1.11. Other definitions

N/A.

### 4.3.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

In this respect, it should be stressed that Article 176/5 of the Media Decree determines that VSP providers shall, for commercial communications marketed, sold or arranged by themselves, comply with the requirements set out in Articles 52-55 (relating to the obligatory identifiability of commercial communications, the prohibition of surreptitious advertising and commercial communications that are in conflict with legal provisions, or that violate human dignity, incite violent or discriminatory behaviour or contain or promote any form of discrimination). Furthermore, the same applies to provisions from Article 62 (relating to behaviour that is detrimental to health or safety or that is highly

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harmful to the environment), Articles 65-69 (prohibition of: cigarettes and other tobacco products; medicinal products for human use and medical treatments for human use only available as prescription treatments; arms, as well as restrictions vis-à-vis commercial communication regarding alcoholic beverages and candy which contains sugar). Finally, VSPs are also obliged to respect provisions relating to the protection of minors (Articles 71-77) and sponsorship (Articles 90-97).

Article 176/5 of the Media Decree:

> *Providers of video platform services are free to market, sell or organise commercial communications, with the exception of the restrictions and obligations set forth in this Decree.*
> *For commercial communications which the providers of video platform services market, sell or organise, they shall comply with the provisions set out in Articles 52-55, Article 62, Articles 65-69, Articles 71-77 and Articles 90-97.*

For commercial communications that are not marketed, sold or arranged by themselves, Article 176/6, paragraph 1 of the amended Media Decree requires them to take appropriate measures to comply with the requirements of Articles 52-55, Article 62, Articles 65-69, Articles 71-77 and Articles 90-101:

> Article 176/6
> *The providers of video platform services shall take the following appropriate measures to comply with the requirements referred to in Articles 52-55, Article 62, Articles 65-69, Articles 71-77, and Articles 90-101.*

In addition, certain provisions of other legislative acts, such as the Belgian Code of Economic Law, apply, in addition to the ICC Code, which provides guidelines as to how to comply with the Media Decree.

#### 4.3.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco related products, including electronic cigarettes and refill containers

VSPs must comply with the requirements of Article 65, which prohibits: "Commercial communications about cigarettes, electronic cigarettes and refill containers and other tobacco products". Furthermore, they must also comply with Article 68 which lays down the requirements for the advertising of alcoholic beverages, as follows:

> *Commercial communications regarding alcoholic beverages shall comply with the following criteria: 1° they shall not be aimed specifically at minors or, in particular, depict minors consuming these beverages; 2° they shall not link the consumption of alcohol to enhanced physical performance or to motorised driving; 3° they shall not create the impression that the consumption of alcohol contributes to social or sexual success; 4° they shall not claim that alcohol has therapeutic qualities or that it has stimulating, sedative or stress-reducing effects; 5° they shall not encourage immoderate alcohol consumption or present abstinence or moderate alcohol consumption in a*

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*negative light; 6° they shall not place emphasis on the high alcohol percentage of beverages as being a positive characteristic.*

#### 4.3.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 66 of the amended Media Decree provides that "commercial communication about medicinal products for human use and medical treatments for human use, which are only available on prescription, is prohibited". As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2. Article 66 is applicable to commercial communication on VSPs.

#### 4.3.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious advertising is prohibited according to Article 54 of the amended Media Decree. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Article 54 is applicable to commercial communication on VSPs.

#### 4.3.2.2.4. Subliminal techniques in commercial communications

Article 54/1 of the amended Media Decree sets out a prohibition against the use of subliminal techniques in commercial communications and public service announcements. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Article 54/1 is applicable to commercial communication on VSPs. The Explanatory Memorandum (p. 34) defines subliminal techniques as techniques that hide a commercial message or signal in a programme or a broadcasting service without the viewer consciously noticing it.

#### 4.3.2.2.5. Prejudice with regard to human dignity

According to Article 55, 1° of the amended Media Decree: "Commercial communications may not be set up in such a way that they: 1° prejudice human dignity". When it comes to commercial communications for children[71] and young people,[72] Article 74, paragraph 1 specifies that these commercial communications must "respect the dignity of children and young people and may not portray children and young people in such a way that their physical or moral integrity is prejudiced or endangered". As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Articles 55 and 74, paragraph 1 are applicable to commercial communication on VSPs.

[71] As per Article 2, 18° of the amended Media Decree, a child means "any person under the age of twelve".
[72] As per Article 2, 15/1° of the amended Media Decree young people means: "any person between twelve and sixteen years of age".

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#### 4.3.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

Article 55, 2° of the amended Media Decree prohibits commercial communications to be set up in such a way that they contain or promote any form of discrimination on the following grounds: "a) gender; b) race or ethnic origin; c) nationality; d) religion or philosophy of life; e) disability; (f) age; (g) sexual orientation". As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Article 55 is applicable to commercial communication on video-sharing platforms.

In addition to this prohibition, Article 176/4 goes further by requiring VSPs to take appropriate measures to*:*

> *protect the general public from programmes, user-generated content and commercial communications which incite violence or hatred towards a group of persons or member of a group based on: a) gender; b) race; c) colour; d) ethnic or social origin; e) genetic features; f) language; g) religion or belief; h) political or other opinion; i) membership of a national minority; j) property; k) birth; l) disability; m) age; n) sexual orientation.*

#### 4.3.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour prejudicial to health or safety is strictly prohibited in commercial communications by Article 62 of the amended Media Decree, which also encompasses behaviour that is "highly harmful to the environment". Further restrictions are introduced for commercial communications aimed at children and young people by Article 74, paragraph 3 and paragraph 4 which also prevents such communications from discouraging compliance with safety rules in certain areas such as traffic safety, domestic situations, or medicinal products. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Articles 62 and 74 are applicable to commercial communication on VSPs.

Article 38 of the Media Decree determines the same for the broad category of broadcasting activities (*omroepactiviteiten*) – which also covers VSPs by stating that broadcasting activities may not incite violence or hatred against a group of persons or a member of a group of persons on the same grounds as mentioned above, nor publicly incite the commission of a terrorist offence as referred to in Articles 137 and 140bis of the Penal Code.

In addition to these restrictions, as per Article 176/4, paragraph 1, 3°, VSPs are required to take appropriate measures to protect the general public from commercial communications the dissemination of which constitutes a criminal offence.

#### 4.3.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

As mentioned in the previous section, the prohibition in Article 62 of the amended Media Decree on commercial communication likely to encourage behaviour prejudicial to health or safety also includes behaviour that is "*highly harmful to the environment*". Furthermore,

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the former Article 62, paragraph 2 of the Media Decree stated that commercial communications and public service announcements could not contain elements that could mislead the viewer or listener as to environmental impact. This article was deleted by the amending decree as the legislator considered this issue to be covered by Articles 17 and 22 (Explanatory Memorandum, pp. 37-38) of the ICC Code, which states the following:

> *Article 17*
> *Marketing communications should not, without justification on educational or social grounds, contain any visual portrayal or any description of potentially dangerous practices, or situations which show a disregard for safety or health, as defined by local national standards.*
> ...
> *Article 22*
> *Marketing communications should not appear to condone or encourage actions which contravene the law, self-regulatory codes or generally accepted standards of environmentally responsible behaviour. They should respect the principles set out in chapter D, Environmental Claims in Marketing Communications.*

#### 4.3.2.2.9. Causing physical, mental or moral detriment to minors

Article 74, paragraphs 3 and 4 of the amended Media Decree prohibit commercial communications aimed at children and young people that encourage behaviour prejudicial to health or safety or discourage them from compliance with safety rules. In addition, a series of requirements and restrictions that must be observed by commercial communications aimed at children and young people is set out in Article 72, which substantially implements the requirements in Article 9 (1) g. of the AVMS Directive, and in Article 73, which goes further by requiring the adoption of a certain sense of social responsibility when creating commercial communications. Such social responsibility can include, for instance, a requirement "not to undermine positive social behaviour, lifestyles and attitudes" or "not to undermine the authority, the responsibility or the judgement of parents and educators". As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2, Articles 72, 73 and 74 are applicable to commercial communication on VSPs.

In addition, a general obligation in line with the requirement of Article 28b of the AVMS Directive requires VSPs to take appropriate measures to "protect minors from programmes, user-generated content and commercial communications that could impair the physical, mental or moral development of minors as referred to in Article 42 of this Decree" as per Article 176/4, paragraph 1 of the amended Media Decree. Such appropriate measures may include age verification or parental control systems, as mentioned under 5° and 7° of Article 176/4, paragraph 2 and 176/6, paragraph 1.

The amended Media Decree and in particular the Explanatory Memorandum include certain references to direct marketing, profiling and behaviourally targeted advertising in relation to the rules on the protection of minors. In the context of the prohibition of the

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processing for commercial purposes of personal data of minors obtained for the purpose of protecting minors from potentially harmful content,[73] the Explanatory Memorandum (pp. 30, 52-53, 55 and 58) clarifies that direct marketing, profiling and behavioural advertising constitute examples of such commercial purposes, but without providing a definition of these advertising techniques. Article 176/4, paragraph 2 and Article 176/6, paragraph 1 of the Media Decree prohibit VSP providers from processing the personal data of minors that they collect in the context of age verification and parental control.

#### 4.3.2.2.10. Other

As mentioned at the beginning of section 4.3.2.2., the amended Media Decree refers to a number of other articles which must be complied with (in the case of Article 176/5) and in the light of which appropriate measures for such compliance must be taken (in the case of Article 176/6). This includes a prohibition against commercial communications concerning arms (Article 67). Articles 53 and 71 also provide that commercial communications, including those aimed at children and young people (Article 71), must be easily identifiable or recognisable as such. More generally, VSPs have to clearly inform users about the presence of commercial communications in programmes or user-generated content when they are aware of this as per Article 176/7.

Other restrictions have also been established to protect minors from commercial communications aimed at them, in addition to the restrictions already established to prevent those that may cause physical, mental or moral harm (see section 4.3.2.2.9. above). Article 76, for example, sets out rules to protect children from advertising that exploits their naivety and vulnerability by preventing commercial communications from pretending "that the ownership or use of a given product will give them a benefit compared to other children, or that the fact that they do not own a given product will result in the opposite effect".

With regard to such communications concerning foods or beverages, Article 77 prohibits them from "encourag[ing] or trivialis[ing] the excessive intake of food and beverages containing nutrients of which immoderate use is not recommended, such as fats, trans-fatty acids, salt or sodium or sugars" while Article 69 adds some specific requirements for communications pertaining to candy which have to "show a stylised image of a toothbrush in a clear and contrasting manner for the duration of the commercial communication, respecting a size limitation of one tenth of the height of the film image, as shown below".

[73] Broadcasters, video-sharing platform providers and services providers shall protect minors from potentially harmful content, as envisaged by the amended Media Decree (see Article 42 for broadcasters, Articles 176/4, paragraph 2 and Article 176/6, paragraph 1 i) for video-sharing platform providers and Article 183/1 for service providers).

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## 4.3.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.3.3.1. Sponsorship

The general requirements for sponsored services or programmes are set out in Article 91 of the Media Decree, which stipulates the following:

> *1° the content, and in the case of linear broadcasts, the programming shall never be influenced in such a manner by the sponsor that the responsibility and the editorial independence of the broadcaster are affected;*
> *2° they shall not directly encourage the purchase or rental of goods or services, in particular by specifically promoting these goods or services;*
> *3° viewers and listeners shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes or teletext pages shall be clearly identified as such by mentioning the name and/or logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way at the beginning, during and/or at the end of the programme or the programme segment or teletext pages.*

In addition, several restrictions related to the sponsor's activity are laid down in the decree: their principal activity cannot be linked to the "manufacture or sale of cigarettes and other tobacco products, electronic cigarettes and refill containers" (Article 93) or to the "manufacture or sale of alcoholic beverages" in the case of children's programmes (Article 94). And when the sponsor's activities include the manufacture or sale of medicinal products and medical treatments, Article 95 specifies that the sponsorship "may promote the name or image of the company, but may not promote specific medicinal products or medical treatments which are available only on prescription in Belgium".

Other restrictions also pertain to the type of programme or service sponsored: news and political affairs programmes may not be sponsored, for example (Article 96), while children's programmes may be sponsored, but the mention or display of a sponsor's logo during the programme is prohibited (Article 97). As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Articles 91 and 93 to 97 are applicable to commercial communications on VSPs.

### 4.3.3.2. Product placement

In Article 100, the amended Media Decree sets out certain general requirements with which product placements must comply. They are as follows:

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*1° the content, and in the case of linear broadcasts the organisation within a schedule, or the inclusion in a catalogue in the case of non-linear television broadcasts, will never be influenced in such a way that the responsibility and the editorial independence of the broadcaster are affected;*
*2° they shall not directly encourage the viewer to purchase or rent goods or services, in particular by specifically recommending these products or services;*
*3° the product or the service in question is not given undue prominence;*
*4° if the programme in question is produced or ordered by the broadcaster itself or by an undertaking associated with it, viewers shall be clearly informed of the existence of product placement. The programme in question shall be identified appropriately at the start and at the end of the programme, and when a programme resumes after an advertising break, in order to avoid confusion on the part of the viewers. The Flemish Government can lay down further rules in this regard.*

In addition, two other restrictions concerning the type of products are established, with a ban on product placement for: "cigarettes and other tobacco products, electronic cigarettes and refill containers or undertakings of which the principal activity consists of the manufacture or sale of such products" and for "specific medicinal products or medical treatments, which are only available on prescription in Belgium" (Article 101). These restrictions can also concern the type of programme, with a ban on product placement in: "1° news and political affairs programmes; 2° consumer affairs programmes; 3° religious programmes; 4° children's programmes" (Article 99). As per Article 176/6 mentioned at the beginning of section 4.3.2.2., Articles 99-101 are applicable to commercial communications on VSPs.

## 4.3.4. Obligations regarding (v)blogs and (v)blogging

(V)bloggers have been included in the scope of the amended Media Decree, under the condition that they qualify as providers of a "broadcasting service" in the sense of Article 2, 26°.[74] This inclusion is explicitly recognised in the Explanatory Memorandum (pp. 25 and 44-45), which stipulates that channels or other audiovisual or audio services under the editorial responsibility of a broadcaster may constitute broadcasting services in their own right, even if they are offered on a VSP service which does not enjoy editorial responsibility. This inclusion was not explicitly mentioned in the amended Media Decree as such but was made possible by certain changes introduced by the amending decree, such as the introduction of the words "irrespective of its duration" in the definition of programmes in

[74] Article 2, 26°: broadcasting service: a) a service as mentioned in Articles 56 and 57 of the Treaty on the Functioning of the European Union, which is under the editorial responsibility of a broadcaster and of which the principal purpose of the service or a dissociable section thereof consists of providing audiovisual or audio programmes to the general public, in order to inform, entertain, educate or of a cultural nature, by means of electronic communication networks. Broadcasting services are radio services or television services; b) commercial communication.

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Article 2, 31°, which explicitly enabled "video clips" and other forms of user-generated content to qualify as programmes:

> *Programme" means a sequence of moving images, with or without sound, or a sequence of sounds or noises, which irrespective of its duration, constitutes a separate element of a schedule drawn up by a broadcaster or of a broadcaster or a catalogue prepared by a broadcaster, including cinematographic films, video clips, sports events, comedy series, documentaries, children's programmes and original drama;*

Moreover, in order to provide more clarity on the legal framework applicable to this type of service, the Flemish Media Regulator (*Vlaamse Regulator voor de Media*) published the CCP[75] in December 2021, which clarifies the relevant rules from the amended Media Decree that are applicable to content creators, (v)bloggers and influencers established in Flanders around three main themes: commercial communication on social media; commercial communication and content aimed at minors; and the prohibition of hate speech and incitement to violence. Additionally, on 25 April 2022, recommendations concerning influencer advertising were published by the Communications Centre[76]. On that same day, the Federal Public Service (FPS) Economy (Ministry of Economic Affairs) also published best practices[77] with regard to advertising by content creators or influencers. Finally, the Flemish Government is facilitating a self-regulatory influencer code, which will serve as a general source point of information for influencers.[78]

## 4.3.5. Other relevant information

N/A.

## 4.3.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less

[75] https://www.vlaamseregulatormedia.be/nl/content-creator-protocol.
The CCP will also be available in English, in the relevant part of the VRM-website, in due course.
[76] i.e. the professional organisation gathering together advertisers, media, communication agencies and actors from the digital sector in Belgium. The Communications Centre dedicates a large part of its resources to the Jury on Ethical Practices in Advertising (JEP), which is the independent supervisory body.
[77] https://economie.fgov.be/nl/themas/verkoop/reclame/u-bent-contentcreator.
[78] At the time of preparing this factsheet, the code was expected by mid-2022.

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explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

#### 4.3.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.3.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue. However, Article 52 of the amended Media Decree states that "[p]roviders of broadcasting services may not broadcast any commercial communications and public service announcements that are in conflict with legal provisions".

As per Article 176/5 *in fine* and 176/6, paragraph 1 of the amended Media Decree mentioned at the beginning of section 4.3.2.2., Article 52 is applicable to commercial communication on VSPs. This implies that the Flemish Media Regulator is able to act against violations of national gambling laws in videos on VSPs, such as the requirements of Articles 2 to 5 of the Royal Decree on the conditions for the operation of gambling and betting via information society instruments,[79] which set out the requirements for advertising for gambling and betting via information society instruments.

Additionally, self-regulatory instruments also apply in this area, such as the Covenant on Ethical and Responsible Advertising and Marketing of Games of Chance signed by the Belgian Association of Gaming Operators (BAGO)[80] which contains rules for a responsible gambling policy that informs players, prevents excessive gambling and protects minors. These rules include, for example, the requirement "not to exaggerate the chances of winning", "not to cause or maintain an addiction to gaming" or "take advantage of the vulnerability of persons with financial difficulties". BAGO has also adopted the European Code of Conduct on Responsible Advertising for Online Gambling[81] by the EGBA[82] which includes certain specific rules concerning gambling advertising on social media such as the rule that requires that "[g]ambling operators' profiles and pages on social media should clearly state the legal age limit for gambling".

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[79] https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2018102503&table_name=wet

[80] BAGO brings together five leading companies in the gambling sector, together representing approximately 70% of the Belgian online and offline private gambling market. https://bago.be/

[81] Ibid.

[82] EGBA is the Brussels-based trade association representing the leading online gaming and betting operators established, licensed and regulated within the EU. https://www.egba.eu/

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#### 4.3.6.3. Environmental or "green" claims for products

The issue of environmental claims for a product in the context of misleading advertising is addressed by the Explanatory Memorandum (pp. 36-37) that refers to Article 5 of the ICC Code,[83] which provides, *inter alia*, that commercial communications should not mislead the consumer in particular, but not exclusively, with regard to: characteristics of the product which are material, i.e. likely to influence the consumer's choice, such as "the geographical origin or environmental impact". Other relevant self-regulatory tools exist in Belgium in this respect, including certain provisions of the Environmental Advertising Code of the Consumer Council, which explicitly addresses the issue of misleading advertising through false environmental claims in Articles 1, 3, 7 and 14.

In particular, Article 3 provides that:

> *Advertisements may not contain a claim, designation, image or representation that could directly or indirectly mislead as to the characteristics and features of a product or service with regard to its environmental impact.*

Articles 7 and 14 further stipulate as follows:

> *Article 7:*
> *Expressions, claims or absolute slogans, such as "environmentally friendly" or "ecologically safe", etc., which implicitly indicate that a product or service has no impact on the environment at any stage of its life cycle, are prohibited unless evidence is provided in conformity with Article 14 of this code.*
>
> *Article 14:*
> *The advertiser must be able to justify with certainty and without delay any claim, indication, image or representation referring to environmental effects. To the extent considered necessary by the body that will enforce the Code, to be valid, the evidence must be accepted by an organisation or person recognised by all parties involved.*

#### 4.3.6.4. Other

N/A.

### 4.3.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement

[83] The full article is quoted in section 4.3.2.1.5. of this factsheet.

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powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.3.7.1. Self- and co-regulatory bodies

##### 4.3.7.1.1. Context of establishment and legal background

The Communications Centre (formerly the Council of Advertising) is the professional organisation that unites and represents the various actors of the communication sector and organises the self-regulation of advertising in Belgium. It aims at improving, valorising and defending commercial communication and commercial freedom of expression. Since 1974, the Communications Centre has devoted a large part of its resources to the Jury on Ethical Practices in Advertising (JEP)[84], the independent self-regulatory organisation of the Belgian advertising industry established within the Centre. JEP is founded and funded by the voluntary cooperation of the advertising industry and is responsible for examining whether commercial communication complies with the relevant legislation and self-regulatory codes.

On 25 April 2022, the Communications Centre published the Recommendations on Influencer Marketing, which are in fact an update of the Recommendations from the Council of Advertising on Online Influencers of October 2018.

##### 4.3.7.1.2. Stakeholders involved

The Recommendations on Influencer Marketing have been produced with the support of the members of the Communications Centre, especially the industry/professional associations of the UBA (association of advertisers United Brands Association),[85] the Association of Communication Companies ACC,[86] the association of Belgian AVMS providers VIA,[87] the news media alliance LA PRESSE.be,[88] the association of Flemish News Media VNM,[89] the Belgian magazine, free press and newspaper publishers association WE MEDIA[90] and the Association of Hearing Aid Professionals (AEA),[91] and in collaboration with FeWeb[92]. These recommendations are supported by the different actors of the communications sector who strongly encourage influencers, agencies, media and platforms to respect them.

[84] Jury voor Ethische Praktijken inzake Reclame https://www.jep.be/
[85] https://www.ubabelgium.be/.
[86] https://www.acc.be/.
[87] https://thinkvia.be/en/.
[88] https://www.lapresse.be/.
[89] https://www.vlaamsenieuwsmedia.be/.
[90] https://wemedia.be/.
[91] https://www.aea-audio.org/portal/index.php/member-countries/item/151-belgium.
[92] FeWeb is the professional association of digital companies: Federatie van Webbedrijven – FeWeb, https://www.feweb.be/nl/.

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#### 4.3.7.1.3. Scope and objectives

The aim of these recommendations is to help influencers, advertisers, agencies, media and platforms to protect consumers and ensure legal certainty. With regard to their scope, these recommendations apply to influencers insofar as they are engaged in a commercial relationship. As per these recommendations, a commercial relationship starts to exist when the influencer receives or has the opportunity to receive remuneration in kind or in money from the advertiser or the agency acting on her/his behalf in return for communicating about a brand, product, service or organisation. Any such commercial relationship should be immediately clear to the viewer.

#### 4.3.7.1.4. Code(s) of conduct

The JEP does not only supervise compliance with the guidelines on influencer marketing, it also examines whether commercial communication is in conformity with (1) legislation (including the Media Decree and the Code of Economic Law) and (2) relevant self-regulatory codes.

The most relevant self-regulatory code is the aforementioned ICC Code as most other codes are based on this one. The other codes can be divided into sectoral (e.g. relating to food or alcoholic drinks) and intersectoral codes (e.g. the environmental advertising code), as well as recommendations (e.g. on influencer marketing or advertising for weight loss products). These codes are not medium-based and should also be applied on VSPs, where possible.

#### 4.3.7.1.5. Role of the (self-)regulatory bodies

The JEP is primarily responsible for overseeing the correctness and fairness of commercial messages to the public and can serve as an out-of-court redress mechanism for consumers against advertisers.

Within its scope, the JEP can also be in charge of assessing the content of communications through the prism of applicable advertising legislation and ethical codes.

#### 4.3.7.1.6. Period of activity (if limited)

N/A.

#### 4.3.7.1.7. Role of the regulatory authority in a co-regulatory system

Both the Communications Centre and the JEP operate completely independently from the government and from political, social and religious organisations.

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*4.3.7.1.7.1. Regulatory body*

N/A.

*4.3.7.1.7.2. Co-regulatory scheme*

N/A.

*4.3.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.3.7.2. Monitoring/evaluation, compliance and sanctioning powers

The JEP operates on the basis of complaints and a priori requests for advice. It does not proactively monitor compliance with the law and self-regulatory codes. Specifically, the JEP can make three types of decisions: a decision not to formulate any comments; a decision for the advertiser to change or stop the advertisement (in the absence of compliance, a recommendation of suspension is sent to the media); and a decision to reserve a recommendation, leaving the responsibility with the advertiser, the advertising agency and the media. Decisions of the JEP are non-binding and based on the voluntary commitment of advertisers, communications agencies and advertising media.

## 4.3.8. Cross-sector and cross-border collaboration

The JEP is a member of the European Advertising Standards Alliance (EASA).[93] The purpose of this organisation is to promote and support the current systems of self-regulation, to coordinate the actions of EASA members for the handling of cross-border complaints, to conduct research among its members in order to assess the level of compliance within Europe with certain principles in advertising and to act as an interlocutor with the European policy authorities.

In practice, complaints about commercial communications distributed in Belgium by foreign media can be handled by the competent self-regulatory body through a referral procedure established within the EASA.

[93] European association which brings together the advertising self-regulatory bodies of 25 European and some non-European countries, https://www.easa-alliance.org/.

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## 4.3.9. Update on plans and practices related to new obligations of VSPs

Articles 176/4, paragraph 4 and 176/6, paragraph 3 of the amended Media Decree state that the Flemish Government will lay down further rules in relation to the obligations of VSPs. No initiatives to this end have yet been taken at the time of preparing this factsheet.

## 4.3.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- The impact of influencers on advertising and consumer protection in the Single Market,[94] the European Parliament's Committee on Internal Market and Consumer Protection (IMCO), February 2022
- Research report "Towards a code of ethics for social media influencers",[95] University of Ghent (research group CEPEC) and Artevelde Hogeschool, 11 May 2021
- SMI Barometer. How do Belgian youngsters experience branding and influencer marketing via social media?,[96] Artevelde Hogeschool, May 2021

## 4.3.11. Data compilation

This factsheet is based on data compiled by Nadia Feci, doctoral researcher at both KU Leuven (CITIP) and Ghent University (Law & Technology).

[94] https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf.
[95] https://www.ugent.be/ps/communicatiewetenschappen/cepec/en/news-events/news/influencercode.
[96] https://smib.be/wp-content/uploads/2021/05/SMI-barometer_2021-4.pdf.

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# 4.4. BG – Bulgaria – National legal summary[97]

## 4.4.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Закон за радиото и телевизията*[98] (Radio and Television Act, Prom. SG, No. 138 of 24 November 1998, as amended up to 2022).
- *Закон за здравето*[99] (Health Act, in force from 1 January 2005, Prom. SG, N 70 of 10 August 2004, amended up to 2022).
- *Закон за хазарта*[100] (Gambling Act, Prom. SG, No. 26 of 30 March 2012, amended up to 2021).

Self- and co-regulatory instruments:

- *Национални етични правила за реклама и търговска комуникация в Република България*, 2009, *изм.*до 2020[101] (National ethical standards for advertising and commercial communications in the Republic of Bulgaria, adopted 2009, amended up to 2020).[102]

## 4.4.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

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[97] The factsheet on Bulgaria incorporates the feedback received from Maria Beltcheva, Chief Expert, International Affairs, at the Council for Electronic Media (CEM) during the checking round with the national regulatory authorities.
[98] https://www.lex.bg/index.php/bg/mobile/ldoc/2134447616.
[99] https://www.lex.bg/bg/laws/ldoc/2135489147.
[100] https://www.lex.bg/laws/ldoc/2135783265.
[101] https://www.nss-bg.org/kodeks.
[102] https://www.nss-bg.org/en/kodeks.

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#### 4.4.2.1. Definitions

**Table 30. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | Yes. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | Direct Marketing; Online Behavioural Advertising; Consent |

*Source: Bulgarian response to European Audiovisual Observatory standardised survey*

##### 4.4.2.1.1. Audiovisual commercial communications

Article 73, paragraph 1, of the Radio and Television Act defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim, while also including communications which "promote a cause or idea" or "induce another effect desired by the advertiser", as follows:

*"Audiovisual commercial communications" means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity or to help promote a cause or idea, or generate another effect desired by the advertiser; such images accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes.*

##### 4.4.2.1.2. Television advertising

Article 74, paragraph 1, of the Radio and Television Act defines advertising by transposing the text of the revised AVMSD verbatim, while also including communications which "promote a cause or idea" or "induce another effect desired by the advertiser", as follows:

> *"Advertising" means a form of commercial communication which accompanies or is included in an audiovisual or radio programme in return for payment or for similar consideration or for self-promotional purposes by a public or private undertaking or natural person in*

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*connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations, or to advance a cause or idea, or to bring about some other effect desired by the advertiser, in return for payment.*

#### 4.4.2.1.3. Advertiser

The term advertiser is not defined in the Radio and Television Act but exists at the self-regulatory level, in the "Annex: General Definitions" of the National Ethical Standards for Advertising and Commercial Communications[103], as follows:

*"advertiser" means every physical person or legal entity, which directly or indirectly promotes goods, services, rights, obligations, firms, trademarks, symbols, etc. on its own or through an agent or intermediary;*

#### 4.4.2.1.4. Surreptitious commercial communication

Article 75, paragraph 2, of the Radio and Television Act defines surreptitious commercial communication as follows:

*"Surreptitious commercial communication" means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes, when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature, in particular if it is done in return for payment or for similar consideration.*

This term is also defined in the "Annex: General Definitions" of the NSS Ethical Standards Code as follows: "The term 'hidden advertising' means any advertising message which is pretending to be another form of non-commercial communication (an article, editorial news etc.)".

#### 4.4.2.1.5. Misleading commercial communication

The term misleading advertising is defined in the "Annex: General Definitions" of the NSS Ethical Standards Code as follows:

*"misleading advertising" means any commercial communication which, in any way, including the means of its presentation, leads or may lead the consumers it is reaching or is addressed to, into delusion and thus may influence their economic behaviour or damage the interests of a competitor.*

[103] Hereinafter, the NSS Ethical Standards Code.

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#### 4.4.2.1.6. Virtual advertising

There is no definition of virtual advertising. However, Article C9 of the NSS Ethical Standards Code makes a reference to "digital interactive media" without defining it.

#### 4.4.2.1.7. Sponsorship

Article 74, paragraph 2, of the Radio and Television Act defines sponsorship by transposing the text of the revised AVMSD verbatim, as follows:

> *'Sponsorship' is a form of commercial communication consisting of a contribution made by natural or legal persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works, to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products;*

The term sponsorship is also defined in Chapter B of the NSS Ethical Standards Code as follows:

> *The term "sponsorship" refers to any agreement by which a sponsor, for the mutual benefit of the sponsor and sponsored party, provides financing or other support in order to establish an association between the sponsor's image, brands or products and a sponsorship property, in return for rights to promote this association and/or for the granting of certain agreed direct or indirect benefits.*

#### 4.4.2.1.8. Sponsor

The term sponsor is defined in Chapter B of the NSS Ethical Standards Code as follows: "The term 'sponsor' refers to any corporation or other legal entity providing financial or other sponsorship support".

#### 4.4.2.1.9. Sponsored content

There is no explicit definition of sponsored content, but Chapter B of the NSS Ethical Standards Code provides that sponsored content "refers to an event, activity, organisation, individual, media and so on".

#### 4.4.2.1.10. Product placement

Article 74, paragraph 4, of the Radio and Television Act states the following:

> *"Product placement" means a form of commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof in a programme or user-generated video, in return for payment or for similar consideration.*

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In addition, there is also a definition of product placement in Chapter B of the NSS Ethical Standards Code, as follows:

> *The term "product placement" refers to the inclusion of a product or brand so that it is featured within the content of a programme, film or publication, including online material, normally in return for payment or other valuable consideration to the programme or film producer, publisher or licensee;*

#### 4.4.2.1.11. Other definitions

Additional definitions of other techniques of online commercial communications can be found at the self-regulatory level in the NSS Ethical Standards Code. This code sets the standards for ethical conduct in the marketing eco-system and is applicable to any form or channel of advertising and marketing communication, in the broadest sense.[104] The types of communication which come within the scope of the code are very diverse and include, for example: display ads, internet banners, virals and consumer-generated content, influencers, etc. Therefore, the NSS Ethical Standards Code, in section B defines several of these terms, the most relevant of which are listed below:

> *The term "direct marketing" is the communication, by whatever means, of advertising or marketing material carried out by a direct marketer itself or on its behalf, and which is directed to particular individuals using their personal contact information (including mailing address, telephone number, email address, mobile phone number, fax, social media private account, etc.). A section on telemarketing is also in operation and it contains definitions of terms specific to telemarketing provisions.*
> *The term "online behavioural advertising" (OBA), also "interest-based advertising", refers to the practice of collecting information over time on users' online actions on a particular device across different unaffiliated websites or applications in order to create interest segments or to allocate such viewing behaviour against interest segments for the purposes of delivering advertisements to and by that web user's interests and preferences. It pertains to advertising operations on desktop, mobile, video or TV, social media settings, or IoT[105] settings, and include tracking and targeting across all devices used by the consumer.*
> *The term "consent" means an individual's freely given, specific and informed indication in response to a clear and conspicuous notice regarding the collection and use of data for online behavioural advertising purposes.*

### 4.4.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under

[104] Applicable to activities which directly or indirectly stimulate the sales of any kind of goods and services (corporate and institutional promotion included), or promote trademarks and brands, regardless of the channels and means of communication used.
[105] "IoT": Internet of Things.

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national legislation on media service providers, including VSP providers related to commercial communications.

In this respect, requirements applicable to commercial communications as set out in Article 75 of the Radio and Television Act are made applicable to VSPs through Article 19e paragraphs 2 and 3, which explicitly addresses VSPs while referring to Article 75:

*(2) Video-sharing platform providers shall comply with the requirements set out in Article 75(1) and (4) to (9) with regard to audiovisual commercial communications which they arrange and place.*
*(3) Video-sharing platform providers shall take appropriate measures to comply with the requirements set out in Article 75(1) and (4) to (9) with respect to audiovisual commercial communications that are not arranged or placed by those video-sharing platform providers but are user-generated, taking into account the limited control exercised by video-sharing platforms over those audiovisual commercial communications.*

In addition, certain rules on commercial communications at the self-regulatory level are also applicable to VSPs through Article 4b of the Radio and Television Act which stipulates the following:

*(4) The providers of services on video-sharing platforms shall be obliged to observe the provisions of the National Ethical Rules under para. 1, item 3.*
*(5) Self-regulation shall be fostered through codes of conduct drawn up by media service providers, video-sharing platform providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations. These codes shall be such that they are broadly accepted by the main stakeholders at Union level and shall comply with subparagraphs 2 to 4 of paragraph 2. The Union codes of conduct shall be without prejudice to the national codes of conduct.*
*(6) If the Republic of Bulgaria exercises its freedom to adopt more detailed or stricter rules in accordance with Directive 2010/13 / EU, as amended by Directive (EU) 2018/1808, and with the law of the European Union, and if the Council for the electronic media considers that there is evidence of insufficient effectiveness of a code of conduct or parts of a code of conduct, the Council may require media service providers under their jurisdiction to comply with the relevant rules. The Electronic Media Council shall also inform the European Commission about such rules within one month.*

#### 4.4.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco related products, including electronic cigarettes and refill containers

The requirements applicable to commercial communications in media services, including VSPs, in relation to tobacco products and alcoholic beverages are set out in Article 75 of the Radio and Television Act as follows:

*(6) All forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers, shall be prohibited;*

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*(7) Commercial communications for alcoholic beverages must not be aimed specifically at children and may not encourage immoderate consumption of such beverages.*

Moreover, Article 55 of the Health Act also provides the following:

*(1) The direct advertising of spirits shall be prohibited.*
*(2) The indirect advertising of spirits and the advertising of wine and beer may not:*
*1. be aimed at persons under 18 years of age, nor be broadcast in programmes or published in printed publications intended for them;*
*2. use persons under 18 years of age as participants;*
*3. connect the use of alcoholic beverages with sports and physical achievements or with driving vehicles;*
*4. contain false statements about health benefits, social or sexual well-being or present abstinence or moderation in a negative light.*
*(3) The indirect advertising of alcoholic beverages may not be broadcast in radio and television broadcasts before 22.00.*

Additional rules on such commercial communications can be found in the NSS Ethical Standards Code, for example, such as common standards which regulate the commercial communication of spirits and mixed drinks with the purpose of ensuring that "commercial communications do not encourage or condone excessive consumption or misuse of any kind", through a series of recommendations in various areas, such as the representation of alcohol products in relation to minors, pregnancy, health, social success and driving. In addition to these common standards there are two annexes: "Guidelines for responsible promotions" and "Guidelines for commercial communication on the internet, for digital and mobile marketing media".

#### 4.4.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

The requirements applicable to commercial communications in media services, including VSPs, in relation to medicinal products are set out in Article 75 paragraph 8 and Article 87 of the Radio and Television Act as follows:

*Article 75 (8): Commercial communications for medicinal products available only on prescription or for medical treatment available only on prescription shall be prohibited, with the exception of the cases under Article 248 of the Medicinal Products in Human Medicine Act.*

*Article 87: Teleshopping for medicinal products for which an authorisation for use is required according to the Medicinal Products in Human Medicine Act, as well as teleshopping for medical treatment, shall be prohibited.*

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#### 4.4.2.2.3. Surreptitious audiovisual commercial communications

Article 75 paragraph 1 of the Radio and Television Act prohibits surreptitious commercial communications.

#### 4.4.2.2.4. Subliminal techniques in commercial communications

Article 75 paragraph 4 of the Radio and Television Act prohibits the use of subliminal techniques in commercial communications:

> *(4) Commercial communications shall not use subliminal techniques. "Subliminal techniques" mean indirect methods, which are not identified as commercial communications and are not recognised by the audience as such, but may elicit a subconscious mental reaction and produce a predisposition to the presented goods and services in the audience.*

In addition, Article 5.1 of the NSS Ethical Standards Code prescribes that "marketing communication should be truthful and not misleading" and 5.2 states that "marketing communication cannot be hidden and act on a subconscious level".

#### 4.4.2.2.5. Prejudice with regard to human dignity

Article 75 paragraph 5, subparagraph 1, of the Radio and Television Act provides restrictions for all media services, including VSPs, that: "Commercial communications must not 1. prejudice human dignity". Furthermore, Article 77 prohibits "any commercial communications containing pornography or inciting to violence and disrespect for human dignity".

At the self-regulatory level, the NSS Ethical Standards Code in its Article 4.1 prescribes that "[m]arketing communication should respect all aspects of human dignity" and in Article 4.9 that:

> *[m]arketing communication should not show excessive erotic content and should not promote excessive susceptibility to sexuality by depicting encouragement and readiness for sex, revealing the human body in an inappropriate manner, and it should not show the product as a tool for removing sexual barriers. The human body may only be revealed with due respect to personal rights and human dignity.*

#### 4.4.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

Article 75 paragraph 5, subparagraph 2, of the Radio and Television Act prescribes that "[c]ommercial communications must not … 2. include or promote any discrimination based on such grounds as sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation".

At the self-regulatory level, the NSS Ethical Standards Code in its Article 4.2 provides that:

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*Marketing Communication should not incite or condone, or tolerate any form of offence, discrimination, including that based upon race, national origin, religion, social status or political affiliation, gender, age, disability or sexual orientation, without the above list being exhaustive.*

In Article 4.3 the same code provides that "[m]arketing communication should observe the principles of gender equity."

#### 4.4.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 75 paragraph 5, subparagraph 3, of the Radio and Television Act states that: "Commercial communications must not … 3. encourage behaviour prejudicial to health or safety".

At the self-regulatory level, in relation to the encouragement of behaviour prejudicial to health or safety, the NSS Ethical Standards Code prescribes several requirements in Articles 4.7 and 16.1 to 16.3, as for example in Article 4.7. which prescribes that "[m]arketing communication should not depict, condone or incite threat to the life and health of people, nature, animals or to personal or public property" or Article 16.3 which states that "[p]otential risks for health and safety should be clearly communicated, especially if not easily recognisable".

#### 4.4.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 75 paragraph 5, subparagraph 4, of the Radio and Television Act provides that "[c]ommercial communications must not […] 4. encourage behaviour grossly prejudicial to the protection of the environment".

Furthermore, additional requirements can be found at the self-regulatory level in the NSS Ethical Standards Code which prescribes in Article D1 that "[m]arketing communication should be so framed as not to abuse consumers' concern for the environment, or exploit their possible lack of environmental knowledge". Meanwhile, Article 21 states as follows:

*Marketing communication should not appear to condone or encourage actions which contravene the law, self-regulatory codes or generally accepted standards of environmentally responsible behaviour. It should comply with the principles stated in Section D, Environmental Claims in Marketing Communications.*

#### 4.4.2.2.9. Causing physical, mental or moral detriment to minors

Article 75 subparagraph 9 of the Radio and Television Act sets out a series of restrictions that must be observed by commercial communications aimed at children, as follows:

*Commercial communications must not:*

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*1. endangering the physical, mental, moral and/or social development of children.*
*2. directly exhort children to buy or hire a product or service by exploiting their inexperience or credulity;*
*3. encourage children to persuade their parents or others to purchase the goods or services being advertised;*
*4. exploit the special trust children place in their parents, teachers or other persons;*
*5. unreasonably show children in dangerous situations.*

Also, Article 76 requires VSPs to prepare, as part of the code of ethics under Article 4b, specific rules regarding inappropriate commercial communications accompanying or included in children's programmes for alcoholic beverages as well as for food and beverages containing nutrients and substances with nutritional or physiological effect, excessive intake of which is not recommended in the overall diet.

At the self-regulatory level, the NSS Ethical Standards Code prescribes a series of requirements to prevent commercial communications from causing physical, mental, or moral harm to minors in its Articles 4.5, 16.5 and 17.1 to 17.13, such as the requirement that "[s]pecial care should be taken in marketing communication directed at or featuring children or young people" (17.1) or that "[m]arketing communication directed at children and teens should not be inserted in media, whose editorial content endangers their physical, psychological, moral and/or social well-being" (see 4.4.7.2.2.).

#### 4.4.2.2.10. Other

Further restrictions may apply to commercial communications on VSPs, such as Article 80 paragraph 1, of the Radio and Television Act which prohibits the use of "the coat of arms, the flag and the anthem of the Republic of Bulgaria, as well as the voices and images of active journalists - news anchors" in commercial communications.

The NSS Ethical Standards Code also prescribes other restrictions, notably from the perspective of promoting a certain social responsibility with Article 4.4, and 4.11. to 4.14. which prescribes for instance that commercial communication "should not play on fear or exploit misfortune or suffering without justifiable reason" (4.4.), "should not use the Bulgarian language in an insulting manner" (4.12.) and "shall use natural, historical, scientific or cultural values in such a manner as not to damage the respect for them" (4.11.).

## 4.4.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

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#### 4.4.3.1. Sponsorship

The general requirements for sponsored services or programmes are set out in Article 82 of the Radio and Television Act as follows:

> *(1) Media services or programmes that are sponsored must meet the following requirements:*
> *1. their content and, in the case of programme services, their programme schedule must in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;*
> *2. they must not directly encourage the purchase or rental of goods or services, especially by making references to those goods or services in the programmes;*
> *3. viewers must be clearly informed of the existence of a sponsorship agreement;*
> *4. they must be clearly identified as such by the name, logo and/or any other symbol of the sponsor, such as a reference to its products or services or a distinctive sign thereof in an appropriate way at the beginning, during and/or at the end of the programmes.*
> *(2) Media services or programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.*
> *(3) The sponsorship of media services or programmes by producers or sellers of medicinal products or by medical-treatment facilities may promote the name or the image of the sponsor, but shall not promote specific medicinal products available only on prescription or medical treatment available only on prescription.*
> *(4) News and current affairs programmes may not be sponsored.*
> *(5) Political parties and organisations, as well as religious organisations, may not sponsor programmes.*
> *(6) The showing of a sponsorship logo during children's and religious programmes shall be prohibited.*

Addition rules pertaining to sponsorship can also be found in Chapter B of the NSS Ethical Standards Code, which applies to all forms of sponsorship relating to corporate image, brands, products, activities or events of any kind.

#### 4.4.3.2. Product placement

Article 84 of the Radio and Television Act provides the following restrictions vis-à-vis product placement:

> *Programmes that contain product placement shall meet the following requirements:*
> *1. their content and organisation within a schedule, in the case of linear services, or within a catalogue in the case of non-linear media services, shall under no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;*
> *2. they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;*
> *3. they shall not give undue prominence to the product in question;*
> *4. viewers shall be clearly informed of the existence of product placement by an appropriate identification at the start and at the end of the programme, and when a programme resumes*

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*after an advertising break, in order to avoid any confusion on the part of the viewer; this requirement does not apply to programmes that are not produced or commissioned by the media service provider or an entity affiliated with it.*

### 4.4.4. Obligations regarding (v)blogs and (v)blogging

The Radio and Television Act does not make any reference to (v)blogs. Moreover, the scope of the NSS Ethical Standards Code does not include "blogs with no control from an advertiser and/or which do not publish communication against payment from an advertiser or other consideration of any kind" as stated in the elements "Outside (the) Scope" of the code.

### 4.4.5. Other relevant information

N/A.

### 4.4.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

#### 4.4.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue in relation to VSPs. A general ban on gambling advertising which targets in particular children and adolescents is lay down by Article 10 of the Gambling Act. In addition, the NSS Ethical Standards Code has a separate chapter for the commercial communication of gambling which specifies the use of some of the general rules of the code which must be interpreted and applied to such communications.

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#### 4.4.6.3. Environmental or "green" claims for products

No specific provisions deal with this issue in the Radio and Television Act. However, the NSS Ethical Standards Code has been amended to include a section that applies to commercial communications containing environmental claims. Some of the rules in the code introduce rules from the ISO 14021 standard.[106] This section of the code includes a series of recommendations and restrictions to ensure that the environmental claims of a product or service in a commercial communication are not misleading to the public. They require, for instance, that "[m]arketing operators should not make exaggerated environmental claims" or that "[c]laims such as 'environmentally friendly', 'environmentally safe', 'green', 'sustainable', 'low carbon' or others, suggesting that a product or activity has no or only positive impact on the environment should not be used unless there is convincing evidence to that effect".

#### 4.4.6.4. Other

N/A.

### 4.4.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.4.7.1. Self- and co-regulatory bodies

##### 4.4.7.1.1. Context of establishment and legal background

Article 4b, paragraphs 1 and 2, of the Radio and Television Act emphasises the necessity of self-regulation and co-regulation through codes of conduct and standards, where appropriate, with the enlistment of applicable self-regulatory mechanisms:

> *(1) Self-regulation and co-regulation shall be encouraged through codes of conduct and standards, where appropriate and suitable. The codes of conduct and standards include, but are not limited to:*
> *1. The Code of Ethics of the Bulgarian Media, developed by the National Council for Journalism Ethics;*

[106] ISO 14021:2016 Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling), https://www.iso.org/standard/66652.html.

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*2. The single standard for the regulation of sound levels in advertising adopted by the industry;*
*3. National ethics rules on advertising and commercial communications, developed by the National Council for Self-Regulation, in line with the Code of Conduct referred to in Article 17a(3);*
*4. other standards for the implementation of Directive 2010/13/EU as amended by Directive (EU) 2018/1808.*
*(2) The codes of conduct and standards and their implementation must meet the following requirements:*
*1. be broadly accepted by the main stakeholders;*
*2. clearly and unambiguously set out their objectives;*
*3. provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at;*
*4. have the necessary resources for their effective enforcement, including procedures for amendment and effective and proportionate sanctions.*

#### 4.4.7.1.2. Stakeholders involved

The National Council for Self-Regulation (NCSR)[107] is an independent body for the self-regulation of advertising and commercial communications in Bulgaria. Members of the NCSR can be associations, companies and physical persons involved in the advertising industry.

#### 4.4.7.1.3. Scope and objectives

N/A.

#### 4.4.7.1.4. Code(s) of conduct

The NCSR develops national ethical rules for advertising and commercial communication while other codes regarding VSPs are presently not available.

Also, paragraph 5 of Article 4b of the Radio and Television Act refers to codes of conduct to be drawn up by VSPs:

*Self-regulation shall be fostered through codes of conduct drawn up by media service providers, video-sharing platform providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations. Those codes shall be such that they are broadly accepted by the main stakeholders at Union level and shall comply with subparagraphs 2 to 4 of paragraph 2. The Union codes of conduct shall be without prejudice to the national codes of conduct.*

[107] https://www.nss-bg.org/en.

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The code was adopted by the National Council for Self-Regulation in 2009, in accordance with its Articles of Association, the laws and regulations in Bulgaria and is based on the Consolidated Code of the International Chamber of Commerce, both in spirit and in letter.

The code should be observed by all operators in the advertising industry in Bulgaria, whether as advertisers, marketers, advertising practitioners or agencies, in the media, or in related functions. The code applies to all forms of advertising and other commercial communications and sets the standards of ethical conduct.

In addition to the National Ethical Code, the NCSR can apply other specific industry codes, provided that they do not contradict the national code. In specific cases, when applying their own stricter standards for commercial communication, a given media outlet may decline a specific advertisement, even if it conforms to the rules of the national code.

#### 4.4.7.1.5. Role of (self-)regulatory bodies

The NCSR, after consultations with distinguished professionals, creates, revises and ensures the voluntary application of ethical standards and good practices in the advertising industry with the aim of providing protection for consumers, the principles of fair competition and the interests of society as a whole. For this purpose, the NCSR creates working bodies, such as the Ethical Committee, the Appeal Committee, the Working Group for Code Interpretation, the Monitoring Committee, etc.

#### 4.4.7.1.6. Period of activity (if limited)

N/A.

#### 4.4.7.1.7. Role of the regulatory authority in a co-regulatory system

##### *4.4.7.1.7.1. Regulatory body*

Under Article 4b, paragraph 6, the Bulgarian Council for Electronic Media (CEM) may, after considering evidence of the insufficient effectiveness of a code of conduct or parts of a code of conduct "require media service providers under their jurisdiction to comply with the relevant rules. The Electronic Media Council shall also inform the European Commission about the rules within one month".

According to Article 19d, the Council for Electronic Media maintains the public register of VSP providers that are established or are considered to be established on the territory of the Republic of Bulgaria, and supervises the VSPs' observance of the legal requirements.

##### *4.4.7.1.7.2. Co-regulatory scheme*

N/A.

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*4.4.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.4.7.2. Monitoring/evaluation, compliance and sanctioning powers

Paragraph (4) of Article 4b of the Radio and Television Act provides the obligation for VSPs to respect the self-regulatory instruments in place:

> *[T]he service providers of video-sharing platforms shall be obliged to observe the provisions of the National Ethical Rules under para. 1, item 3 - National Ethical Rules for advertising and commercial communication, developed by the Association "National Council for Self-Regulation".*

## 4.4.8. Cross-sector and cross-border collaboration

N/A.

## 4.4.9. Update on plans and practices related to new obligations of VSPs

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to the new VSP obligations.

## 4.4.10. Studies, reports and research

N/A.

## 4.4.11. Data compilation

This factsheet is based on data compiled by Dr. Bissera Zankova, independent researcher and president of the Media 21 Foundation and Dr. Ivo Indzhov, Associate Professor of Journalism at St. Cyril and Methodius University.

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# 4.5. CY – Cyprus – National legal summary[108]

## 4.5.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Ο περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών Νόμος του 1998 μέχρι (Αρ. 2) του 2021*[109] (Radio and Television Broadcasters Law 7(I)/1998 as subsequently amended – RTV Law).
- Ο περί Στοιχημάτων Νόμος 37(I)/2019 [110] (Betting Law 37(I)/2019).
- Ο περί Ραδιοφωνικού Ιδρύματος Κύπρου (Τροποποιητικός) Νόμος του 2021111 (Cyprus Broadcasting Foundation (Amendment)
- Ο περί Ραδιοφωνικών και Τηλεοπτικών Οργανισμών (Τροποποιητικός) (Αρ. 2) Νόμος του 2021 εκδίδεται με δημοσίευση στην Επίσημη Εφημερίδα της Κυπριακής Δημοκρατίας σύμφωνα με το Άρθρο 52 του Συντάγματος.[112] (Radio and Television Organisations (Amendment) (No.2)- RTV Law)

## 4.5.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

[108] The factsheet on Cyprus incorporates the feedback received from Constandia Michaelidou, Radiotelevision Legal Officer at the Cyprus Radiotelevision Authority, during the checking round with the national regulatory authorities.
[109] https://drive.google.com/file/d/1zFrjwc-EMFsglPAlj1pOYh97OsKYIVyu/view?usp=sharing.
[110] http://www.cylaw.org/nomoi/enop/non-ind/2019_1_37/full.html.
[111] https://www.nomoplatform.cy/bills/o-peri-radiofwnikoy-idrymatos-kyproy-nomos-2021/
[112] http://www.cylaw.org/nomoi/arith/2021_1_197.pdf

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### 4.5.2.1. Definitions

**Table 31. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | No. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | / |

*Source: Cyprus response to European Audiovisual Observatory standardised survey*

#### 4.5.2.1.1. Audiovisual commercial communications

RTV Law, in section 2, defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim as follows:

> *images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity, which (images) are accompanied by or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;*

#### 4.5.2.1.2. Television advertising

Section 2 of RTV Law defines television advertising as:

> *any form of television communication broadcast for payment or for similar consideration or for self-promotional purposes by a public or private undertaking or natural person in the course of a commercial, industrial or craft activity or profession, for the purpose of promoting the supply of goods or services, including immovable property, rights and obligations, in return for payment;*

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#### 4.5.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.5.2.1.4. Surreptitious commercial communication

The RTV Law, section 2, defines surreptitious commercial communication as:

> *the oral or visual presentation, in programmes of goods or services, of the name, trade mark or activities of a producer of goods or a provider of services, where such presentation is made by the audiovisual media service provider for advertising purposes and is likely to mislead the public as to the nature of that presentation. Such a presentation shall be deemed to be made intentionally, in particular where it is made for payment or for similar consideration;*

#### 4.5.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication.

#### 4.5.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.5.2.1.7. Sponsorship

Section 2 of the RTV Law defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

> *any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products.*

#### 4.5.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.5.2.1.9. Sponsored content

There is no definition of sponsored content.

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#### 4.5.2.1.10. Product placement

Section 2 of the RTV Law provides the definition of product placement by transposing the text of the revised AVMSD verbatim as follows:

> *any form of audiovisual commercial communication consisting of the presentation of or reference to a product, service or trademark thereof so that it is displayed within a programme, in return for payment or for similar consideration;*

#### 4.5.2.1.11. Other definitions

N/A.

### 4.5.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

On a general note, it is emphasised that Article 32(F) (2) of the RTV Law stipulates that:

> *(2) Video-sharing platform providers under the jurisdiction of the Republic of Cyprus shall comply with the requirements set out in Article 30E(1) with respect to audiovisual commercial communications that are marketed, sold or arranged by those video-sharing platform providers.*
>
> (3) Video-sharing platform providers under the jurisdiction of the Republic of Cyprus shall take appropriate measures to comply with the requirements set out in Article 30E(1) with respect to audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.

#### 4.5.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Section 30E(2) of the RTV Law concerns audiovisual commercial communications of alcoholic beverages in on-demand audiovisual services and provides that section 33(4) applies to audiovisual commercial communications, which, in turn, stipulates that

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television advertising and teleshopping of alcoholic beverages must not be aimed specifically at minors nor encourage immoderate consumption of such drinks.

Section 30E(1)(e) of the RTV Law relates to the prohibitions vis-à-vis tobacco and tobacco-related products: "All forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers, shall be prohibited."

In addition, section 30E (1)(f) stipulates that media service providers must ensure that the audiovisual commercial communications of alcoholic beverages that they transmit must not be aimed specifically at minors and must not encourage immoderate consumption of such beverages.

#### 4.5.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

The RTV Law, in section30E (1) (g), stipulates that: "Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the Republic shall be prohibited."

#### 4.5.2.2.3. Surreptitious audiovisual commercial communications

The RTV Law, section 30E (1) (b), prohibits surreptitious audiovisual commercial communications: "Surreptitious audiovisual commercial communication shall be prohibited."

#### 4.5.2.2.4. Subliminal techniques in commercial communications

Section 30E (1) (c) of the RTV Law stipulates that: "Audiovisual commercial communications shall not use subliminal techniques."

#### 4.5.2.2.5. Prejudice with regard to human dignity

Section 30E (1) (d) (i) of the RTV Law stipulates that: "Audiovisual commercial communications shall not prejudice respect for human dignity."

#### 4.5.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

The RTV Law, section 30E (1) (d) (ii), provides that: "Audiovisual commercial communications shall not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation".

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#### 4.5.2.2.7. Encouragement of behaviour prejudicial to health or safety

Section 30E (1) (d) (iii) of the RTV Law states: "Audiovisual commercial communications shall not encourage behaviour prejudicial to health or safety."

#### 4.5.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

The RTV Law, in section 30E (1) (d) (iv), reads that: "Audiovisual commercial communications shall not encourage behaviour which is manifestly prejudicial to the protection of the environment."

#### 4.5.2.2.9. Causing physical, mental or moral detriment to minors

Section 30E (1) (h) of the RTV Law establishes prohibitions regarding the protection of minors by providing that audiovisual commercial communications shall not:

*i) cause physical, mental or moral detriment to minors; or*
*ii) directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, or*
*iii) directly encourage them to persuade their parents or others to purchase the goods or services being advertised, or*
*iv) exploit the special trust minors place in parents, teachers or other persons, or*
*v) unreasonably show minors in dangerous situations.*

#### 4.5.2.2.10. Other

N/A.

## 4.5.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.5.3.1. Sponsorship

While not directly applicable to VSPs, Section 30H of the RTV Law requires sponsored audiovisual media services or programmes to meet the following requirements: that they may not directly encourage the purchase or rental of goods or services, and that they must inform clearly viewers of the existence of a sponsorship agreements.

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Section 30Θ prohibits the sponsorship by undertakings the principal activity of which is the manufacture or sale of cigarettes and other tobacco products, as well as electronic cigarettes and refill containers. According to Section 30I, the sponsorship of audiovisual media services or programmes by undertakings whose activities include the production or sale of medicines and therapeutic products may promote the name or image of the undertaking, but not specific medicines or therapeutic products available only on prescription in the Republic within whose jurisdiction the audiovisual media service provider is subject.

Finally, section 30K of the RTV prohibits sponsoring of news and current affairs programmes, such as news bulletins and political informational programmes, while a sponsorship logo during children's programmes, documentaries and religious programmes is allowed only for three minutes at the beginning of the programme and for three minutes before its end.

#### 4.5.3.2. Product placement

Section 30G of the RTV Law allows product placement in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious and children's programmes.

Section 30G(3) of the RTV Law, further stipulates that such programmes:

> *(a) Programmes that contain product placement shall meet the following requirements:*
> *(a) their content and organisation within a schedule, in the case of television broadcasting, or within a catalogue in the case of on-demand audiovisual media services, shall under no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the audiovisual media service provider;*
> *(b) shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;*
> *(c) shall not give undue prominence to the product in question; in particular by means of close-up images and/or prolonged display of the product;*
> *(d) (i) shall clearly inform viewers about the existence of product placement via appropriate identification at the start and at the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.*

The programmes which are exempted from the aforementioned requirements are programmes which are not produced or commissioned by a media service provider or by a company affiliated with that media service provider, provided that the media service provider does not financially benefit from the product placement.

The total time of transmission and/or reference to products and services, in product placement messages, is limited to a minimum of the total time of the programme in which they are placed and in any case may not exceed three minutes in the case of cinematographic works and television films and one minute in the case of episodes of series, sports programmes and light entertainment.

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Product placement of tobacco, tobacco-related products, electronic cigarettes and refill containers as well as of specific medicinal products or medical treatments available only on prescription in Cyprus is prohibited, as well as children's toys, or any other commercial communication for non-permissible products.

## 4.5.4. Obligations regarding (v)blogs and (v)blogging

N/A.

## 4.5.5. Other relevant information

N/A.

## 4.5.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.5.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.5.6.2. Gambling, betting, betting tipsters, etc.

There is a general provision in section 89 of the Betting Law 37(I)/2019 which provides restrictions for any person who advertises bets in a manner that:

*a) implies that these are connected to or promote social acceptance, personal or financial success or resolution of any person, financial or social problems, or*
*b) includes the support of known personalities in a manner that implies that this is related to their success, or*
*c) may influence any minor persons to participate in this or*

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*d) promotes it by using services of persons who do not hold a Class A or B license or are not an authorised agent, or*
*e) exceeds the limits of honesty and decency, is guilty of a criminal offence and in case of conviction is subject to a penalty of imprisonment not exceeding six months or to a monetary fine not exceeding 30 000 euros or to both fines.*

#### 4.5.6.3. Environmental or "green" claims for products

No specific provisions deal with this issue.

#### 4.5.6.4. Other

N/A.

### 4.5.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.5.7.1. Self- and co-regulatory bodies

##### 4.5.7.1.1. Context of establishment and legal background

In section 31B of the RTV Law, it is provided that the Cyprus Radio-Television Authority (CRTA)[113] must encourage media service providers to promote the use of co-regulation and the fostering of self-regulation through codes of conduct at a national level. Section 32F(10) states that for the purposes of the implementation of the measures that the VSPs should apply, as referred to in section 32F(1)(3)(6)-(9), the CRTA shall encourage the use of co-regulation as provided for in section 31B(1). No such codes have so far been enacted by video-sharing platforms. Section 32F(5) encourages co-regulation and self-regulation aimed at effectively reducing the exposure of children to unhealthy foods on VSPs.

##### 4.5.7.1.2. Stakeholders involved

N/A.

[113] Αρχή Ραδιοτηλεόρασης Κύπρου, http://www.crta.org.cy/.

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#### 4.5.7.1.3. Scope and objectives

N/A.

#### 4.5.7.1.4. Code(s) of conduct

The codes, envisaged by section 31B of the RTV Law should be broadly accepted, while the CRTA remains free to require media service providers under the jurisdiction of the Republic to comply with more detailed or stricter rules.

#### 4.5.7.1.5. Role of the (self-)regulatory bodies

N/A.

#### 4.5.7.1.6. Period of activity (if limited)

N/A.

#### 4.5.7.1.7. Role of the regulatory authority in a co-regulatory system

##### *4.5.7.1.7.1. Regulatory body*

Besides encouragement for the establishment of self- and co-regulatory codes, the CRTA is, according to section 32E(8), in charge of keeping and updating a list of video-sharing platform providers and assessing the measures adopted by VSPs (section 32(F)(11)).

##### *4.5.7.1.7.2. Co-regulatory scheme*

As stipulated earlier, the CRTA must encourage the establishment of self- and co-regulatory codes.

##### *4.5.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.5.7.2. Monitoring/evaluation, compliance and sanctioning powers

Section 32G of the RTV Law provides the possibility for the CRTA to impose administrative sanctions on VSPs in case of violation of the provisions of the RTV Law and regulations issued (the CRTA is in the process of drafting these regulations).

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### 4.5.8. Cross-sector and cross-border collaboration

N/A.

### 4.5.9. Update on plans and practices related to new obligations of VSPs

N/A.

### 4.5.10. Studies, reports and research

N/A.

### 4.5.11. Data compilation

This factsheet is based on data compiled by Professor Dr. Achilles Emilianides, Dean of the School of Law of the University of Nicosia and Sofia Iordanidou, Associate Professor of Journalism and Communication at the Open University of Cyprus.

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# 4.6. CZ – Czechia - National legal summary[114]

## 4.6.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Zákon č. 40/1995 Sb., o regulaci reklamy*[115] (Act No. 40/1995 Coll., on the regulation of advertising – Advertising Act)
- *Zákon č. 132/2010 Sb., o audiovizuálních mediálních službách na vyžádání*[116] (Act No. 132/2010 Coll., on on-demand audiovisual media services – Act on on-demand AVMS)
- *Zákon č. 231/2001 Sb., o rozhlasovém a televizním vysílání*[117] (Act No. 231/2001 Coll., on Radio and Television Broadcasting – RTV Act)
- *Zákon o službách platforem pro sdílení videonahrávek*[118] (Act on Video-sharing Platform Services - VSP Act)
- *Zákon č. 480/2004 Sb., o některých službách informační společnosti*[119] (Act No. 480/2004 Coll., on certain information society services)
- Zákon č. 634/1992 Sb. o ochraně spotřebitele[120] (Consumer Protection Act No. 634/1992)

## 4.6.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored

[114] The factsheet on Czechia incorporates the feedback received from the Czech Council for Radio and TV Broadcasting (RRTV).
[115] https://www.zakonyprolidi.cz/cs/1995-40.
[116] https://www.psp.cz/sqw/sbirka.sqw?O=9&T=30.
[117] https://www.zakonyprolidi.cz/cs/2001-231.
[118] https://www.psp.cz/sqw/historie.sqw?o=9&t=30
[119] https://www.zakonyprolidi.cz/cs/2004-480.
[120] https://www.zakonyprolidi.cz/cs/1992-634.

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content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

#### 4.6.2.1. Definitions

**Table 32. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | Yes. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | No. |

*Source: Czech response to European Audiovisual Observatory standardised survey*

##### 4.6.2.1.1. Audiovisual commercial communications

Section 2 paragraph 1 (e) of the Act on on-demand AVMS defines audiovisual commercial communications as follows:

> *Audiovisual commercial communication means images with or without sound which are designed to promote, directly or indirectly, the goods, services or public image of a person pursuing an economic activity, and which accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes; audiovisual commercial communications may take the form, in particular, of advertising, sponsorship or product placement.*

##### 4.6.2.1.2. Television advertising

There is no definition of television advertising. However, section 2 paragraph 1 (n) of the RTV Act defines the term advertising as:

> *any public announcement broadcast in return for payment or a similar consideration, or broadcast for the broadcaster's self-promotion, in order to promote the supply of goods or*

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*provision of services, including immovable property, rights and obligations in return for payment.*

#### 4.6.2.1.3. Advertiser

Section 1 paragraph (5) of the Advertising Act defines an advertiser as "a legal or natural person who has ordered advertising from another legal or natural person".

A similar definition is provided by section 48 paragraph 3 of the RTV Act which states that "[t]he party commissioning a commercial communication is a legal or natural person placing an order for commercial communication with another legal or natural person".

The VSP Act extends the scope of the Advertising Act to video-sharing platforms (VSPs), as it includes VSPs in the communication media by which advertising is transmitted and will, hence, be subject to the relevant regulation under this Act:

*The communication media through which advertising is disseminated are the means by which advertising is transmitted, in particular periodicals and non-periodical publications, radio and television broadcasting, on-demand audiovisual media services, video-sharing platform services, audiovisual productions, computer networks, carriers of audiovisual works, posters and leaflets.*

#### 4.6.2.1.4. Surreptitious commercial communication

Section 2 paragraph 1 (q) of the RTV Act defines surreptitious commercial communications as follows:

*Surreptitious commercial communication means the oral or visual presentation of goods, services, the name, trademark or activity of a producer of goods or provider of services, included by the broadcaster in a programme unit, if such a presentation intentionally follows an advertising objective and if it may mislead the public as to the nature of the presentation; such a presentation is considered as intentional when it is provided in return for payment or similar consideration.*

A similar definition applicable to on-demand services is found in section 2 paragraph 1 (f) of the Act on on-demand AVMS:

*Surreptitious audiovisual commercial communication means the oral or visual presentation of goods, services, the name, trademark or activity of a producer of goods or provider of services, included by the on-demand audiovisual media service provider in a programme, if such a presentation intentionally follows an advertising objective and if it may mislead the public as to the nature of the presentation; such a presentation is considered as intentional when it is provided in return for payment or similar consideration.*

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#### 4.6.2.1.5. Misleading commercial communication

Section 5 of the Consumer Protection Act referred to in section 2 paragraph 1 (b) of the Advertising Act, defines deceptive acts as follows:

> *(1) A commercial practice shall be deemed to be misleading if it contains materially incorrect information and is therefore untrue, which leads or is likely to lead the consumer to make a purchasing decision which (s)he would not otherwise have made…*

Commercial practices which have truthful information, but which still mislead consumers into purchasing products or services, are also considered to be deceptive acts as they contain misleading elements, such as the nature of product or service, its price, etc.

#### 4.6.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.6.2.1.7. Sponsorship

Section 2 paragraph 1 (s) of the RTV Act defines sponsorship as follows:

> *Sponsorship means any contribution from a person who does not operate a radio or television broadcasting service, provide on-demand audiovisual media services or produce audiovisual works, made for the direct or indirect financing of a radio or television programme or programme for the purpose of promoting his or her name or title, trademark, products, services, activities or public image.*

A similar definition applicable to on-demand services is laid down in section 2 paragraph 1 (g) of the Act on on-demand AVMS:

> *Sponsorship means any contribution made by a natural or legal person not engaged in the provision of an on-demand audiovisual media service, the operation of television broadcasting, or the production of audiovisual works, to the direct or indirect financing of an on-demand audiovisual media service or programmes with a view to promoting the sponsor's personal name or business name, trademark, products, services, activities or public image.*

Moreover, section 1 paragraph 4 of the Advertising Act defines sponsorship as "a contribution made to promote the production or sale of goods, services or other performances of the sponsor".

The definition of sponsorship in section 2 paragraph 1 (s) of the RTV Act is amended to include video-sharing platforms as follows:

> *Sponsorship means any contribution from a person who does not operate a video-sharing platform service, radio or television broadcasting service, provide on-demand audiovisual media services or produce audiovisual works, made for the direct or indirect financing of a*

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*radio or television programme or programme for the purpose of promoting his or her name or title, trademark, products, services, activities or public image.*

Similarly, the definition laid down in section 2 paragraph 1 (g) of the Act on on-demand AVMS is as follows:

*Sponsorship means any contribution made by a natural or legal person not engaged in the provision of an on-demand audiovisual media service, the operation of television broadcasting, the operation of a video-sharing platform service, or the production of audiovisual works, to the direct or indirect financing of an on-demand audiovisual media service, video-sharing platform service, user-generated videos or programmes with a view to promoting the sponsor's personal name or business name, trademark, products, services, activities or public image.*

Definitions in the RTV Act and the Act on on-demand AVMS apply to radio and television broadcasting and on-demand audiovisual media services. The definition in the Advertising Act is applicable to VSPs after the adoption of the VSP Act.

#### 4.6.2.1.8. Sponsor

Section 1 (4) of Advertising Act defines a sponsor as "a legal or natural person who makes such a contribution for this purpose".

#### 4.6.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.6.2.1.10. Product placement

Section 2 paragraph 2 (b) of Act No. 231/2001 on Radio and Television Broadcasting defines product placement as follows:

*Product placement means any form of the inclusion of a product, a service, or the trademark thereof, or reference to a product or service, so that it is featured within a programme unit in return for payment or for similar consideration.*

A similar definition applicable to on-demand services is laid down in section 2 paragraph 1 (h) of Act No. 132/2010 on on-demand AVMS:

*Product placement means any form of audiovisual commercial communication consisting of the inclusion of a product, a service or the trademark thereof, or reference to a product or service so that it is featured within a programme in return for payment or for similar consideration.*

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#### 4.6.2.1.11. Other definitions

N/A.

### 4.6.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for VSPs to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

The majority of the provisions applicable to commercial communications on VSPs can be found in the VSP Act, details of which are provided below in this section. In addition, this Act also includes an amendment to the Advertising Act, extending the scope of this act to VSPs as well.

#### 4.6.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Section 7 paragraphs 3-4 of the VSP Act provides that VSP providers shall not place on their platforms any form of commercial communication that they market, sell or negotiate concerning cigarettes and other tobacco products or electronic cigarettes and their refills.

With regard to commercial communications concerning alcoholic beverages, they must not be specifically aimed at minors and must not encourage the immoderate consumption of such beverages (section 8a, VSP Act). In addition, the provider should also take appropriate measures for commercial communications that it does not market, sell or negotiate itself, proportionate to the limited control that the VSP may exercise over such commercial communications.

Similarly, section 4 of the Advertising Act stipulates that the advertising of alcoholic beverages may not be aimed at individuals under the age of 18, in particular, may not depict such individuals[121] consuming such beverages, and may not use elements, means and actions, which appeal to such persons.

#### 4.6.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Section 7 paragraph 5 of the VSP Act provides that VSP providers shall not place on their platforms any form of commercial communication which concerns medicinal products and medical procedures that are available in Czechia only on prescription.

[121] Including individuals which who look like individuals under 18 years of age.

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In the same vein, sections 5-5c of the Advertising Act provides that commercial communications intended for the public may not include medicinal products subject to prescription, nor medicinal products containing narcotic or psychotropic substances. Any information, persuasion or inducement intended to promote the prescription, supply, sale, delivery or consumption of medicinal products is considered as advertising. In addition, the advertising of medicinal products for professionals, the advertising of human tissue and cell donation, the advertising of medical devices and in vitro diagnostic medical devices are also regulated.

#### 4.6.2.2.3. Surreptitious audiovisual commercial communications

Commercial communications that the VSP markets, sells or negotiates itself, must be easily recognisable and must not be surreptitious, according to section 7 paragraph 2 (a) of the VSP Act.

#### 4.6.2.2.4. Subliminal techniques in commercial communications

Section 7 paragraph 2 (b) of the VSP Act states that commercial communications that the VSP itself markets, sells or negotiates must not use subliminal techniques.

#### 4.6.2.2.5. Prejudice with regard to human dignity

Commercial communications that the VSP itself markets, sells or negotiates must not violate human dignity according to section 7 paragraph 2 (c) of the VSP Act.

In addition, section 2 paragraph 3 of the Advertising Act specifies that advertising must not be contrary to morality, or threaten morality in a generally unacceptable manner, lower human dignity, contain elements of pornography, violence or elements using the motive of fear, or attack political convictions.

#### 4.6.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

According to section 7 paragraph 2 (d) of the VSP Act, commercial communications that the VSP itself markets, sells or negotiates must not contain or promote discrimination on the grounds of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. Furthermore, section 2 paragraph 3 of the Advertising Act specifies that advertising must not contain discrimination on the grounds of race, sex or nationality, nor attack religious or national sentiment.

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#### 4.6.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour that endangers health or safety is prohibited in commercial communications that the VSP itself markets, sells or negotiates according to section 7 paragraph 2 (e) of the VSP Act. A similar requirement is found in section 2 paragraph 3 of the Advertising Act, which states that they must also not endanger the safety of persons or property.

#### 4.6.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

According to section 7 paragraph 2 (e) of the VSP Act, encouraging behaviour that is grossly prejudicial to the protection of the environment is prohibited in commercial communications that the VSP itself markets, sells or negotiates. A similar requirement is found in section 2 paragraph 4 of the Advertising Act, which prescribes that advertising must not promote conduct detrimental to environmental interests.

#### 4.6.2.2.9. Causing physical, mental or moral detriment to minors

Requirements pertaining to the protection of minors in relation to commercial communication are laid down in sections 1 and 6 of the VSP Act. They provide that VSP service providers must take measures to protect minors from programmes, video messages produced by users of the platform and commercial communications which may harm their physical, mental or moral development. These measures shall include age verification tools or other technical measures and shall ensure that such video messages, programmes and audiovisual commercial communications are not accessible in such a way that minors could normally see or hear them.

With regard to commercial communications marketed, sold or negotiated by the service provider of the VSP itself, they should not endanger minors physically, psychologically or morally by directly encouraging them to buy or rent a product or service and by taking advantage of their inexperience or credulity, directly encouraging minors to persuade their parents or others to purchase the advertised product or service, taking advantage of the special trust minors place in their parents, teachers or other persons, or unreasonably depicting minors in dangerous situations.

#### 4.6.2.2.10. Other

N/A.

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## 4.6.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.6.3.1. Sponsorship

Sections 1 paragraph 4, 3 paragraph 1, 3a paragraph 2, 5 paragraph 1 and 5m paragraph 3 of the Advertising Act prohibit the sponsorship of tobacco advertising and the sponsorship of events or activities to promote electronic cigarettes and regulate the sponsorship of pharmaceutical products and medical congresses.

### 4.6.3.2. Product placement

There are no specific rules pertaining to product placement for VSPs in Czechia.

## 4.6.4. Obligations regarding (v)blogs and (v)blogging

There are no specific rules concerning (v)blogs. However, they may be subject to the Advertising Act, as the (v)blogger will often be in the position of a processor or distributor of advertising, which entails respect for legal obligations. The most important of these is the labelling of advertising, as well as the need to respect the legal limits of prohibited advertising.

## 4.6.5. Other relevant information

N/A.

## 4.6.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

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#### 4.6.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.6.6.2. Gambling, betting, betting tipsters, etc.

The relevant legal regulation of gambling advertising is contained in Section 5j of the Advertising Act. The following restrictions apply to gambling advertising, including advertising directed at minors:

- it must not contain a message which gives the impression that participation in a game of chance can be a source of funds similar to the receipt of income from a dependent, self-employed, or other similar activity;
- it shall not be directed at minors, in particular by depicting such persons or by using elements, devices or actions which primarily attract such persons;
- it should always contain a statement prohibiting participation in gambling by persons under the age of 18 and a clear and prominent warning as follows: "The Ministry of Finance warns: Participation in gambling may lead to addiction!".

#### 4.6.6.3. Environmental or "green" claims for products

No specific provisions deal with this issue.

#### 4.6.6.4. 1.1.6.4. Other

N/A.

### 4.6.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs

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### 4.6.7.1. Self- and co-regulatory bodies

#### 4.6.7.1.1. Context of establishment and legal background

The VSP Act aims to support self-regulation. To this end, self-regulatory bodies will be established to adopt self-regulatory codes of conduct. The self-regulatory bodies will be able to request an opinion from the Council for Radio and Television Broadcasting (RRTV)[122]. RRTV will also maintain a list of self-regulatory bodies.

#### 4.6.7.1.2. Stakeholders involved

The stakeholders involved will be representatives of AVMS providers, on-demand AVMS providers, self-regulatory bodies and RRTV.

#### 4.6.7.1.3. Scope and objectives

Section 5(w) of the RTV Act provides for RRTV's obligation to promote the development of self-regulation and to cooperate, within the scope of its competence, with self-regulatory bodies. In the explanatory report to the adoption of this amended law, the reference to reliance on self-regulatory instruments, as stipulated by the revised AVMSD is provided and further explained:

> *It is therefore clear that the State, through its authorities, cannot in any way impose or call on the relevant institutions to adopt any self-regulatory activities – these are entirely within the competence of the entities concerned by self-regulation. The Bill attempts to reflect this by amending section 5(w) by introducing the power of the Council (RRTV – op.ed.) to facilitate (as it cannot do more in relation to self-regulation) the development of self-regulation in its area of competence, with the addition of video-sharing platforms, which are now covered by the Bill…*

Specific references to self-regulatory instruments can be seen in sections 5 paragraph (1)(w) and (x) and section 52 paragraphs 2 and 3 of the VSP Act. The aim of the relevant codes should be to effectively restrict the exposure of minors to audiovisual commercial communications about alcoholic beverages, as well as to commercial communications accompanying or contained in children's programmes about foods and beverages containing nutrients and substances with a nutritional or physiological effect, the excessive consumption of which in the total diet is not recommended.

[122] *Rada pro rozhlasové a televizní vysílání*, https://www.rrtv.cz/en/.

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#### 4.6.7.1.4. Code(s) of conduct

N/A.

#### 4.6.7.1.5. Role of the (self-)regulatory bodies

As per section 5 paragraph 1 (w) and (x) and section 52 paragraphs 2 and 3 of the VSP Act, self-regulatory bodies, through self-regulation and in their own interest, are responsible for the cultivation of the services they provide in a form conducive to their development and, to this end, undertake in writing to comply with the rules set out in the code of conduct which they publish.

#### 4.6.7.1.6. Period of activity (if limited)

N/A.

#### 4.6.7.1.7. Role of the regulatory authority in a co-regulatory system

##### *4.6.7.1.7.1. Regulatory body*

RRTV shall be responsible for facilitating the development of self-regulation and, upon request, cooperating with a self-regulatory body, in particular in the establishment of effective self-regulatory systems; it shall maintain and publish a list of self-regulatory bodies. At the request of self-regulatory bodies, it shall adopt positions and make recommendations on their internal rules and codes of conduct.

##### *4.6.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.6.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.6.7.2. Monitoring/evaluation, compliance and sanctioning powers

As per section 5 paragraph 1 (w) and (x) and section 52 paragraphs 2 and 3 of the VSP Act, supervisory powers are exercised by RRTV within the framework of the tasks entrusted to it. RRTV cannot impose or require the self-regulatory bodies concerned to undertake self-regulatory activities – these are entirely the responsibility of those entities concerned with self-regulation.

> [RRTV:] *(w) facilitate[s] the development of self-regulation in its area of competence and cooperate[s] with a self-regulatory body, if the Council's cooperation with a self-regulatory body is requested in writing, in particular in the establishment of effective self-regulatory*

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*systems and in the introduction of measures to promote media literacy; it shall publish a list of self-regulatory bodies on its website,*
*(x) at the request of the self-regulatory bodies, adopt[s] opinions and make[s] recommendations on their internal rules in so far as they lay down the obligations of broadcasters, providers of on-demand audiovisual media services or providers of video-sharing platforms, in particular in the field of the protection of minors against programmes which may impair their physical, mental or moral development, by means of a code of ethics*.

### 4.6.8. Cross-sector and cross-border collaboration

N/A.

### 4.6.9. Update on plans and practices related to new obligations of VSPs

N/A.

### 4.6.10. Studies, reports and research

N/A.

### 4.6.11. Data compilation

This factsheet is based on data compiled by Jaroslav Tajbr, Lawyer at Squire Patton Boggs.

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# 4.7. DE – Germany – National legal summary[123]

## 4.7.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Medienstaatsvertrag*[124] – MStV (Interstate Media Treaty).[125]
- *Jugendmedienschutz-Staatsvertrag* – JMStV[126] (Interstate Treaty on the Protection of Minors in the Media).[127]
- *Telemediengesetz* – TMG[128] (Telemedia Act).
- *Jugendschutzgesetz* – JuSchG[129] (Youth Protection Act).
- *Gesetz gegen den unlauteren Wettbewerb* – UWG[130] (Act against Unfair Competition[131]).
- Gesetz über die Werbung auf dem Gebiet des Heilwesens - Heilmittelwerbegesetz – HWG[132] (Law on Advertising in the Field of Healthcare).
- Gesetz über Tabakerzeugnisse und verwandte Erzeugnisse, Tabakerzeugnisgesetz – TabakerzG (Law on Tobacco Products and Related Products).[133]
- *Staatsvertrag zur Neuregulierung des Glücksspielwesens in Deutschland - Glücksspielstaatsvertrag 2021* – GlüStV 2021[134] (Interstate Treaty on the New Regulation of Gambling in Germany – Interstate Treaty on Gambling 2021).

[123] The factsheet on Germany incorporates feedback received from Peter Matzneller, Consultant on Legal and European Affairs at the Joint Management Office of the Media Authorities (*die Medienanstalten*) during the checking round with the national regulatory authorities.

[124] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Medienstaatsvertrag_MStV.pdf.

[125] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Interstate_Media_Treaty_en.pdf.

[126] https://www.kjm-online.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/JMStV_geaend._durch_ModStV.pdf.

[127] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Gesetze_Staatsvertraege/Interstate_Media_Treaty_en.pdf.

[128] https://www.gesetze-im-internet.de/tmg/BJNR017910007.html.

[129] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua_Leitfaden_Medienanstalten_Werbekennzeichnung_Online-Medien.pdf.

[130] https://www.gesetze-im-internet.de/uwg_2004/BJNR141400004.html.

[131] https://www.gesetze-im-internet.de/englisch_uwg/englisch_uwg.html.

[132] https://www.gesetze-im-internet.de/heilmwerbg/BJNR006049965.html.

[133] https://www.gesetze-im-internet.de/tabakerzg/BJNR056910016.html.

[134] https://www.gesetze-bayern.de/Content/Document/StVGlueStV2021/true.

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- Zweiter Staatsvertrag zur Änderung medienrechtlicher Staatsverträge, Zweiter Medienänderungsstaatsvertrag[135] (Second Interstate Treaty amending the Interstate Media Treaty).

Secondary legislation:

- *Satzung über die Schlichtungsstelle*[136] (Statute regulating the Arbitration Body pursuant to Article 99 of the Interstate Media Treaty).
- *Satzung zur Durchführung der Werbevorschriften des Medienstaatsvertrags der Landesmedienanstalten*[137] (Statute for the Implementation of the Advertising Regulations of the Interstate Media Treaty of the media regulatory authorities).

Self-regulatory instruments:

- *ARD-Werberichtlinien*[138] (ARD advertising guidelines) – for public service media.
- *ZDF-Werberichtlinien*[139] (ZDF advertising guidelines) – for public service media.

Other (legally non-binding):

- Leitfaden der Medienanstalten: Gewinnspiele auf Social-Media-Angeboten[140] (Guidance on sweepstakes in social media offerings).
- Leitfaden der Medienanstalten Werbekennzeichnung bei Online-Medien[141] (Guidance on the labelling of advertising in online media).
- Politische Werbung in Rundfunk und Telemedien[142] (Factsheet on political advertising).

[135] https://www.land.nrw/media/25318/download?attachment.
[136] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Satzungen_Geschaefts_Verfahrensordnungen/VSD-Satzung.pdf.
[137] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Satzungen_Geschaefts_Verfahrensordnungen/Werbesatzung.pdf.
[138] https://www.daserste.de/ard/die-ard/ARD-Werberichtlinien-100.pdf.
[139] https://www.zdf.de/assets/zdf-richtlinien-werbung-100~original.
[140] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/DLM-Leitfaden_Gewinnspiele_Social_Media.pdf.
[141] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua_Leitfaden_Medienanstalten_Werbekennzeichnung_Online-Medien.pdf.
[142] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua_Leitfaden_Medienanstalten_Werbekennzeichnung_Online-Medien.pdf).

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- *Journalistische Sorgfalt in Online-Medien*[143] (Factsheet on journalistic due diligence in online media).

## 4.7.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.7.2.1. Definitions

**Table 33. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes, also covered under the definition of advertising. |
| **Television advertising** | Yes, broadcast advertising, also covered under the definition of advertising. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

[143] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua_Merkblatt_Journalismus_im_Internet.pdf.

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*Source: German response to European Audiovisual Observatory standardised survey*

#### 4.7.2.1.1. Audiovisual commercial communications

Article 2 paragraph 2, subparagraph 7, of the MStV does not refer to audiovisual commercial communication but to (the broader term of) advertising in general and includes various formats:

> *"advertising" means any form of announcement that serves to directly or indirectly promote the sale of goods and services, including immovable property, rights and obligations, or the appearance of natural or legal persons engaged in an economic activity, and in return for remuneration or a similar consideration, or as self-promotion, and is recorded on the radio or a telemedia channel. Advertising is, in particular, broadcast advertising, sponsorship, teleshopping, and product placement; Article 8 (9) and Article 22 (1) sentence 3 remain unaffected;*

With the comprehensive reform of the former Interstate Broadcasting Treaty (*Rundfunkstaatsvertrag* – RStV) into an Interstate Media Treaty (MStV) in 2019, also in light of the implementation of the AVMSD in 2018 the term "advertising" was redefined and aligned with the definition of audiovisual commercial communication from the AVMSD (although it is still broader than the latter). It is now a broad term which also covers, *inter alia*, product placement and sponsorship so that rules under the MStV referring to advertising (illustrated under 4.7.2.2.) also cover advertising in the form of product placement and sponsorship (illustrated under 4.7.3.). The same broad definition now applies to advertising on video-sharing platforms (VSPs), Article 98 of the MStV is primarily relevant in this context, which declares Article 8 paragraphs 1, 3 sentences 1 and 2, paragraphs 7 and 10 of the MStV and Article 6 paragraphs 2 and 7 of the JMStV applicable for advertising in video-sharing services (see under 4.7.2.2. in detail).

Rules referring to advertising can be found in Articles 8, 22, 30 (paragraphs 5 and 6), 3 (paragraph 5), 35, 39, 40, 46, 70, 74, 80 and 98 of the MStV as well as in Article 45 of the MStV in conjunction with the ARD and ZDF advertising guidelines for public service media and in Articles 21 (sentence 1) and 74 of the MStV in conjunction with the Statute for the Implementation of the Advertising Regulations of the Interstate Media Treaty of the media regulatory authorities (Advertising Statute) for commercial media.

Insofar as VSPs or individual channels on VSPs are also to be classified as telemedia, Article 22, which contains rules on advertising, sponsorship and prize games, also applies. German law (still) does not explicitly rely on the terms used in the AVMSD nor is it limited to the providers addressed in the AVMSD. Generally, a distinction is made between two categories of media: broadcasting and telemedia. The very broad term of telemedia can thus cover a variety of online media regardless of their format in terms of content (audiovisual, audio, video, text, mixed forms, etc.) or integration as or into a service (websites, apps, social networks, etc.). According to the definition in Article 2 paragraph 1 sentence 4 of the MStV, telemedia:

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*means all electronic information and communications services, as far as they are not telecommunications services pursuant to Article 3 subparagraph 24 of the Telecommunications Act, which consist entirely in the conveyance of signals across telecommunications networks or telecommunications-supported services pursuant to Article 3 subparagraph 25 of the Telecommunications Act, or broadcasting pursuant to sentences (1) and (2).*

The Advertising Statute of the German State Media Authorities contains concretisations of the advertising provisions of the MStV. It also applies to broadcast-like telemedia, which are defined in Article 2 paragraph 2, subparagraph 13, of the MStV:

*telemedia with content that is similar to radio or television in terms of form and design and which is made available from a catalogue specified by a provider for individual demand at a time selected by the user (audio and audiovisual media services on demand); contents include, in particular, radio plays, feature films, series, reports, documentaries, entertainment programmes, information programmes, and children's programmes).*

The Advertising Statute thus does not apply to VSPs themselves, but possibly to the individual channels on VSPs, as far as they fall under the definition of broadcast-like telemedia.

Furthermore, Article 2, subparagraph 9, of the TMG defines audiovisual commercial communication as:

*any form of communication using images with or without sound that accompanies or is included in a programme or a user-generated video in return for payment or for similar consideration or for self-promotional purposes where the purpose of the communication is to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity, including sponsorship and product placement;*

Article 10c contains the obligation for VSPs to effectively agree with their users that they are prohibited from distributing unlawful audiovisual commercial communications. Article 6 contains specific obligations for audiovisual commercial communications in telemedia which may also apply to VSPs and individual channels within VSPs.

#### 4.7.2.1.2. Television advertising

Article 2 paragraph 2, subparagraph 8, of the MStV refers to the broader term of broadcast advertising which includes radio and television advertising:

*'broadcast advertising' means any form of announcement in the exercise of a transaction, trade, handicraft, or liberal profession that is broadcast on the radio by a public-service or commercial broadcaster or a natural person either in return for remuneration or a similar consideration, or as self-promotion, with the aim of promoting the sale of goods or the provision of services, including immovable property, rights and obligations;*

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Rules referring to broadcast advertising can be found in Articles 8 (paragraphs 2, 3, 4 and 11), 9, 35 and 39 of the MStV, as well as Article 45 of the MStV in conjunction with the ARD and ZDF advertising guidelines for public service broadcasting only and in Articles 21 (sentence 1) and 74 of the MStV in conjunction with Articles 5, 6 and 13 of the Advertising Statute, for commercial media only including broadcast-like telemedia (see under 4.7.2.1.1.).

#### 4.7.2.1.3. Advertiser

The term "advertiser" is used in Articles 8 (paragraph 2) and 22 of the MStV without a definition.

#### 4.7.2.1.4. Surreptitious commercial communication

Article 2 paragraph 2, subparagraph 9, of the MStV defines surreptitious advertising as follows:

> *'Surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising purposes and might mislead the public as to the actual purpose of the representation. Such representation is considered to be intended for advertising purposes, in particular if it is done in return for payment or for similar consideration;*

Article 8 paragraph 7 of the MStV prohibits surreptitious advertising and is also applicable to VSPs according to Article 98 of the MStV.

Further provisions referring to surreptitious advertising can be found in Article 45 of the MStV in conjunction with Article 8 of the ARD advertising guidelines and Article 8 of the ZDF advertising guidelines for public service broadcasting only and in Article 21 (sentence 1) and Article 74 of the MStV in conjunction with Article 9 of the Advertising Statute for commercial media only including broadcast-like telemedia (see under 4.7.2.1.1).

#### 4.7.2.1.5. Misleading commercial communication

The term "misleading commercial communication" exists in Article 8 paragraph 1, subparagraph 3, of the MStV without a definition.

Article 45 of the MStV in conjunction with Article 3.2 of the ARD and ZDF advertising guidelines (*ARD-Werberichtlinien*) and Article 3.2 of the ZDF advertising guidelines (ZDF-*Werberichtlinien*) also refer to this for public service broadcasting only.

Furthermore, Article 5 (paragraphs 1 – 4) and Article 5a (paragraph 1) of the UWG provide the criteria to recognise a misleading commercial communication, and Article 5a paragraph 1 of the UWG elaborates on misleading by omission. These rules in German

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competition law as well as Articles 3, 5, 5a, 8 et seq. of the UWG contain rules on misleading commercial practices, which also cover misleading commercial communication. However, they are not specifically aimed at the media, but at all companies that promote their goods and services.

#### 4.7.2.1.6. Virtual advertising

The term "virtual advertising" exists in Article 8 paragraph 6 of the MStV and the Advertising Statute, without a definition. Article 8 paragraph 6 of the MStV stipulates that virtual advertising may be inserted in programmes provided that the insertion is signalled at the beginning and at the end of the programme in question, and that it replaces advertising already existing at the site of transmission.

Article 45 of the MStV in conjunction with Article 7 of both the ARD and ZDF advertising guidelines also refers to this, for public service broadcasting only, as well as Articles 21 (sentence 1) and 74 of the MStV in conjunction with Article 8 of the MStV for commercial media only including broadcast-like telemedia (see under 4.7.2.1.1).

#### 4.7.2.1.7. Sponsorship

Article 2 paragraph 2, subparagraph 10, of the MStV defines sponsorship as follows:

> *'sponsorship' means any contribution by a natural or legal person or an association of persons not engaged in broadcasting activities, the provision of broadcast-like telemedia or video-sharing services, or in the production of audiovisual works, to the direct or indirect financing of a broadcast programme, broadcast-like telemedia, video-sharing services, user-generated videos or a programme, with a view to promoting the name, the trademark, the image of the person or association, their activities or their products;*

References to sponsorship are made in Articles 10, 22, 39 and 40 of the MStV, as well as in Article 45 of the MStV, in conjunction with Articles 11.3, 12 and 13 of the ARD and ZDF advertising guidelines for public service broadcasting only, and Articles 21 (sentence 1) and 74 of the MStV, in conjunction with Article 14 of the Advertising Statute, for commercial media only including broadcast-like telemedia (see under 4.7.2.1.1). With regard to VSPs the explanation under 4.7.3.1. applies.

#### 4.7.2.1.8. Sponsor

The term "sponsor" exists in Article 10 paragraphs 2 and 3 of the MStV and the ARD (Article 11.3) and ZDF advertising guidelines (Article 13.2) for public service broadcasting, but without a definition.

With regard to VSPs the explanation under 4.7..3.1. applies.

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#### 4.7.2.1.9. Sponsored content

The term "sponsored content" exists in Article 10 of the MStV, without a definition of the concept:

> *the content of a sponsored broadcast programme or a sponsored television programme, as well as the scheduling of a sponsored programme, shall not be influenced by the sponsor in such a manner that the editorial responsibility and independence of the broadcaster are prejudiced.*

The term can also be found in Article 45 of the MStV in conjunction with Article 13 of both the ARD and ZDF advertising guidelines, which refer to transmission of sponsored events for public service broadcasting only and in Articles 21 (sentence 1) and 74 of the MStV in conjunction with Article 14 of the Advertising Statute, for commercial media only including broadcast-like telemedia (see under 4.7.2.1.1.).

#### 4.7.2.1.10. Product placement

Article 2 paragraph 2 subparagraph 12 of the MStV defines product placement as follows:

> *"Product placement" means any form of advertising that consists of incorporating or referring to a product, service, or brand in return for remuneration or a similar consideration, so that it appears in a programme or user-generated video. The free provision of goods or services is product placement, provided that the goods or services in question are of significant value.*

As the term "advertising" also covers product placement, the respective provisions of the MStV and Articles 6 and 10c of the also TMG apply (see under 4.7.2.1.1). Provisions explicitly referring to product placement can be found in Articles 8 (paragraph 7), 30 (paragraph 5), 33 (paragraph 5), 38 and 39 (paragraphs 1, 45, 70 and 117). Also, Article 45 of the MStV in conjunction with Article 9 of both the ARD and the ZDF advertising guidelines refers to product placement for public service broadcasting only, as well as Articles 21 (sentence 1) and 74 of the MStV in conjunction with Article 10 of the Advertising Statute for commercial media only including broadcast-like telemedia (see under 4.7.2.1.1).

With regard to VSPs the explanation under 4.7.3.2. applies.

#### 4.7.2.1.11. Other definitions

N/A.

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#### 4.7.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for VSPs to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

Following the comprehensive reform of the former Interstate Broadcasting Treaty (*Rundfunkstaatsvertrag* – RStV) into an Interstate Media Treaty (MStV) in 2019, VSP providers must ensure that advertisements that are marketed, sold, or composed by said provider comply with certain requirements, according to Article 98 paragraphs 1 and 2 of the MStV. With regard to advertisements that are not marketed, sold, or composed by the VSP provider itself (e.g. within user-generated content), the VSP providers must also ensure compliance with these requirements by including and implementing the respective provisions in their general terms and conditions and by providing a function that allows users who upload user-generated videos to label audiovisual commercial communications (Article 98 paragraph 3 of the MStV in conjunction with Article 6 paragraph 3 of the TMG).

This applies to VSPs within the scope of the AVMSD if they are established in Germany and to VSPs outside the scope of the AVMSD insofar as they are intended for use in Germany irrespective of the place of their establishment (Article 1 paragraph 8 of the MStV).

In addition to the explicit provision for VSPs implementing the respective requirements of the AVMSD, there continue to be provisions addressing telemedia or certain kinds of telemedia, including the rules on advertising. As VSPs as well as user channels on VSPs can be considered as telemedia, further obligations than just the ones that are explicitly declared applicable, as mentioned in Article 98 paragraph 1 of the MStV, can apply to them in their capacity as telemedia. However, these provisions, where relevant, then only apply to content (including advertising) for which the VSP provider is responsible, unlike under Article 98 which obliges VSPs also in respect of user-generated content.

##### 4.7.2.2.1. Audiovisual commercial communications for alcoholic beverages, tobacco and tobacco related products, including electronic cigarettes and refill containers

According to Article 98 paragraph 1 in conjunction with Article 8 paragraph 10 of the MStV, advertising and teleshopping for alcoholic beverages shall not promote excessive consumption of such beverages.

The advertising prohibitions laid down in the Law on Tobacco Products and Related Products are directed at the manufacturer, the importer, the distributor and any natural or legal person who advertises or sponsors such products (Article 3 paragraph 2 of the TabakerzG).

According to Article 19 paragraph 3 in conjunction with paragraph 2 of the TabakerzG, it is prohibited to advertise tobacco products, electronic cigarettes or refill containers in information society services in the sense of Directive (EU) 2015/1535, which

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regularly also includes VSPs (any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services). Furthermore, according to Article 20 of the TabakerzG, it is prohibited to provide audiovisual commercial communications within the meaning of Article 1(1)(h) of the AVMSD for tobacco products, electronic cigarettes or refill containers or for the benefit of undertakings whose main activity is the manufacture or sale of such products.

Furthermore, Article 19 paragraph 5 of the TabakerzG prohibits the sponsorship of an event or activity with the aim or the direct or indirect effect of promoting the sale of tobacco products, electronic cigarettes or refill containers if the event or activity involves more than one member state of the European Union, takes place in more than one member state of the European Union, or if the event or activity has any other cross-border effect. Since sponsorship is generally prohibited under these conditions, the transmission of such a sponsored event or other activity in a user-generated video on a VSP would also be inadmissible.

According to Article 10c paragraph 1 in conjunction with paragraph 2 subparagraph 1 of the TMG, VSP providers established in Germany are obliged to effectively agree with their users (in general terms and conditions or in a similar way) that they are prohibited from distributing unauthorised audiovisual commercial communications, which includes those mentioned in Article 20 of the TabakerzG (for tobacco products, electronic cigarettes or refill containers or for the benefit of undertakings whose main activity is the manufacture or sale of such products).

Finally, according to Article 6 paragraph 5 of the JMStV, advertising for alcoholic beverages shall not be aimed at children or adolescents nor specifically appeal to children and adolescents through its presentation, nor show them consuming alcohol. This provision applies in German law to all providers of telemedia (which may include VSPs) and concerns advertisements that are marketed, sold, or composed by said providers. Unlike other obligations imposed on VSPs in relation to advertising under Article 98 of the MStV, it is not specified here how telemedia providers have to implement these obligations; in particular, they are not required by law to provide a corresponding function for the labelling of user-generated videos by uploaders. In practice, however, in order to comply with this obligation, VSPs have started to provide a corresponding option with which users can indicate whether their videos are specifically aimed at children and adolescents, in order to then be able to exclude these videos for certain advertising content.

#### 4.7.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 10 paragraph 1 of the HWG stipulates that the advertising of prescription-only medicinal products is only permitted to doctors, dentists, veterinarians, pharmacists and persons who legally trade in these medicinal products. This excludes advertising via other channels, such as on VSPs.

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In accordance with Article 10c paragraph 1 in conjunction with paragraph 2, subparagraph 2 of the TMG and Article 10 of the HWG, VSP providers are obliged to effectively agree with their users (in general terms and conditions or in a similar way) that they are prohibited from distributing unauthorised audiovisual commercial communications, which includes those for prescription-only medical products (both medicinal products available only on prescription and also medicinal products containing psychotropic active substances with a risk of dependence and intended to eliminate insomnia or mental disorders or to influence a person's mood).

#### 4.7.2.2.3. Surreptitious audiovisual commercial communications

Article 98 in conjunction with Article 8 paragraph 7 of the MStV prohibits surreptitious advertising as well as similar practices.

#### 4.7.2.2.4. Subliminal techniques in commercial communications

According to Article 98 in conjunction with Article 8 paragraph 3 sentence 2 of the MStV, advertising shall not use subliminal techniques.

#### 4.7.2.2.5. Prejudice with regard to human dignity

Article 98 in conjunction with Article 8 paragraph 1, subparagraph 1, of the MStV states that advertising shall not prejudice respect for human dignity.

#### 4.7.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

According to Article 98 in conjunction with Article 8 paragraphs 1 and 2 of the MStV, advertising shall not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, or sexual orientation.

#### 4.7.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 98 in conjunction with Article 8 paragraphs 1 and 4 of the MStV states that advertising shall not encourage behaviour prejudicial to health or safety.

#### 4.7.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 98 in conjunction with Article 8 paragraphs 1 and 4 of the MStV stipulates that advertising shall not encourage behaviour grossly prejudicial to the protection of the environment.

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#### 4.7.2.2.9. Causing physical, mental or moral detriment to minors

Article 98 of the MStV and Article 6 paragraph 2 of the JMStV stipulate that advertising shall not cause any physical or moral detriment to children and adolescents.

The JuSchG, which was last amended in Germany in 2021, also covers since then online media. It includes the rule that "content impairing the development of children and adolescents" in films and game programmes must be labelled and service providers who store or provide third-party information for users with commercial intent must take appropriate precautionary measures to protect children and adolescents from such content (this may include the implementation of reporting and redress procedures). If content is impairing the development of children and adolescents, it requires an assessment of several risk factors. Article 10b paragraph 3 of the JuSchG identifies risk factors, in particular risks arising from communication and contact functions, purchase functions, gambling-like mechanisms, mechanisms to promote excessive media use behaviour, the disclosure of inventory and usage data to third parties without consent, and age-inappropriate purchase appeals, in particular through advertising (cross-)references to other media.

Furthermore, other restrictions apply to commercial communications in the presence of children and/or adolescents:

- Appeals to buy or rent goods or services directed at children or adolescents exploiting their inexperience and credulity: Article 98 of the MStV in conjunction with Article 6 paragraph 2, subparagraph 1, of the JMStV stipulates that advertising shall not contain direct appeals to buy or rent goods or services directed at children or adolescents exploiting their inexperience and credulity.
- Encouraging of children or adolescents to persuade their parents or others to purchase the goods or services being advertised: According to Article 98 of the MStV in conjunction with Article 6 paragraph 2, subparagraph 2, of the JMStV, advertising shall not directly encourage children or adolescents to persuade their parents or others to purchase the goods or services being advertised.
- Exploitation of the special trust children or adolescents place in parents, teachers or other persons of trust: Article 98 of the MStV in conjunction with Article 6 paragraph 2, subparagraph 3, of the JMStV states that advertising shall not exploit the special trust children or adolescents place in parents, teachers or other persons of trust.
- Showing children or adolescents in dangerous situations: Article 98 of the MStV in conjunction with Article 6 paragraph 2, subparagraph 4, of the JMStV provides that advertising shall not unreasonably show children or adolescents in dangerous situations.
- Foods containing nutrients and substances not recommended in the overall diet: according to Article 98 of the MStV in conjunction with Article 6 paragraph 7of the JMStV, VSP providers shall take appropriate measures to effectively reduce the impact on children of advertising disseminated in the context of children's programmes for foods containing nutrients and substances with a nutritional or

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physiological effect, in particular fat, trans-fatty acids, salt, sodium, sugars, excessive intake of which in the overall diet is not recommended.

- Advertising of content extremely harmful to minors: Article 6 paragraph 1 of the JMStV, in conjunction with Article 4 provides that advertising for content that has been indexed (media content that has been banned or restricted from distribution by the Federal Review Board for Media Harmful to Young Persons for reasons of the protection of minors)[144] is only permissible under the conditions that also apply to the distribution of the content itself. Advertising for content that is absolutely prohibited under the JMStV (in particular content relevant under provisions of criminal law, glorification of violence and war, violations of human dignity and child pornography) is prohibited. The List of Media Harmful to Young Persons (section 18 of the Youth Protection Act) may not be distributed or made accessible for the purpose of advertising. In advertising, it is prohibited to indicate that proceedings for the inclusion of an offer or a carrier medium with the same content in the list pursuant to section 18 of the Youth Protection Act are pending or have been pending. This provision applies in German law to all providers of telemedia (which may include VSPs) and concerns advertisements that are marketed, sold, or composed by said providers.
- Content impairing the development of children and adolescents: Article 6 paragraph 3 of the JMStV states that advertising content likely to impair the development of children or adolescents into independent and socially competent personalities must be carried out separately from offers aimed at children or adolescents. This provision applies in German law to all providers of telemedia (which may include VSPs) and concerns advertisements that are marketed, sold, or composed by said providers.
- Exploitation of inexperience of children and adolescents: According to Article 6 paragraph 4 of the JMStV, advertising which is also directed at children or adolescents or in which children or adolescents are placed as actors must not harm the interests of children or adolescents or exploit their inexperience. This provision applies in German law to all providers of telemedia (which may include VSPs) and concerns advertisements that are marketed, sold, or composed by said providers.

#### 4.7.2.2.10. Other

Thematic placement: according to Article 98 in conjunction with Article 8 paragraph 7 of the MStV, thematic placement as well as similar practices shall be prohibited. The term “thematic placement” is concretised in Article 3, subparagraph 13, of the Advertising Statute and means the treatment of topics in the editorial content in the interest of or at the instigation of third parties, in particular if the provider receives or is promised a fee or similar consideration for this.

[144] https://www.bzkj.de/bzkj/meta/en.

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Since November 2020, with the introduction of the MStV, there are new rules for media intermediaries, user interfaces and media platforms on signal integrity, transparency, non-discrimination and accessibility that have a direct or indirect influence on online commercial communication, but not specifically on VSPs. Further rules addressing new (online) advertising techniques so far only exist for broadcasting in the MStV and in the Advertising Statute. However, the state media regulatory authorities are publishing guidance documents which are intended to help influencers including channel operators on VSPs to understand their legal obligations with regard to online advertising. Such guidance can be found, for example, in the Guidance on the labelling of advertising in online media (*Leitfaden der Medienanstalten: Werbekennzeichnung bei Online-Medien*). It addresses some of the common new advertising practices in the online sector such as labelling obligations in the area of advertising links or tags, affiliate links, discount codes as well as reposts and categorises them according to the relevant legal framework.

## 4.7.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.7.3.1. Sponsorship

In accordance with Article 22 in conjunction with Article 10 paragraph 1 sentence 2 of the MStV, sponsorship is applicable to broadcasting only and was not declared applicable for VSPs. However, there are rules in other sectoral legislation which at least indirectly impact VSPs (and user-generated content provided on VSPs) such as the prohibition of sponsorship promoting tobacco products, the prohibition against sponsoring an event or activity with the aim or the direct or indirect effect of promoting the sale of tobacco products, electronic cigarettes or refill containers if the event or activity involves more than one member state of the European Union, takes place in more than one member state of the European Union, or the event or activity has any other cross-border effect.

Although the special provision on sponsorship does not apply to VSPs, the more general rule in Article 22 paragraph 1 of the MStV is applicable insofar as VSPs are to be regarded as telemedia. This provision covers (the broader concept of) telemedia, i.e. all electronic information and communication services that are not broadcasting or telecommunications or telecommunications-based services, which may include both VSPs and the individual user channels distributed via VSPs. It provides that advertising (i.e. including sponsorship) shall be clearly recognisable as such and shall be distinctly separate from the other parts of the offers provided. In the case of advertising of a political nature, subliminal techniques shall not be used and, in the case of advertising of a political, ideological, or religious nature, the advertiser or commissioning party (the sponsor) must

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be clearly indicated in an appropriate manner. Article 8 of the MStV then refers to the applicability of Article 10 paragraph 1 sentence 2 of the MStV according to which, alongside or in place of the name of the sponsor, the company logo or a trademark, another symbol of the sponsor, a reference to their products or services or a similar distinctive sign may be shown in order to comply with this obligation to label.

#### 4.7.3.2. Product placement

Article 98 in conjunction with Article 8 paragraph 7 of the MStV declares that the provisions on product placement that apply to broadcasting are also applicable to VSPs.

Article 8 paragraph 7 states that product placement is permitted, except in news programmes and programmes intended for political information, consumer programmes, regional window services according to Article 59, window services according to Article 65, programmes with religious content, and children's programmes. For other programmes that contain product placement, they are allowed providing that they respect certain conditions. Furthermore, there shall be clear information concerning product placement, meaning that it shall be identified at the beginning and at the end of a programme as well as at its continuation following an advertising break.

Article 8 paragraph 7 sentence 6 of the MStV further states that:

> *Obligatory identification shall not apply for programmes not produced by the broadcaster itself or produced or commissioned by a company affiliated to the broadcaster, if it is not possible to establish at reasonable expense whether they contain product placement; information to this effect shall be given.*

Details of general obligations for VSP providers are the same as under 4.7.2.2, except that it should be pointed out that this part of the paragraph which is referred to in its entirety in Article 98 paragraph 1 of the MStV was clearly established with broadcasters in mind and programmes produced by such broadcasters or by third parties. As for VSPs, these general obligations will have to be read in conjunction with the VSP's obligation to provide a function that allows users who upload user-generated videos to label audiovisual commercial communications, as per Article 98 of the MStV and Article 6 of the TMG. Therefore, this functionality would only be one possible measure to be regarded as a reasonable measure for VSPs within the meaning of Article 8 (7) sentence 6.

### 4.7.4. Obligations regarding (v)blogs and (v)blogging

There are no specific provisions on (v)blogs, indeed this expression is not clearly defined in German law. However, as (v)blogs are regularly distributed online as telemedia (all electronic information and communications services, as far as they are not telecommunications services or broadcasting). Therefore, the following advertising rules from the MStV, the TMG and the JMStV apply:

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- According to Article 22 paragraph 1 of the MStV, advertising shall be clearly recognisable as such and shall be distinctly separate from the other parts of the offers provided. Advertising shall not use subliminal techniques. In the case of advertising of a political, ideological, or religious nature, the advertiser or commissioning party must be clearly indicated in an appropriate manner.
- According to Article 6 paragraph 1 of the TMG, commercial communications in telemedia must be clearly recognisable as such and the natural or legal person on whose behalf commercial communications are made, must be clearly identifiable. Promotional offers such as discounts, giveaways and gifts as well as prize promotions and sweepstakes must be clearly identifiable as such and their terms and conditions must be easily accessible and clearly and unambiguously stated.
- Telemedia providers have to comply with the requirements of the JMStV when it comes to advertising. Pursuant to Article 6 paragraph 1, special provisions apply to advertising for services which have been "indexed" (i.e. put on a list of fully or partially prohibited content) according to the JuSchG. In addition, according to Article 6 paragraph 2 of the JMStV, advertising shall not cause any physical or moral detriment to children and adolescents, nor shall it exploit their inexperience or credulity, encourage them to persuade their parents to purchase goods/services, exploit the trust children/adolescents place in parents/teachers or other persons of trust or unreasonably show children or adolescents in dangerous situations.

Furthermore, German media law also provides for certain subcategories of telemedia, for which stricter rules apply due to their similarity to traditional media (television, radio or press). These are broadcast-like telemedia, television-like telemedia and telemedia with journalistic-editorial content. According to the definition in Article 2 paragraph 1, subparagraph 13, of the MStV, 'broadcast-like telemedia' means:

> *telemedia with content that is similar to radio or television in terms of form and design and which is made available from a catalogue specified by a provider for individual demand at a time selected by the user (audio and audiovisual media services on demand); contents include, in particular, radio plays, feature films, series, reports, documentaries, entertainment programmes, information programmes, and children's programmes.*

Thus, this includes on-demand audiovisual media services as well as similar services in the sector.

Typical (v)blogs will neither be qualified as broadcast-like nor television-like telemedia, as the required catalogues or programmes with qualified content (radio plays, feature films, series, documentaries, etc.) and therefore the comparability with broadcasting offers will be lacking. However, this is highly dependent on the precise content and design of the (v)blog. If such a similarity to broadcasting can be assumed for individual (v)blogs such as certain channels on VSPs due to their specific design and content in the overall picture, the advertising rules applicable to private broadcasting would apply, i.e. Articles 8, 10 and 11 of the MStV.

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## 4.7.5. Other relevant information

N/A.

## 4.7.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.7.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

According to Article 22 paragraph 1 sentence 2 of the MStV, in the case of advertising of a political, ideological or religious nature, the advertiser or client must be clearly indicated in an appropriate manner. This provision applies in Germany to all providers of telemedia which may include VSPs.

### 4.7.6.2. Gambling, betting, betting tipsters, etc.

The relevant rules on gambling and betting are included in the GlüStV 2021, recently extensively amended with regard to aspects of the online sector, providing, i.a., rules for the organisation, conduct and brokerage of games of chance in public.

The provision relevant for VSPs is Article 5 which contains rules for commercial communications and applies to all games of chance. Accordingly, advertising and sponsorship for prohibited games of chance (i.e. for which the required licence has not been obtained in Germany) is prohibited regardless of where and how the advertising takes place (Article 5 paragraph 7). For permitted games of chance, however, pursuant to Article 5 paragraph 1, providers may advertise (including sponsorship) in principle. They may also entrust third parties with carrying out the advertising. But in addition, the licence, which is granted by the competent state authorities pursuant to Article 4, must as a prerequisite already specify rules on the design of advertising as well as on mandatory information for public games of chance, in particular on television and on the internet, including television-like telemedia and video-sharing services.

Article 5 paragraph 2 further regulates general requirements for advertising (e.g., games of chance shall not be excessive) and special features shall be highlighted for individual games of chance. Advertising may not be directed at minors or comparably vulnerable target groups; as far as possible, minors shall be excluded as recipients of

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advertising. Article 5 paragraph 6 further supplements this to the effect that no variable remuneration, in particular remuneration dependent on turnover, deposits or stakes, may be agreed or paid for advertising for games of chance on the internet in which banned players are not permitted to participate pursuant to Article 8 paragraph 2 (in the GlüStV there is a player ban system for the prevention of gambling addiction), in particular in the form of affiliate links. Finally, between 6 a.m. and 9 p.m., no advertising is allowed on the internet for virtual slot machine games, online poker and online casino games (Article 5 paragraph 3).

#### 4.7.6.3. Environmental or “green” claims for products

There are no specific provisions regarding environmental or "green" claims. However, Article 98 in conjunction with Article 8 paragraph 1, subparagraph 3, of the MStV contains a prohibition against misleading advertising and advertising prejudicing the interests of consumers. As so-called greenwashing (i.e. false or deceptive claims about the sustainability of products) can be misleading advertising in this sense, these provisions may also be relevant in this case.

Details of general obligations for VSP providers are the same as under 4.7.2.2.

#### 4.7.6.4. Other

N/A

### 4.7.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

There are no explicit or specific references to systems of self- and co-regulation included in German media law in the context of commercial communication on VSPs. There are systems of co-regulation enshrined in the law applicable to telemedia (which may include VSPs), however, these do not relate to commercial communication, but to due diligence obligations and youth media protection. There are also systems of self-regulation in the field of commercial communications that apply across all media and thus also to VSPs, but these are instruments pertaining to the private sector and not enshrined in law. The most important instrument of self-regulation is the cross-media activity of the German Advertising Council, which, however, is purely driven and prompted by the private sector.

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The advertising code of the German Advertising Council, which contains basic rules and specific codes of conduct for certain areas, is updated regularly.

Also worth noting are initiatives that various VSPs are taking on their own. For example, YouTube, in its help section on labelling videos as advertising (paid product placements, sponsorships and recommendations), offers explanations for creators on how and under what conditions videos must be labelled in order to make the labelling mechanism created by YouTube transparent. These explanations were updated for Germany in January 2021. However, they are pure self-regulation.

On the part of the media regulatory authorities, an increasing number of guidance documents are being published, especially for the area of online media, in order to make the partly complex legal framework that is applicable to this sector more comprehensible for practitioners. It should be emphasised that such guidance merely clarifies and explains the existing legal framework and does not provide any further concretisation or legally binding interpretation.

Guidance is predominantly aimed less at platforms such as VSPs or their providers than at the creators of user-generated content who operate on these platforms and also fall under the obligations of German media law. For VSPs, however, this is nevertheless very relevant insofar as they depend on the (competent) cooperation of their users to fulfil their own legal obligations.

#### 4.7.7.1. Self- and co-regulatory bodies

##### 4.7.7.1.1. Context of establishment and legal background

N/A.

##### 4.7.7.1.2. Stakeholders involved

N/A.

##### 4.7.7.1.3. Scope and objectives

N/A.

##### 4.7.7.1.4. Code(s) of conduct

N/A.

##### 4.7.7.1.5. Role of the (self-)regulatory bodies

N/A.

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4.7.7.1.6. Period of activity (if limited)

N/A.

4.7.7.1.7. Role of the regulatory authority in a co-regulatory system:

N/A.

*4.7.7.1.7.1. Regulatory body*

N/A

*4.7.7.1.7.2. Co-regulatory scheme*

N/A

*4.7.7.1.7.3. Relationship and roles of stakeholders*

N/A

### 4.7.7.2. Monitoring/evaluation, compliance and sanctioning powers

N/A

## 4.7.8. Cross-sector and cross-border collaboration

According to Article 111 of the MStV, in fulfilling their tasks, the state media authorities shall cooperate with the Regulatory Authority for Telecommunications and with the Federal Cartel Office. In response to an enquiry by the Regulatory Authority for Telecommunications or the Federal Cartel Office, the state media authorities shall provide findings which are required for these authorities to fulfil their tasks. This applies accordingly to the cooperation with the state competition authorities and the gaming supervisory authorities.

At the cross-border level the German state media authorities also cooperate within the European Regulators Group for Audiovisual Media Services (ERGA) and the European Platform of Regulatory Authorities (EPRA).

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### 4.7.9. Update on plans and practices related to new obligations of VSPs

The legislative procedures that have adapted the legal framework for VSPs, in particular the establishment of the new MStV, the reforms of the JuSchG and the JMStV as well as the amendments to the TMG and the Network Enforcement Act,[145] have been completed.

Furthermore, on 22 October 2021, the Second Interstate Treaty amending the Interstate Media Treaty (*Zweiter Staatsvertrag zur Änderung medienrechtlicher Staatsverträge*)[146] was agreed upon. It includes initial adjustments to the MStV (the First Interstate Treaty amending the MStV never actually entered into force) and is mainly aimed at implementing Directive (EU) 2019/882 on barrier-free accessibility requirements. This second amendment is currently in the process of ratification in the parliaments of the Länder and will enter into force as soon as the last ratification has been deposited, at the latest by the end of 2022.

In addition, the Statute regulating the Arbitration Body pursuant to Article 99 of the Interstate Media Treaty (*Satzung über die Schlichtungsstelle gemäß § 99 Medienstaatsvertrag*)[147] came into force on 15 April 2021. According to the Telemedia Act, VSPs are obliged to provide a complaints mechanism so that users can flag up specific illegal content. As part of this complaints procedure, Article 99 of the MStV provides that the state media authorities are to establish a joint body for the settlement of disputes between complainants, or users and providers of video-sharing services affected by the complaint about measures that the providers of video-sharing services have implemented or omitted in the procedure pursuant to the TMG. For this purpose, the state media authorities have to regulate further details in joint statutes. The Statute regulating the Arbitration Body pursuant to Article 99 of the Interstate Media Treaty specifies not only the composition and organisation of the Arbitration Body but also the workflow and procedural principles of the arbitration procedure.

There are currently no other ongoing legislative procedures to amend the legal framework for VSPs. Rather, it is currently a matter of implementing the rules in practice. On the part of the media regulatory authorities, it can be observed that they are increasingly publishing guidance documents, especially for the area of online media, in order to make the partly complex legal framework that is applicable to this sector more comprehensible for practitioners, especially laypersons. Recently published guidance or revised guidance for the online sector concerned includes, in particular, a guide to sweepstakes in social

[145] This has already been covered extensively in the German Country Report in: *Mapping of national rules applicable to video-sharing platforms*: Illegal and harmful content online, European Audiovisual Observatory, Strasbourg, 2021, https://rm.coe.int/mapping-on-video-sharing-platforms-2021-full-report/1680a43575.
[146] https://www.land.nrw/media/25318/download?attachment.
[147] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Satzungen_Geschaefts_Verfahrensordnungen/VSD-Satzung.pdf.

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media offerings,[148] a guide to advertising labelling in online media,[149] a factsheet on political advertising[150] and a factsheet on journalistic due diligence in online media.[151] It should be emphasised that such guidance merely clarifies and explains the existing legal framework and does not provide any further concretisation or legally binding interpretation. These guidance documents are predominantly aimed at the creators of user-generated content who operate on platforms and fall under the obligations of German media law and only to a lesser extent at the platforms, such as VSPs or their providers. For VSPs, however, this is nevertheless very relevant insofar as they depend on the (competent) cooperation of their users to fulfil their own legal obligations. The regulations on commercial communications are an illustrative example of this: the mechanism that VSPs have to provide, which allows users to indicate whether the content they upload contains advertising, presupposes with regard to its practical effectiveness that uploaders also know what advertising is and when it is subject to labelling obligations (e.g., criteria for sponsorship, product placement, etc.). This is explained, for example, in the guidance of the media regulatory authorities on advertising labelling in online media.

## 4.7.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- Leibniz-Institut für Medienforschung Hans-Bredow-Institut: Hofmann/Kettemann (eds.), Plattformregulierung im Superwahljahr 2021, Ergebnisse rechtswissenschaftlicher, sozialwissenschaftlicher und datenwissenschaftlicher Studien zu Parteien und Plattformen im Bundestagswahlkampf, Arbeitspapier des Hans-Bredow-Instituts, Projektergebnisse Nr. 61,[152] 2022.
- Kommission für Jugendmedienschutz (KJM): Enke/Bigl/Schubert/Welker, Studie zu Werbepraktikenund direkten Kaufappellen an Kinder in sozialen Medien. Ein Forschungsprojekt im Auftrag der KJM,[153]2021.

[148] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/DLM-Leitfaden_Gewinnspiele_Social_Media.pdf.
[149] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua_Leitfaden_Medienanstalten_Werbekennzeichnung_Online-Medien.pdf.
[150] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua-Checkliste_politische_Werbung_2021-07-20.pdf.
[151] https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua_Merkblatt_Journalismus_im_Internet.pdf.
[152] https://doi.org/10.21241/ssoar.76248.v2.
[153]https://www.kjm-online.de/fileadmin/user_upload/KJM/Publikationen/Studien_Gutachten/210811_Abschlussbericht_KJM.pdf.

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### 4.7.11. Data compilation

This factsheet is based on data compiled by Christina Etteldorf, Senior Research Scientist, Institut für Europäisches Medienrecht (EMR).

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DK

# 4.8. DK – Denmark – National legal summary[154]

## 4.8.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Bekendtgørelse af lov om radio- og fjernsynsvirksomhed m.v.[155] (Act on Radio and Television Broadcasting).
- *Markedsføringsloven*[156] (Marketing Practices Act).[157]
- *E-handelsloven*[158] (Act on E-Commerce).
- *Bekendtgørelse om videodelingsplatformstjenester*[159] (Statutory Instrument on Video-sharing Platform Services).
- Bekendtgørelse om reklamer og sponsorering m.v. af programmer i radio, fjernsyn og on demand audiovisuelle medietjenester samt indgåelse af partnerskaber[160] (Statutory Instrument on Advertising and Sponsorship, etc. of programmes on radio, television and on-demand audiovisual services and partnerships).

## 4.8.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

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[154] The factsheet on Denmark incorporates feedback received from Søren F. Jensen, Senior Legal Advisor at the Danish Agency for Culture and Palaces during the checking round with the national regulatory authorities.
[155] https://www.retsinformation.dk/eli/lta/2020/1350.
[156] https://www.retsinformation.dk/eli/lta/2022/866.
[157] English version (from 2013 – the Act has been amended since then):
https://www.consumerombudsman.dk/media/14553/markedsfoeringsloven-lbkg-2013.pdf.
[158] https://www.retsinformation.dk/eli/lta/2002/227.
[159] https://www.retsinformation.dk/eli/lta/2020/1158.
[160] https://www.retsinformation.dk/eli/lta/2020/1155.

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#### 4.8.2.1. Definitions

**Table 34. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | No. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | No. |
| **Misleading commercial communication** | No. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other: (Specify)** | No. |

*Source: Danish response to European Audiovisual Observatory standardised survey*

##### 4.8.2.1.1. Audiovisual commercial communications

The Statutory Instrument on Video-sharing Platform Services (VSPs) does not define audiovisual commercial communication as such. However, Article 2 paragraph 6 of the Act on E-Commerce regarding online trading defines commercial communication as:

> *Any kind of communication directly or indirectly aimed at advancing the sale of commodities or services or at establishing an image for a company, an organisation or a person who carries out commercial, industrial or trade activities or a profession governed by legislation.*

It should be noted that Article 3 (which refers to Article 2 paragraph 1) of the Statutory Instrument on Video-sharing Platform Services excludes non-commercial activities (a term which is found in the legislation and which refers to non-financial activities) from the definition of a VSP service, as follows:

> *(1) The definition of a video-sharing platform service, cf. sec. 2, no. 1, does not cover non-financial activities, including offers of audiovisual content on private websites and non-commercial interest groups.*
> *(2) When a part that can be separated from the service constitutes a video-sharing platform service as defined in Article 2, no. 1, only that part is covered by the Statutory instrument, and only in respect of programmes and user-generated videos. Video clips embedded in editorial content in electronic editions of newspapers and magazines, and animations such as GIFs, are not covered by the Statutory instrument.*

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#### 4.8.2.1.2. Television advertising

There is no definition of television advertising.

#### 4.8.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.8.2.1.4. Surreptitious commercial communication

There is no definition of surreptitious commercial communication.

The Statutory Instrument on Advertising and Sponsorship and the Statutory Instrument on Video-sharing Platform Services include rules on the fact that the advertising must be clearly identifiable as such.

#### 4.8.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication.

The Statutory Instrument on Advertising and Sponsorship and the Marketing Practices Act include provisions on the requirement that advertisements shall respect generally observed ethical standards for advertisements and should be legal, proper, decent and truthful and be designed with a due sense of social responsibility.

#### 4.8.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.8.2.1.7. Sponsorship

Article 79 paragraph 1 of the Act on Radio and Television Broadcasting defines sponsorship by transposing the text of the revised AVMSD verbatim, as follows:

> *Sponsorship of programmes means any kind of contribution of direct or indirect subsidies to the financing of programmes on radio, television, including tele-text pages, and on-demand audiovisual media services by a natural person or legal entity not themselves broadcasting, offering or producing programmes on radio, television or on-demand audiovisual media services, films, phonograms, etc., with a view to promoting their name, logo, image, activities or products.*

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A similar definition of sponsorship of programmes can be found in Article 24 paragraph 1 of the Statutory Instrument on Advertising and Sponsorship and in Article 2 paragraph 5 of the Statutory Instrument on Video-sharing Platform Services.

#### 4.8.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.8.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.8.2.1.10. Product placement

Article 85a paragraph 2 of the Radio and Televisions Act defines product placement as follows:

> *In this Act product placement means display or mention of a commodity, a service or a trademark as part of a programme against payment or other consideration.*

A similar definition of product placement can be found in Article 2 paragraph 8 of the Statutory Instrument on Video-sharing Platform Services:

> *a display of or reference to a good, service or trade mark in the context of an image programme or user-generated video in return for payment or for similar consideration.*

#### 4.8.2.1.11. Other definitions

With regard to direct marketing techniques, Article 10 paragraph 1 of the Marketing Practices Act makes a reference to these techniques by prescribing that:

> *A trader must not approach anyone by means of electronic mail, an automated calling system or a facsimile machine (fax) for the purposes of direct marketing unless the party concerned has given his prior consent. The trader must allow free and easy revocation of consent.*

This implies that unsolicited marketing by means of e.g., electronic mail is prohibited, except in situations covered by exemptions mentioned in paragraphs 2 or 3 of Article 10, and that direct marketing towards natural persons by other means of remote communication must be made in such a way that the recipients can easily decline it.

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#### 4.8.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including the VSP providers related to commercial communications.

As a general note, it should be stressed that the obligations of the VSPs in relation to commercial communications can be found in Article 13 of the Statutory Instrument on Video-sharing Platform Services, in respect of advertising, sponsorship and product placement marketed, sold or organised by the providers, the details of which and the applicable restrictions can be found further down in this section. Under Article 14 paragraph 1 of the Statutory Instrument on Video-sharing Platform Services, video-sharing platforms must take appropriate measures to comply with the requirements set out in Article 13 paragraphs (2)-(8) as to commercials, sponsoring and product placement that is not marketed, sold or organised by the platforms.

Besides, the scope of application of the two Statutory instruments is the following:

- The Statutory Instrument on Video-sharing Platform Services applies to providers of VSP services that fall under Danish authority.
- The Statutory Instrument on Advertising and Sponsorship, etc., of programmes on radio, television and on-demand audiovisual services and partnerships applies to advertising and sponsorship, etc., of programmes on radio, television and on-demand audiovisual media services as well as product placement in programmes on television and on-demand audiovisual media services.

##### 4.8.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

VSPs must comply with the requirement set out in Article 13 paragraph 5 of the Statutory Instrument on Video-sharing Platform Services which prohibits “all kinds of advertising, sponsorship and product placement of cigarettes and other tobacco products and of electronic cigarettes and refill containers”, and the requirements in Article 13 paragraph 6 which prescribes that:

> *Advertising, sponsorship and product placement aimed at promoting the sale of alcoholic beverages may not be directed specifically at minors and may not encourage excessive consumption of such beverages.*

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#### 4.8.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 13 paragraph 7 of the Statutory Instrument on Video-sharing Platform Services prohibits advertising, sponsorship and product placement for medicinal products and medical treatment available only on prescription.

#### 4.8.2.2.3. Surreptitious audiovisual commercial communications

Article 13 paragraph 2 of the Statutory Instrument on Video-sharing Platform Services requires advertising, sponsorship and product placement to be clearly identifiable as such and prohibits covert advertising, sponsorship and product placement.

#### 4.8.2.2.4. Subliminal techniques in commercial communications

The use of subliminal techniques in advertising, sponsorship and product placement is prohibited under Article 13 paragraph 3 of the Statutory Instrument on Video-sharing Platform Services.

#### 4.8.2.2.5. Prejudice with regard to human dignity

Advertising, sponsorship and product placement must not damage respect for human dignity according to Article 13 paragraph 4, subparagraph 1, of the Statutory Instrument on Video-sharing Platform Services.

#### 4.8.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

Article 11 paragraph 2 of the Statutory Instrument on Video-sharing Platform Services requires video-sharing platforms to:

> *take appropriate measures to protect the general public from programmes, user-generated videos, advertising, sponsorship and product placement inciting violence or hatred directed against a group of persons or a member of a group on any of the grounds referred to in Article 21 of the EU Charter of Fundamental Rights.*
> [161]

In addition, Article 13 paragraph 4, subparagraph 2 prescribes that advertising, sponsorship and product placement must not "contain or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;".

[161] Which includes discrimination on the following grounds: "sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation" and on nationality.

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#### 4.8.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour that is detrimental to health or safety is prohibited in advertising, sponsorship and product placement under Article 13 paragraph 4, subparagraph 3 of the Statutory Instrument on Video-sharing Platform Services.

#### 4.8.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Encouraging behaviour that is highly detrimental to environmental protection is prohibited in advertising, sponsorship and product placement under Article 13 paragraph 4, subparagraph 4 of the Statutory Instrument on Video-sharing Platform Services.

#### 4.8.2.2.9. Causing physical, mental or moral detriment to minors

Article 11 paragraph 1 of the Statutory Instrument on Video-sharing Platform Services requires video-sharing platforms to: "take appropriate measures to protect minors from programmes, user-generated videos, advertisements, sponsorship and product placement that may harm their physical, mental or moral development." In addition, specific requirements pertaining to the protection of minors in advertising, sponsorship and product placement are set out in Article 13 paragraph 8 which prescribes:

> *Advertising, sponsorship and product placement must not cause physical, mental or moral detriment to minors. Advertising, sponsorship and product placement must not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons or show minors in dangerous situations without due reason.*

In relation to the protection of personal data of minors, Article 12 paragraph 3 of the Statutory Instrument on Video-sharing Platform Services makes a reference to direct marketing, profiling and behaviourally targeted advertising, as follows:

> *Personal data of minors collected or otherwise generated by video-sharing platform service providers under the age control and parental control systems referred to in paragraph (1), points (4) and (6), must not be processed for commercial purposes such as direct marketing, profiling or behavioural advertising.*

Article 11 paragraph 3 of the Marketing Practices Act places restrictions on trading practices directed at minors, as follows:

> *Trading practices directed at children and young people under the age of 18 must not take place on or via social media profiles belonging to or appearing to belong to children and young people under the age of 15. Also, trading practices directed at children and young people under the age of 18 on social media must not in other ways use children and young*

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*people under the age of 15, unless such use is a natural feature in the illustration or display of a product.*

#### 4.8.2.2.10. Other

N/A.

## 4.8.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.8.3.1. Sponsorship

All the restrictions set out by Article 13 of the Statutory Instrument on Video-sharing Platform Services which are mentioned in section 4.8.2.2. of this factsheet are applicable to sponsorship as well.

### 4.8.3.2. Product placement

All the restrictions set out by Article 13 of the Statutory Instrument on Video-sharing Platform Services which are mentioned in section 4.8.2.2. of this factsheet are applicable to product placement as well.

## 4.8.4. Obligations regarding (v)blogs and (v)blogging

Vlogs or blogs are not considered to be audiovisual media services. The determining factor is whether the blog or vlog itself is hosted on an audiovisual media service.

However, advertising on (v)blogs and (v)bloggers on social media are regulated under the Marketing Practices Act and must comply with the requirements of that Act, including Articles 5 and 6 on misleading actions and surreptitious commercial communications.

## 4.8.5. Other relevant information

N/A.

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## 4.8.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.8.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.8.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue.

### 4.8.6.3. Environmental or "green" claims for products

The Marketing Practices Act applies to advertisers and does not specifically concern VSPs. However, it should be noted that Articles 5 and 6 on misleading actions in commercial communication also apply to environmental and "green" claims relating to the way products are produced, packaged, distributed, used, consumed and/or disposed of. More specifically, an advertiser's commercial practices must not:

- contain false information or in any other way, including general presentation, deceive or be likely to deceive the average consumer, even if the information is factually correct (Article 5)
- be misleading by omitting or concealing material information or by providing material information in an unclear, incomprehensible or untimely manner (Article 6).

In addition, under Article 13, the advertiser must be able to provide evidence of the accuracy of his/her factual claims.

### 4.8.6.4. Other

N/A.

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## 4.8.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.8.7.1. Self- and co-regulatory bodies

#### 4.8.7.1.1. Context of establishment and legal background

N/A.

#### 4.8.7.1.2. Stakeholders involved

N/A.

#### 4.8.7.1.3. Scope and objectives

N/A.

#### 4.8.7.1.4. Code(s) of conduct

N/A.

#### 4.8.7.1.5. Role of the (self-)regulatory bodies

N/A.

#### 4.8.7.1.6. Period of activity (if limited)

N/A.

#### 4.8.7.1.7. Role of the regulatory authority in a co-regulatory system

N/A.

##### *4.8.7.1.7.1. Regulatory body*

N/A.

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#### *4.8.7.1.7.2. Co-regulatory scheme*

N/A.

#### *4.8.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.8.7.2. Monitoring/evaluation, compliance and sanctioning powers

The Radio and Television Board[162] alone administers the Act on Radio and Television Broadcasting, the Statutory Instrument on Video-sharing Platform Services and the Statutory Instrument on Advertising and Sponsorship, etc., of programmes on radio, television and on-demand audiovisual services and partnerships.

The Danish legal framework does not include self- or co-regulatory measures regarding commercial communications on video-sharing platforms. It is envisaged that the Radio and Television Board[163] is the competent regulatory body vis-à-vis VSPs, in terms of their registration and enforcement of legal obligations. The Radio and Television Board is the competent regulatory body vis-à-vis VSPs, according to Article 42a. of the Radio and Television Act:

> *The Radio and Television Board shall have the following duties in relation to video-sharing platform services:*
> *1) to register providers of video-sharing platform services and to supervise the undertaking, cf. Article 51 a.*
> *2) to issue notices of infringements of the Act and regulations made under the Act.*
> *3) to decide on measures for the protection of minors and the public from content inciting to violence or hatred or to commit acts of terrorism, or from content containing child pornography, racism or xenophobia, pursuant to Article 51 b (2) and (3).*
> *4) to decide on measures and regulations concerning the identification and content of advertisements, sponsorship and product placement on video-sharing platform services, pursuant to Article 51 b, paragraph 4.*
> *5) to decide on the suspension of the undertaking pursuant to Article 51c(1).*

Similarly, Article 16 of the Statutory Instrument on Video-sharing Platform Services provides that:

> *(1) The Radio and Television Board shall verify that video-sharing platform service providers, cf. Section 8(1), take appropriate measures under the provisions of Sections 11, 12, 14 and 15 and comply with the provisions of Sections 8, 9 and 13.*
> *(2) The Board shall prosecute infringements of the provisions referred to in paragraph (1).*

[162] Radio- og tv-nævnet, https://slks.dk/omraader/medier/naevn-og-udvalg/radio-og-tv-naevnet..
[163] Radio- og tv-nævnet, https://slks.dk/omraader/medier/naevn-og-udvalg/radio-og-tv-naevnet..

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*(3) The Board shall adopt decisions on the appropriate measures providers are obliged to take under the provisions of Sections 11, 12, 14 and 15 and on whether providers comply with the provisions of Sections 8, 9 and 13.*

According to the Radio and Television Act Article 51 a(1), VSPs must register for services which fall under the Danish authority.

## 4.8.8. Cross-sector and cross-border collaboration

N/A.

## 4.8.9. Update on plans and practices related to new obligations of VSPs

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to the new VSPs' obligations.

## 4.8.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- The Danish Ministry of Culture, *Mediernes udvikling i Danmark* 2021[164]
- *Juristen, Skjult reklame*, 2020 Research paper on surreptitious advertising by Professor, Dr. jur., PhD., Caroline Heide-Jørgensen
- *Festskrift til Palle Bo Madsen, Markedsføring i medier*, 2021, Research paper on commercial communications in media by Professor, PhD., Søren Sandfeld Jakobsen

## 4.8.11. Data compilation

This factsheet is based on data compiled by Terese Foged, Attorney and Partner of Lassen Ricard law firm.

[164] https://mediernesudvikling.kum.dk/fileadmin/user_upload/dokumenter/medier/Mediernes_udvikling/2021/Branche/Annonceomsaetning/Annonceomsaetning_2021_ny.pdf.

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# 4.9. EE – Estonia – National legal summary[165]

## 4.9.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Meediateenuste seadus*[166] (Media Services Act).[167]
- *Reklaamiseadus*[168] (Advertising Act).[169]
- *Income Tax Act*[170] (Tulumaksuseadus).[171]

Self- and co-regulatory instruments:

- *Eesti Meediaettevõtete Liit – Reklaami ja ajakirjandusliku sisu eristamise hea tava*[172] (The Estonian Media Enterprises Association: The good practice for distinguishing between advertising and journalistic content - Good Practice).

Soft law:

- *Tarbijakaitse ja Tehnilise Järelvalve Amet* (TTJA) universaalsed suunised reklaami edastamiseks[173] (TTJA universal guidelines for ad delivery).[174]
- *TTJA Juhend Hasartmängu Reklaam*[175] (TTJA Guidelines on Gambling Advertising).

## 4.9.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual

[165] The factsheet on Estonia incorporates the feedback received from Peeter Sookruus, Advisor of the Information Society Division at the Consumer Protection and Technical Regulatory Authority during the checking round with the national regulatory authorities.
[166] https://www.riigiteataja.ee/akt/106012011001?leiaKehtiv.
[167] https://www.riigiteataja.ee/en/eli/514032022003/consolide.
[168] https://www.riigiteataja.ee/akt/101072020013?leiaKehtiv.
[169] https://www.riigiteataja.ee/en/eli/504032022001/consolide.
[170] https://www.riigiteataja.ee/akt/123122013023.
[171] https://www.riigiteataja.ee/en/eli/530012014003/consolide.
[172] https://meedialiit.ee/hea-tava-lepped/#1572471641775-750b457b-d3f8.
[173] https://ttja.ee/ariklient/tarbija-teemad/tarbijakaitsenouded-tegevusalale/reklaam.
[174] https://www.ttja.ee/en/business-client/consumer-topics/consumer-protection-requirements/advertising.
[175] https://www.ttja.ee/media/714/download.

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Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

#### 4.9.2.1. Definitions

**Table 35. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | Yes, indirectly. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other** | N/A. |

*Source: Estonian response to European Audiovisual Observatory standardised survey*

##### 4.9.2.1.1. Audiovisual commercial communications

Article 25 paragraph 1 of the Media Services Act defines audiovisual commercial communications as follows:

> *A commercial communication is information presented by means of sound or image that is intended to promote though directly or indirectly the goods, services, or image of a natural or legal person engaged in economic activities and accompanies the programme or user-generated video, or is included therein, in return for payment or other similar consideration or for self-promotional purposes.*

##### 4.9.2.1.2. Television advertising

Article 28 paragraph 1 of the Media Services Act defines television advertising as follows:

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*Television and radio advertising means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a legal or natural person in connection with economic or professional activities with a view to the supply of goods or services, including immovable property and rights and obligations, in return for payment.*

Similar definitions are found in Article 2 paragraph 1, subparagraph 3 of the Advertising Act which defines it as:

*Advertising means information which is made public in any generally perceived form for a charge or without charge for the purpose of increasing the provision of services or the sale of goods, promoting an event or directing the conduct of a person in public interests;*

And point 1 of the Good Practice self-regulatory instrument stipulates the following:

*Advertising is any information, ordered by a particular person, in any form, in words, images or sound (words, figures, images, music and sound effects) intended to persuade or influence a specific audience.*

#### 4.9.2.1.3. Advertiser

Article 2 paragraphs 4 to 6 of the Advertising Act lay down the following definitions for an advertiser:

*4) a person publicising advertising means a natural person or legal person, a state agency or local government agency (hereinafter person) who presents, communicates, exhibits or disseminates advertising to the public;*
*5) a person placing advertising means a person who commissions advertising directly or in whose interests advertising is made public;*
*6) a person producing advertising means a person who creates or produces advertising or organises the making of it public, except the technical producer;*

#### 4.9.2.1.4. Surreptitious commercial communication

Article 26 paragraph 1 of the Media Services Act defines surreptitious commercial communication, as follows:

*A surreptitious commercial communication means the representation of goods, services, name, trademark or the activities of a producer of goods or provider of services in a programme in words or pictures if such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall be considered as intentional, in particular if it is done in return for payment or other similar consideration.*

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#### 4.9.2.1.5. Misleading commercial communication

Article 4 paragraphs 1 and 2 of the Advertising Act defines and prohibits misleading advertising, especially if some of the characteristics of goods, services, sale of goods or provision of services are misleading (e.g., availability, quantity, composition, technical data, environmental safety, etc.), as well as the price, intended purpose, and information related to the manufacturer of the goods or provider of the services, as follows:

> *(1) Advertising which in any way misleads or is likely to mislead the persons to whom it is directed or whom it reaches and which, by reason of its misleading nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor of the person placing advertising is prohibited…*

#### 4.9.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.9.2.1.7. Sponsorship

Article 30 of the Media Services Act defines sponsorship:

> *(1) For the purposes of this Act sponsorship means any contribution made by a legal or natural person not engaged in providing media services or the operation of a video-sharing platform or in the production of a user-generated video programme, to the financing of a media service or a video-sharing platform or programme or a user-generated video with a purpose to promote their image or introduce their name, trademark, activities or products.*
> *(2) Sponsorship information is information transmitted by the media service provider about sponsorship in media services.*

#### 4.9.2.1.8. Sponsor

There is no direct definition of sponsor, but the meaning that a sponsor is a legal or natural person not engaged in providing media services or the operation of a VSP or in the production of a user-generated video programme, who is financing a media service or a VSP or programme or a user-generated video with a purpose to promote their image or introduce their name, trademark, activities or products, can be taken from Article 30 on sponsorship (see under 4.9.2.1.7.)

#### 4.9.2.1.9. Sponsored content

There is no definition for sponsored content.

However, Article 30 paragraphs 5 to 10 of the Media Services Act specifies the requirements that a sponsored programme must meet, such as the need to be clearly identifiable and distinguishable as a sponsored programme by distinctive signs, the

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prohibition of sponsorship for sponsors whose activity is related to the tobacco or medical industries under certain conditions and the prohibition of sponsorship of certain programmes such as news and current affairs programmes.

#### 4.9.2.1.10. Product placement

Article 31 of the Media Services Act defines product placement:

> *(1) Product placement means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trademark thereof in a programme or a user-generated video in return for payment or for similar consideration.*

#### 4.9.2.1.11. Other definitions

N/A.

### 4.9.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for VSPs to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including the VSP providers related to commercial communications.

On a general note, Article 25 paragraph 3 of the Media Services Act provides that the provisions set out for advertising in the provisions of the Advertising Act and other acts apply to commercial communications, which also include commercial communication on VSPs as per Article 31(1). In particular, the provisions mentioned state:

> *Article 25. Commercial communications*
> *3) The requirements set out for advertising in the provisions of the Advertising Act and other acts apply to commercial communications.*
>
> *Article 31(1)*
> *(1) The operator of a video-sharing platform prescribes in the terms of use of the service that commercial communications transmitted on the video-sharing platform must comply with the requirements established in this Act for commercial communications, including sponsorship and product placement, and in the requirements established for advertising in other Acts.*
> *(2) The operator of a video-sharing platform ensures the existence of a technical application by means of which the users uploading videos are able to inform whether the video contains audiovisual commercial communications, in so far as they are aware thereof or can reasonably be expected to be aware thereof.*

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*(3) The operator of a video-sharing platform explicitly informs the users if programmes and user-generated videos contain audiovisual commercial communications, provided that the operator is aware of commercial communications.*

In the same vein, Article 11 of the Advertising Act states that:

*(2) In addition to the provisions of this Act, the requirements provided for teleshopping and other commercial communications in the Media Services Act apply to advertising and teleshopping in media services and advertising that is marketed, sold or organised by video-sharing platform providers.*
*(3) Teleshopping and other commercial communications in media services and video-sharing platforms are deemed to be the same as within the meaning of the Media Services Act.*

#### 4.9.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

In relation to alcoholic beverages, Article 28 of the Advertising Act sets out specific requirements for alcohol advertising, in terms of what may be included in such advertising and what is prohibited, such as:

*(3) Information contained in the advertising of alcohol must be focused on the product and be presented neutrally. Auditory and visual design of information presented in advertising shall not:*
*1) contain a living being, a picture or image thereof in any manner, except for the human voice;*
*2) contain an animated image of inanimate objects;*
*3) incite to buy or consume alcohol;*
*4) depict the serving or consumption of alcohol;*
*5) link alcohol to any important dates, events, activities or seasons;*
*6) otherwise leave an impression that alcohol is a natural part of life and that consumption of alcohol has a positive effect;*
*7) link alcohol to driving;*
*8) place emphasis on high ethanol content as being a positive quality of beverages;*
*9) imitate the voice of well-known persons or characters or the voice of persons or characters known from films, television, music or entertainment programmes or events directed principally at children.*

In addition, Article 28 paragraph 4 specifies that any advertisement for alcohol must contain a textual warning stating "Attention! This is an alcoholic beverage. Alcohol may cause damage to your health" and Article 28(7) prohibits any advertising of alcohol in television and radio programmes from 7.00 to 22.00.

With regard to tobacco products, advertising for tobacco products is prohibited under Article 17, which nevertheless specifies that a trademark used to designate a tobacco

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product, but which does not express a tobacco product or its consumption in words or pictures and which also designates other products or services may be used for advertising purposes. Furthermore, according to Article 31 paragraph 6, subparagraph 1 of the Media Services Act, product placement is prohibited for:

> *cigarettes and other tobacco products and products related to tobacco products or goods of such undertakings whose principal activity is the production and sale of cigarettes and other tobacco products or products related to tobacco products;*

#### 4.9.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

The advertising of health services, which only relate to services and treatments, including artificial insemination, is prohibited under Article 22 of the Advertising Act. In addition, according to Article 31 paragraph 6, subparagraph 2 of the Media Services Act, product placement is prohibited for "prescription medicinal products or medical treatments available only on a medical prescription".

#### 4.9.2.2.3. Surreptitious audiovisual commercial communications

The transmission of a surreptitious commercial communication is prohibited according to Article 26 paragraph 2 of the Media Services Act. Article 26 paragraph 3 specifies that this prohibition is also applied to the commercial communications marketed, sold or organised by a VSP operator.

#### 4.9.2.2.4. Subliminal techniques in commercial communications

Article 11 of the Advertising Act specifies that the use of subliminal techniques in advertising and teleshopping transmitted upon provision of media services is prohibited, including in advertising that is distributed, sold or organised by VSP providers.

#### 4.9.2.2.5. Prejudice with regard to human dignity

According to Article 3 paragraph 4, subparagraph 9 of the Advertising Act, advertising shall not: "directly or by implication degrade or in some other manner denigrate a person, a person's name, trademark, a geographical indication, activity, area of activity, goods, services or an event".

#### 4.9.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

Any form of discrimination is prohibited under Article 12 of the Constitution which states:

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*Everyone is equal before the law. No one shall be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other beliefs, property or social status, or on other grounds.*
*The incitement of national, racial, religious or political hatred, violence or discrimination shall be prohibited and punishable by law. The incitement of hatred, violence or discrimination between social strata shall also be prohibited and punishable by law.*

With regard to advertising, Article 3 paragraph 4, subparagraph 10 of the Advertising Act prescribes that advertising must not: "contain denigration or discrimination on the grounds of nationality, race, age, colour, sex, language, origin, religion, political or other beliefs, financial or social status or other circumstances".

Besides, Article 19(1) paragraph 1, subparagraph 1 of the Media Services Act prohibits commercial communications which:

*incite to hatred, violence or discrimination on the grounds of any group identity, including nationality, sex, race, colour, ethnic or social origin, genetic characteristics, language, religion, political beliefs, belonging to a national minority, financial status, birth, disability, age or sexual orientation, where it poses a threat to the life, health or property of a person.*

#### 4.9.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging activities harmful to human health or the environment is prohibited in advertising under Article 3 paragraph 4, subparagraph 4 of the Advertising Act.

#### 4.9.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

As mentioned under 4.9.2.2.7., encouraging activities harmful to human health or the environment is prohibited in advertising under Article 3 paragraph 4, subparagraph 4 of the Advertising Act.

#### 4.9.2.2.9. Causing physical, mental or moral detriment to minors

Harming the physical, mental or moral integrity of minors is prohibited in advertising through a series of requirements established under Article 8 of the Advertising Act. These requirements provide primarily that advertising targeting children should in general "take into account their unique physical and mental state resulting from their age" and should not have as its object products or services for which the sale to minors is prohibited. More specifically, Article 8 paragraph 4 sets out the following requirements that must be met in advertising targeted at children:

*(4) Advertising which targets primarily children shall not: 1) create the impression that the acquisition of certain goods or the use of certain services will give the child an advantage over other children or that the lack thereof will have the opposite effect;*

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*2) create the feeling of inferiority in children;*
*3) incite children to behave or act in a manner which has or may have the effect of bringing children into unsafe conditions;*
*4) contain elements which frighten children;*
*5) exploit the trust children place in their parents, teachers or other persons;*
*6) include a direct or indirect appeal to children to demand the acquisition of the advertised goods or the use of the advertised services from other persons;*
*7) directly incite children to enter into transactions independently.*

In addition, Article 19[1] of the Media Services Act imposes on VSPs a series of specific measures to ensure the protection of minors from certain content or communications transmitted on their platforms, as follows:

...
*(2) The video-sharing platform operator prescribes in the terms of use of the service that at the beginning of such programme, user-generated video and commercial communication that may impair the physical, mental or moral development of minors, a warning must be presented in a manner understandable to the viewer stating that the subsequent programme is unsuitable for minors, and a relevant symbol about the unsuitability of this programme to minors or some age groups of minors must be seen on the screen during the whole programme, video or commercial communication.*
...
*(5) If the video sharing platform operator is aware of a programme, user-generated video or commercial communication that may impair the physical, mental or moral development of minors, the operator immediately adds a warning and symbol pursuant to subsection 2 of this section to the programme, video or commercial communication in the absence thereof or ensures that this programme, video or commercial communication is received by means of personal identification codes or other appropriate technical solutions only in a manner that would not normally be accessible to a minor...*

#### 4.9.2.2.10. Other

N/A.

## 4.9.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

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#### 4.9.3.1. Sponsorship

The general rules on sponsorship are set out in Article 30 of the Media Services Act, paragraph 3 of which specifies in particular the general requirements to be met by sponsored content:

> *Media services and programmes that are sponsored shall meet the following requirements:*
> *1) sponsorship shall not affect the editorial responsibility and independence of the media service provider;*
> *2) sponsorship shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;*
> *3) viewers shall be clearly informed of the existence of a sponsorship agreement;*
> *4) information about sponsors shall be broadcast to the viewers in such manner that is clearly distinguishable from other forms of commercial communication.*

Additional requirements are imposed in the following paragraphs of Article 30, such as the requirement that the sponsored programme be clearly identifiable and distinguishable, the prohibition of sponsorship for sponsors whose activity is related to the tobacco or medical industries under certain conditions, and the prohibition of sponsorship of certain programmes such as news and current affairs programmes.

#### 4.9.3.2. Product placement

The rules on product placement are laid down in Article 31 of the Media Services Act, paragraph 4 of which specifies in particular the general requirements to be met:

> *Programmes containing product placement shall meet the following requirements:*
> *1) product placement shall not affect the responsibility and editorial independence of the media service provider;*
> *2) the programme shall not directly encourage the purchase or rental of goods or services, in particular, by making special promotional references to those goods or services;*
> *3) the programme shall not give undue prominence to the product in question;*
> *4) with the purpose of informing the viewers clearly and understandably of the existence of product placement, the programmes containing product placement shall be appropriately identified at the start and end of the programme, and when a programme resumes after an advertising break with a corresponding text or a common symbol agreed upon by means of self-regulation.*

Under Article 31 paragraphs 2 and 6, product placement is prohibited in news and political programmes, consumer programmes, programmes with religious content and programmes for children. In addition, product placement is also prohibited for tobacco products and medicinal products or medical treatments available only on a medical prescription.

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## 4.9.4. Obligations regarding (v)blogs and (v)blogging

Article 4 paragraph 1 of the Media Services Act defines audiovisual media service:

> *Audiovisual media service means a media service or a dissociable section thereof, where the main purpose is to provide, under the editorial responsibility of a media service provider, informative, educational or entertaining programmes to the general public by means of electronic communications networks.*

The article provides a list of services that meet these criteria and includes radio and TV, on-demand and VSPs. Blogs and vlogs are not included in either the definition or the list and are therefore not considered as audiovisual media services, nor are they subject to advertising rules.

A VSP is not an audiovisual media service but a specific type of video-content service and is, as such, defined as an information society service. Vlogs and vlogging would be considered an audiovisual media service if they meet its criteria.

## 4.9.5. Other relevant information

N/A.

## 4.9.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.9.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.9.6.2. Gambling, betting, betting tipsters, etc.

Advertising for gambling is regulated by Article 29(2) of the Advertising Act, which prescribes the following requirements:

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(1) *Advertising of gambling, a gaming location and organiser of gambling (hereinafter advertising of gambling) is prohibited if the organiser of gambling has no operating permit required under the Gambling Act.*

...

*(3) Advertising of gambling shall not contain an incitement to participate in gambling or visit a gaming location or information which may suggest that gambling contributes towards social success.*

*(4) Advertising of gambling shall include the textual warning:* "Tähelepanu! Tegemist on hasartmängu reklaamiga. Hasartmäng pole sobiv viis rahaliste probleemide lahendamiseks. Tutvuge reeglitega ja käituge vastutustundlikult!" *["Attention! This is advertising of gambling. Gambling is not a suitable means for solving financial problems. Examine the rules and behave responsibly!"]. The warning shall, given ordinary attention, be noticeable, understandable and clearly distinguishable from other information.*

Additionally, the Consumer Protection and Technical Regulatory Authority has published guidelines on Gambling Advertising, which explain in detail the manner in which the related provisions of the Advertising Act are to be implemented.

#### 4.9.6.3. Environmental or "green" claims for products

Article 3 paragraph 4, subparagraph 15 of the Advertising Act provides that advertising must not: "contain the words "keskkonnasõbralik" ["environment-friendly"] or "ökoloogiliselt ohutu" ["ecologically safe"] or other words or expressions with the same meaning if there is no such evidence."

Furthermore, as regards the definition of misleading advertising, Article 4 paragraph 2 specifies that one of the elements which may lead to an advertisement being considered misleading is the fact that it provides misleading information on certain circumstances or characteristics of the goods or services, including, *inter alia*: "risks related to use and storage, including environmental safety" and "activity sustainable for the environment".

#### 4.9.6.4. Other

N/A.

### 4.9.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement

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powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.9.7.1. Self- and co-regulatory bodies

##### 4.9.7.1.1. Context of establishment and legal background

Article 22 of the Media Services Act states that media services and VSPs can enter into self-regulatory schemes, as follows:

> *(1) Persons involved in the pursuit of the media service and video-sharing activity may create on their own initiative a system the parties to which define voluntarily common recommendations and rules, establishing content requirements as a code of conduct with the purpose of regulating the activities in the area and identify good and bad practice.*
> *(2) The code of conduct specified in subsection 1 of this section must be widely accepted among the main interest groups, describe its objectives clearly and unambiguously, provide for regular, transparent and independent monitoring of the compliance with the established objectives, and set out the procedures for compliance with the established rules and the liability of the parties for violation of the rules.*

##### 4.9.7.1.2. Stakeholders involved

There are two main interest groups in Estonia that may fall under Article 22 of the Estonian Broadcasting Union (ERL)[176] and the Estonian Media Enterprises Association (EML).[177]

The ERL is a non-governmental, non-profit association established in 1992, which promotes the national broadcasting culture and represents the interests of radio and television organisations. The ERL has ten members: one television station, one newspaper and eight radio organisations. The EML was founded in 1990 and is an organisation acting in the common interest of the media, whose members include newspapers, magazines, portals, TV and radio channels. The EML's members comprise major private media companies (such as Delfi Meedia AS, Õhtuleht Kirjastus AS, AS Äripäev), fourteen local newspapers and three NGOs.

##### 4.9.7.1.3. Scope and objectives

The ERL participates in the legislative process and its representatives are involved in the working groups that develop most broadcasting policies and bills.

The EML's objective is to represent the interests of its members at all levels.

[176] *Eesti Ringhäälingute Liit* (ERL): http://www.ringhliit.ee/yldinfo/.
[177] *Eesti Meediaettevõtete Liit* (EML): https://meedialiit.ee/.

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#### 4.9.7.1.4. Code(s) of conduct

The Estonian Consumer Protection and Technical Regulatory Authority (TTJA)[178] has issued universal guidelines for ad delivery that apply to all platforms.[179] These are detailed explanations of how the rules in the Advertising Act should be implemented. Guidelines cover following areas: alcohol advertising, tobacco advertising, misleading and comparative advertising, advertising aimed at children, pyrotechnics advertising, healthcare advertising, financial service advertising and gambling advertising. Also, guidelines for advertising on social media are introduced, clarifying that all requirements and restrictions arising from the Advertising Act also apply to advertising published on social media.

#### 4.9.7.1.5. Role of the (self-)regulatory bodies

The ERL's and EML's role are seen in adoptions of related self-regulatory mechanisms, as well as in lobbying for the interests and rights of their members. The EML also organises the work of the Press Council.

#### 4.9.7.1.6. Period of activity (if limited)

N/A.

#### 4.9.7.1.7. Role of the regulatory authority in a co-regulatory system

The Estonian Consumer Protection and Technical Regulatory Authority (CTRA)[180] is currently not involved in the co-regulatory system, but the CTRA could have a role in the co-regulatory system in the future, should the self-regulatory mechanisms be considered insufficient, as Article 27 paragraph 2 of the Media Services Act stipulates:

> *If persons operating in the field of media services and video-sharing have not established a code of conduct as specified in subsection 1 of this section by self-regulation or it has not proved to be sufficiently effective, the requirements for audiovisual commercial communications promoting food and drink during children's programmes or user-generated videos targeted at children, shall be established by a regulation of the minister in charge of the policy sector.*

In this case the CTRA as a regulatory body will have a role in the supervision of the implementation of relevant provisions of a new regulation established by the relevant minister.

[178] *Tarbijakaitse ja Tehnilise Järelvalve Amet* (TTJA): https://ttja.ee.
[179] Links to guidelines are found under section 4.9.1. of this factsheet.
[180] *Tarbijakaitse ja Tehnilise Järelevalve Amet* : https://www.ttja.ee/et..

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*4.9.7.1.7.1. Regulatory body*

N/A.

*4.9.7.1.7.2. Co-regulatory scheme*

N/A.

*4.9.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.9.7.2. Monitoring/evaluation, compliance and sanctioning powers

The EML, through the Press Council, deals with citizens' complaints related to media content, from the perspective of professional journalistic standards.

## 4.9.8. Cross-sector and cross-border collaboration

N/A.

## 4.9.9. Update on plans and practices related to new obligations of VSPs

N/A.

## 4.9.10. Studies, reports and research

N/A.

## 4.9.11. Data compilation

This factsheet is based on data compiled by Andres Jõesaar, Associate Professor of Media Policies at Tallinn University.

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# 4.10. ES – Spain – National legal summary[181]

## 4.10.1. Applicable related framework

Relevant legislation includes the following:

Primary legislation:

- *Ley General de Comunicación Audiovisual*[182] (Law 13/2022 of 7 July 2022 on Audiovisual Communication – LAC).
- *Ley General de Publicidad*[183] (Law 34/1988 of 11 November on Advertising – Law on Advertising).
- *Ley de Competencia Desleal*[184] (Law 3/1991 of 10 January on Unfair Competition – LUC).
- Real Decreto Legislativo 1/2015, de 24 de julio, por el que se aprueba el texto refundido de la Ley de garantías y uso racional de los medicamentos y productos sanitarios[185] (Royal Legislative Decree 1/2015, of 24 July, which approves the Law on guarantees and rational use of medicines and health products).
- *Ley 13/2011, de 27 de mayo, de regulación del juego*[186] (Law 13/2011, of 27 May on regulation of gambling).
- Ley 3/2013, de 4 de junio, de creación de la Comisión Nacional de los Mercados y la Competencia - CNMC[187] (Law 3/2013 of 4 June 2013 creating the National Markets and Competition Commission – LCNMC).

Secondary legislation:

- Real Decreto 1907/1996, por el que se regula la publicidad publicidad y promoción commercial de productos, actividades o servicios con pretendida finalidad sanitaria[188] (Royal Decree 1907/1996, of 2 August, on advertising and commercial promotion of products, activities or services with intended health purposes).

[181] The factsheet on Spain incorporates feedback received from Pedro Domingo Martín Contreras, Senior Legal Advisor at the Directorate of Telecommunications and Audiovisual at the National Commission of Markets and Competition (*Comisión nacional de los mercados y la competencia*, CNMC), during the checking round with the national regulatory authorities.
[182] https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-11311.
[183] https://www.boe.es/buscar/act.php?id=BOE-A-1988-26156.
[184] https://www.boe.es/buscar/act.php?id=BOE-A-1991-628.
[185] https://www.boe.es/buscar/act.php?id=BOE-A-2015-8343.
[186] https://www.boe.es/buscar/act.php?id=BOE-A-2011-9280.
[187] https://www.boe.es/buscar/act.php?id=BOE-A-2013-5940.
[188] https://www.boe.es/buscar/act.php?id=BOE-A-1991-628.

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- Real Decreto 1416/1994 por el que se regula la publicidad de los medicamentos de uso humano[189] (Royal Decree 1416/1994, of 25 June, on advertising for drugs for human use).

Self and co-regulatory instruments

- El Código de Conducta Publicitaria de Autocontrol[190] (Autocontrol's Advertising Code of Conduct)

## 4.10.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.10.2.1. Definitions

**Table 36. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |

[189] https://www.boe.es/buscar/act.php?id=BOE-A-1994-17681.
[190] https://www.autocontrol.es/wp-content/uploads/2021/05/codigo-de-conducta-publicitaria-autocontrol.pdf.

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| | |
|---|---|
| **Product placement** | Yes. |
| **Other:** | Screen overlays and hybrid advertising (in the case of audiovisual linear services). |

*Source: Spanish response to European Audiovisual Observatory standardised survey*

#### 4.10.2.1.1. Audiovisual commercial communications

Article 121 paragraph 1 of the LAC defines audiovisual commercial communications:

> *Audiovisual commercial communications are considered to be images or sounds intended to promote, directly or indirectly, the goods, services or image of a natural or legal person engaged in an economic activity, which accompany or are included in a programme or in a user-generated video in exchange for remuneration or similar consideration in favour of the audiovisual media service provider, or for self-promotion purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;*

Articles 121 to 125 LAC contain the general provisions applicable to all types of audiovisual commercial communications, in all types of services, as outlined further below.

#### 4.10.2.1.2. Television advertising

Article 126 LAC defines audiovisual advertising as:

> *Audiovisual advertising is any form of audiovisual commercial communication by a natural or legal person, whether public or private, in connection with their trade, business, craft or profession, to promote the supply of goods or services, including property, rights and obligations.*

#### 4.10.2.1.3. Advertiser

The Law on Advertising, in Article 8, defines the advertiser as:

> *the natural or legal person in whose interest the advertising is carried out.*

#### 4.10.2.1.4. Surreptitious commercial communication

Article 4 of the Law on Advertising provides the following definition:

> *Subliminal advertising is that which, by means of production techniques of stimuli of border intensities with the thresholds of the senses or analogous, can act on the target public without being consciously perceived.*

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#### 4.10.2.1.5. Misleading commercial communication

The LUC, in Article 5 paragraph 1 defines misleading commercial communication as:

> *Any conduct that contains false information or information that, even though it is true, due to its content or presentation, misleads or may mislead the recipients, being likely to alter their economic behaviour, is considered unfair and misleading.*

Misleading commercial communication may trigger legal action before civil courts.

#### 4.10.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.10.2.1.7. Sponsorship

Article 128 paragraph 1 of LAC provides for the definition of sponsorship:

> *Sponsorship is considered to be any contribution that a natural or legal person, public or private, not linked to the provision of audiovisual media services or video-sharing platform services, or to the production of audiovisual works, makes to the financing of audiovisual media services, video-sharing platform services or user-generated videos or programmes, with the aim of promoting their name, brand, image, activity or product.*

#### 4.10.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.10.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.10.2.1.10. Product placement

The LAC, in Article 129 paragraph 1 defines product placement as:

> *"Product placement" means any form of audiovisual commercial communication consisting of the inclusion or portrayal of, or reference to, a product, a service or the trade mark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.*

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#### 4.10.2.1.11. Other definitions

Article 14 paragraph 2 of the LAC establishes that a (future) regulation, to be adopted by the government will regulate the use of screen overlays and hybrid advertising in the case of audiovisual linear services. Article 141 paragraph 3 determines that the use of hybrid and interactive commercial techniques by audiovisual service providers is subject to the provisions included in the General Data Protection Regulation (Regulation 2016/679 of 26 April 2016).[191]

> *2. The use of transparencies, overprints, virtual advertising and split screen in programming shall be regulated, without prejudice to the provisions of Article 139 for sporting events.*
> *3. If audiovisual media service providers use techniques based on hybrid or interactive advertising, they shall respect the provisions laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, and in Organic Law 3/2018 of 5 December 2018 on user consent and personal data processing.*

### 4.10.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, it should be noted that, according to Article 91 of the LAC, VSPs need to adopt a series of measures with regard to commercial communications that they sell or organise in order to guarantee that they also respect the provisions applicable to other providers.

> *1. Video-sharing platform service providers shall ensure that the audiovisual commercial communications that they market, sell or organise comply with Section 1 of Chapter IV of Title VI, with the exception of the time limit laid down in Article 123(4) and (5), which shall not apply. In any case, commercial communications that encourage behaviours that are harmful or prejudicial to minors shall require age verification and provide access to users that are of age.*

Restrictions and prohibitions related to the aforementioned related provisions are provided below.

In paragraph 2 of the said article, VSPs are obliged to adopt measures, as stipulated by the revised AVMSD (Article 28b 3. of the revised AVMSD) and to guarantee that the

[191] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), https://eur-lex.europa.eu/eli/reg/2016/679/oj.

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audiovisual commercial communications that they market, sell or organise comply with the provisions of the LAC through these measures.

#### 4.10.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 123 paragraph 1 of the LAC provides prohibitions vis-à-vis tobacco and tobacco-related products:

> *1. Audiovisual commercial communications concerning cigarettes and other tobacco products, including electronic cigarettes and their refill packs, and herb-based products for smoking, and the companies producing them shall be prohibited.*

Restrictions regarding alcohol beverages are found in Article 123 paragraph 3 of the LAC:

> *3. Audiovisual commercial communications concerning alcoholic beverages that meet one of the following requirements shall be prohibited:*
> *a) They specifically target minors, or present minors consuming such beverages.*
> *b) They link consumption to improving physical performance, or to driving vehicles.*
> *c) They give the impression that consumption contributes to social or sexual success, or associate, link or relate such beverages to ideas or behaviours that express success in a personal, family, social, sporting or professional context.*
> *d) They suggest that alcoholic beverages have therapeutic properties or a stimulating or sedative effect that constitutes a means of resolving conflicts, or which is beneficial to health.*
> *e) They encourage immoderate consumption or provide a negative image of abstinence or sobriety.*
> *f) They underline the alcohol content of the beverage as a positive quality.*
> *g) They do not include messaging about moderate, low risk consumption.*

#### 4.10.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 123 paragraph 2 of the LAC prohibits audiovisual commercial communications for medicinal products, medical treatments and other products with an alleged health purpose:

> *Audiovisual commercial communications concerning medicines and health products that do not respect the limits laid down in the regulations governing health-related advertising and activities and, in any event, audiovisual commercial communications concerning products, materials, substances, energies or methods with an alleged health-related purpose that do not respect the provisions of Royal Decree 1907/1996 of 2 August 1996 on advertising and commercial promotion of products, activities or services with an alleged health-related purpose shall be prohibited.*

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The aforementioned Royal Decree 1907/1996 on advertising and commercial promotion of products, activities or services with intended health purposes includes additional rules and principles, such as the advertising of secret remedies and products, materials, substances, energies or methods with intended health purposes.

Finally, the Royal Legislative Decree 1/2015, of July 24, which approves the Law on guarantees and rational use of medicines and health products, in Article 80 paragraphs 2-3, contains a series of provisions applicable to commercial communications for medicinal products in all types of media, including VSPs. These relate to obligatory identification of products as medicine, that all the essential information for the correct use of the medication is included, that such advertising satisfies the accessibility conditions for people with disabilities, etc. It also stipulates that:

> *…3. The advertising of medicines not subject to medical prescription will not require prior administrative authorisation, although the competent health administrations will carry out the necessary controls to guarantee that the advertising content complies with the legal and regulatory standards that are applicable to them and that they faithfully comply with the scientific and technical conditions contained in the marketing authorisation.*

#### 4.10.2.2.3. Surreptitious audiovisual commercial communications

The prohibition of surreptitious techniques in commercial communications is covered under Article 122 paragraph 4 of the LAC, relating to subliminal audiovisual commercial techniques (see 4.10.2.2.4.).

#### 4.10.2.2.4. Subliminal techniques in commercial communications

Article 122 paragraph 4 of the LAC prohibits subliminal techniques:

> *Subliminal audiovisual commercial communications that, by means of techniques to stimulate the senses bordering on the threshold of the senses or similar, could act on the target audience without being consciously perceived shall be prohibited.*

#### 4.10.2.2.5. Prejudice with regard to human dignity

Commercial communications that may cause prejudice to human dignity are prohibited by Article 122 paragraph 1 of the LAC:

> *Audiovisual commercial communications that undermine human dignity… are prohibited.*

#### 4.10.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Article 122 paragraph 1 of the LAC stipulates that:

> *Audiovisual commercial communications that undermine human dignity or which encourage discrimination against a group of people or a member of a group on the reasons of age, sex,*

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*disability, sexual orientation, gender identity, gender expression, race, colour, ethnic or social origin, sexual or genetic characteristics, language, religion or beliefs, political or any other opinions, nationality, heritage or birth, or which encourage behaviours that are unsafe or seriously harmful to environmental protection, are prohibited.*

Also, Article 122 paragraph 2 of the LAC states that:

*Audiovisual commercial communication that uses the image of women in a humiliating or discriminatory manner is prohibited.*

#### 4.10.2.2.7. Encouragement of behaviour prejudicial to health or safety

The LAC, in Article 122 paragraph 1 prohibits:

*Any audiovisual commercial communications that … are harmful to security or encourages behaviours that are seriously harmful …*

In addition to this, the aforementioned Article 123 should also be mentioned here, as it prohibits audiovisual commercial communications of products, including cigarettes and other tobacco products, etc. medicines and health products that do not respect the limits established in the regulations governing advertising, alcoholic beverages that, inter alia, specifically addresses minors, or presents minors consuming said beverages, etc.

#### 4.10.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 122 paragraph 1 of the LAC prohibits audiovisual commercial communications which encourage behaviours that are unsafe or seriously harmful to environmental protection

#### 4.10.2.2.9. Causing physical, mental or moral detriment to minors

Article 124 paragraphs 1-2 of the LAC prohibit audiovisual commercial communications from causing physical, mental or moral detriment to minors and provide further restrictions related to the protection of minors:

*1. Audiovisual commercial communications must not cause physical, mental or moral harm to minors and must not:*
*a) Directly incite minors to buy or rent products or services by taking advantage of their inexperience or credulity.*
*b) Directly encourage minors to persuade their parents or third parties to buy advertised goods or services.*
*c) Exploit the special relationship of trust that minors place in their parents, teachers, or other people, such as professionals in children's programmes or fictional characters.*
*d) Present, without justified reasons, minors in dangerous situations.*
*e) Incite behaviour that favours discrimination between men and women.*

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*f) Incite violent behaviour towards minors, as well as violent behaviour by minors to themselves or others, or encourage stereotypes based on sex, race or ethnic origin, nationality, religion or beliefs, disability, age or sexual orientation.*
*g) Promote the cult of the body and the rejection of self-image via audiovisual commercial communications on slimming products, surgical interventions and aesthetic treatments, which appeal to social rejection due to physical condition, or success due to weight or aesthetic factors.*
*2. Audiovisual commercial communications pertaining to products particularly intended for minors, such as toys, shall not be misleading about the characteristics or safety of such products, or the skills and aptitudes minors need to have in order to use them without causing harm to themselves or others. They shall also not reproduce sexist stereotypes in accordance with Article 3(a) of Law 34/1988 of 11 November 1988 (General Advertising Act).*

#### 4.10.2.2.10. Other

N/A.

## 4.10.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.10.3.1. Sponsorship

The LAC, in Article 128 paragraph 3, stipulates certain conditions with regard to the provision of sponsorship, including an obligation to identify the sponsor (by name, logo, or any other symbol), a prohibition, related the content of the sponsored program or audiovisual communication, on influencing the editorial responsibility of the audiovisual communication service provider, as well as a prohibition on directly encouraging the purchase or lease of goods or services.

### 4.10.3.2. Product placement

Article 129 paragraph 3 of the LAC lists conditions for product placement, including a prohibition on influencing the editorial content or organisation of the programming schedule or the catalogue by affecting the responsibility and editorial independence of the provider of the audiovisual communication service, as well as on directly encouraging the purchase or lease of goods or services. Product placement shall also:

*c) Not give undue prominence to the products in question.*
*d) Identify that it is a product placement at the beginning, at the commencement of each resumption after an interruption, and at the end of the programme, when such programmes*

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*have been produced or commissioned by an audiovisual media service provider or by one of its subsidiaries. Obligations regarding (v)blogs and (v)blogging*

The aforementioned Article 94 paragraph 1 of the LAC establishes that: "Users of special relevance who use VSPs will be considered providers of the audiovisual communication service."

Article 94 paragraph 2 further establishes the following characteristics to identify users of special relevance:

*a) The service provided entails an economic activity for which its owner obtains significant income derived from its activity in the video-sharing services through the platform;*
*b) The user of special relevance is the editorial manager of the audiovisual content made available to the public in his/her service.*
*c) The service provided is intended for a significant part of the general public and may have a clear impact on it.*
*d) The function of the service is to inform, entertain or educate and the main objective of the service is the distribution of audiovisual content.*
*e) The service is offered through electronic communications networks and is established in Spain.*

According to a recent interview, the Spanish government hopes that the regulation with regard to the requirements for considerations as a "streamer" or "influencer" according to the audiovisual law will be adopted by the beginning of 2023.[192]

## 4.10.4. Other relevant information

N/A.

## 4.10.5. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

[192] More information on this is available at: https://www.businessinsider.es/roberto-sanchez-ley-cav-streamers-1098011.

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#### 4.10.5.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

In this context, it should be mentioned that Article 123.6, which also applies to VSP providers, restricts audiovisual commercial communications for esotericism and parasciences in the time period from 01.00 to 05.00.

#### 4.10.5.2. Gambling, betting, betting tipsters, etc.

Article 91 paragraph 2 of the LAC relates to restrictions regarding audiovisual commercial communications for games of chance and betting in the following manner:

> *c) In the case of audiovisual commercial communications linked to games of chance and gambling, these may only be disseminated when the accounts or channels disseminating such audiovisual commercial communications have as their main activity or offering the provision of information or contents on the gambling activities defined in Law 13/2011 of 27 May 2011, and which also guarantee that control mechanisms are established and available on the platform to prevent access by minors. It shall also be required for messages on safe or responsible gambling to be disseminated on a regular basis. In such cases, these commercial communications shall not have to adhere to the time slot framework set out in Article 123(7) and (8).*

#### 4.10.5.3. Environmental or "green" claims for products

No specific provisions deal with this issue

#### 4.10.5.4. Other

N/A.

### 4.10.6. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

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### 4.10.6.1. Self- and co-regulatory bodies

#### 4.10.6.1.1. Context of establishment and legal background

There are no clear designated self- or co-regulatory bodies in this area at this stage.

It is, however, important to mention the independent self-regulatory body of the advertising industry in Spain, Autocontrol[193], established in 1995 as a non-profit association, and currently gathers advertisers, advertising agencies, the media and professional associations. Autocontrol's Advertising Code of Conduct, established in 1996, and inspired by the International Code of Advertising Practices of the International Chamber of Commerce (ICC), binds all companies adhering to the Association, which undertake to comply with its standards and submit to the Advertising Jury, which is the body in charge of monitoring compliance.

In addition, Autocontrol applies the Sectoral Advertising Codes of Conduct, through which certain sectors establish complementary voluntary commitments, in relation to the advertising of their specific products or services. Examples include the Code of Conduct on the use of influencers in advertising (2020), the Wine Commercial Communication Code (2018), Code of Ethics of Good Commercial Practices for the Promotion of Children's Diet Products (2013), the Code of Conduct on Commercial Communications of Gambling Activities (2012, amended in 2019), or the Code of Ethical Standards for the marketing, promotion and advertising of self-care medicines (2007, amended in 2020).

It should also be mentioned that, in 2003, Autocontrol and another advertising self-regulation organisations and Adigital created Confianza Online.[194] It was created to increase user confidence in the Internet. The main element is the "Trust Mark" (label) appearing on websites that comply with the Code of Ethics and can use the seal to demonstrate their commitment to good Internet practice. It is the only Spanish entity that offers the Ecommerce Europe Trustmark.[195] While Confianza Online is a self-regulatory organisation which aims to ensure a trusted and transparent e-commerce, including interactive advertising and E-Commerce, it is currently not identified as a self or co-regulatory body in relation to VSPs.

#### 4.10.6.1.2. Stakeholders involved

More than 10 associations, representing the areas of new digital media, e-commerce and advertising in Spain, participated in the initial drafting of the Code of Ethics.[196] These

[193] https://www.autocontrol.es/.
[194] https://www.confianzaonline.es.
[195] European Cross-Border E-commerce protection for consumers, https://ecommercetrustmark.eu/-
[196] Código de Conducta de Confianza Online[196] (Code of Ethics by Confianza Online (2022)): https://www.confianzaonline.es/doc/codigo_etico_confianzaonline.pdf.

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regulations are intended to serve as a guide for any entity that provides its services or offers its products via the Internet and digital media, but not related to VSPs.

#### 4.10.6.1.3. Scope and objectives

The Code of Ethics described above includes the element of "labelling".[197] i.e. providing a stamp on websites indicating ethical and professional conduct, as well as arbitration and dispute resolutions as provided further below.

#### 4.10.6.1.4. Code(s) of conduct

The Code of Ethics is formed of an ensemble of regulations divided into four larger areas: Protection of personal data, e-commerce with consumers, digital advertising, protection of minors and adolescents.

Article 15 of the LAC details necessary element of self-regulatory codes of conduct, such as their acceptance by the main stakeholders, clear objectives, transparent and independent monitoring and evaluation of the achievement of the objectives pursued, effective enforcement, including effective and proportionate sanctions, etc. Areas to be covered by self-regulatory codes of conduct include: protection of users and public health in the audiovisual field, protection of minors and effective reduction of the exposure of minors to audiovisual commercial communications related to alcoholic beverages, promotion of games of change and foods and beverages with a high content of salt, sugar, fat, saturated fat or trans fatty acids, etc., Effective reduction of the exposure of minors to audiovisual commercial communications related to alcoholic beverages, protection of users regarding content that violates the dignity of women, or promotes sexist, discriminatory or stereotyped values, content that promotes a non-adjusted or stereotyped image of people with disabilities, misinformation, gratuitous violence and pornography, protection of users regarding misinformation promotion of respectful, inclusive and stereotype-free image of people from racial or ethnic minorities, protection and promotion of linguistic and cultural diversity, promotion of media, information and audiovisual literacy, protection of intellectual property rights and codes related to the respect of nature, animal welfare and similar.

#### 4.10.6.1.5. Role of the (self-)regulatory bodies

A Trust Mark (label), granted by Confianza Online – Businesses who have the Trust Mark have been assessed on the basis of 30 objectives, and use it on their website. Websites with the Trust Mark are subject to a self-regulatory claims system, which allows for mediation and arbitration between consumers and businesses with no costs, not related to VSPs.

[197] Requirements and process to obtain the label are specified here: https://www.confianzaonline.es/unete-a-nosotros/.

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Besides, there is an online claims resolution system, based on two "authorities":

- The Autocontrol Advertising Jury,[198] an independent advertising self-regulatory organisation in Spain, established in 1995, comprised of advertisers, advertising agencies, media and professional associations, with the goal of working towards responsible advertising. Autocontrol is responsible for claims related to commercial communications, privacy, data protection and protection of minors. The handling of complaints by the jury is based on a principle of decisions by the independent extrajudicial body responsible for resolving disputes and complaints in advertising, with an official recognition provided to Autocontrol in 2018 as an Alternative Dispute Resolution body in the related legislation. Once the jury makes its decision related to advertising-related complaints, by applying the provision of the Code, they are made public and are binding for members of Autocontrol[199].
- The National Consumer Arbitration Council (Junta Arbitral Nacional de Consumo)[200] is responsible for claims relating to consumer issues with e-commerce. In this case, a prior mediation is carried out by Adigital,[201] an organisation formed by more than 500 companies, Spanish and international technology companies and digital platforms, and digital startups, which leads the dialogue with public agents, promotes collaboration between sectors and gives visibility and support to associates.

#### 4.10.6.1.6. Period of activity (if limited)

N/A.

#### 4.10.6.1.7. Role of the regulatory authority in a co-regulatory system

##### *4.10.6.1.7.1. Regulatory body*

The LAC charges the national AV authority to promote self-regulation (Art. 12) and co-regulation (Art. 114) through the voluntary adoption of codes of conduct (Art. 15).

The LAC, in Article 153 paragraph 1, subparagraph e, includes provisions regarding the authority in charge of the promotion of self-regulation and co-regulation systems, establishing that the promotion of self-regulation and co-regulation is the role of the Ministry of Economic Affairs and Digital Transformation:[202]

[198] AUTOCONTROL, https://www.autocontrol.es/autocontrol-eng/quienes-somos-eng/.
[199] More information is available at: https://www.autocontrol.es/autocontrol-eng/other-services/#advertising-complaints.
[200] https://www.consumo.gob.es/es/consumo/juntasArbitrales/nacional.
[201] Asociación Española de la Economía Digital, https://www.adigital.org/.
[202] Ministerio de Asuntos Económicos y Transformación Digital. https://www.mineco.gob.es/portal/site/mineco/?lang_choosen=en.

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*The Ministry of Economic Affairs and Digital Transformation is the competent audiovisual authority at state level in the terms provided in this law and, in any case, will exercise the following powers:*
*…e) Promotion of self-regulation and co-regulation at a national, European and international level…"*

Also, the LAC establishes that the national audiovisual authority National Markets and Competition Commission CNMC[203] is to promote self-regulation and co-regulation through the voluntary adoption of codes of conduct, as well as establishes the competencies and mandate of CNMC in the audiovisual sector, in relation to monitoring and compliance.

#### *4.10.6.1.7.2. Co-regulatory scheme*

Art. 15 details the co-regulatory scheme.

Article 14 of the LAC provides details on the co-regulatory scheme, with the CNMC having to promote co-regulation through agreements signed with self-regulation bodies and, whenever it directly affects them, audiovisual communication service providers, video sharing service providers through the platform or the organizations that represent them.

#### *4.10.6.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.10.6.2. Monitoring/evaluation, compliance and sanctioning powers

Article 93 paragraph 1 of the LAC establishes that the CNMC is the regulatory body in charge of supervising the activities and obligations of VSPs, as it: "controls fulfilment by VSPs of the obligations established in this Title and in its development provisions".

Besides, the fifth final provision of LAC modifies Article 9 of the LCNMC vis-à-vis the competencies of CNMC in the audiovisual sector, providing CNMC with the mandate to:

*Fifth final provisions*
*…*
*14. Supervise the compliance of audiovisual content and commercial communications with current legislation and with the codes of self-regulation and co-regulation, ….*
*15. Promotion of self-regulation and co-regulation at national, European and international level, ….*
*16. Ensure compliance with the codes of self-regulation and co-regulation on audiovisual content, verifying its compliance with the regulations in force…*

[203] https://www.cnmc.es/en.

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### 4.10.7. Cross-sector and cross-border collaboration

N/A.

### 4.10.8. Update on plans and practices relative to new obligations of VSPs

N/A.

### 4.10.9. Studies, reports and research

N/A.

### 4.10.10. Data compilation

This factsheet is based on data compiled by Joan Barata Mir, Fellow at Stanford Cyber Policy Center.

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# 4.11. FI – Finland – National legal summary[204]

## 4.11.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Laki sähköisen viestinnän palveluista*, 917/2014[205] (Act on Electronic Communications Services)[206]
- *Kuluttajansuojalaki* 38/1978[207] (Consumer Protection Act)[208]
- Laki sopimattomasta menettelystä elinkeinotoiminnassa, 1061/1978[209] (Unfair Business Practices Act)[210]
- *Alkoholilaki* 1102/2017[211] (Alcohol Act)
- *Tupakkalaki* 549/2016[212] (Tobacco Act)[213]
- *Lääkelaki* 395/1987[214] (Medicines Act)[215]
- *Arpajaislaki* 1047/2001[216] (Lotteries Act)[217]
- *Kuvaohjelmalaki* 710/2011[218] (Act on Audiovisual Programmes)[219]

[204] The factsheet on Finland incorporates feedback received from Inkeri Lindeman, Legal Counsel at the Finnish Transport and Communications Agency (Traficom) during the checking round with the national regulatory authorities.
[205] https://finlex.fi/fi/laki/ajantasa/2014/20140917.
[206] https://finlex.fi/en/laki/kaannokset/2014/en20140917.pdf.
Information on sections related to sponsorship and product placement in English:
https://www.traficom.fi/en/communications/tv-other-audiovisual-services-and-radio/marketing-sponsorship-and-product-placement.
[207] https://finlex.fi/fi/laki/ajantasa/1978/19780038.
[208] Unofficial English translation:
https://finlex.fi/en/laki/kaannokset/1978/en19780038_20050029.pdf.
[209] https://www.finlex.fi/fi/laki/ajantasa/1978/19781061.
[210] Unofficial English translation:
https://www.finlex.fi/en/laki/kaannokset/1978/en19781061_20020461.pdf.
[211] https://www.finlex.fi/fi/laki/ajantasa/2017/20171102.
[212] https://www.finlex.fi/fi/laki/ajantasa/2016/20160549.
[213] https://www.finlex.fi/en/laki/kaannokset/2016/en20160549_20161374.pdf.
[214] https://www.finlex.fi/fi/laki/ajantasa/1987/19870395.
[215] Unofficial English translation:
https://www.fimea.fi/documents/160140/765540/18580_Laakelaki_englanniksi_paivitetty_5_2011.pdf
[216] https://finlex.fi/fi/laki/ajantasa/2001/20011047.
[217] https://finlex.fi/en/laki/kaannokset/2001/en20011047.pdf.
[218] https://finlex.fi/fi/laki/ajantasa/2011/20110710.
[219] Unofficial English translation: https://finlex.fi/en/laki/kaannokset/2011/en20110710.pdf.

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Secondary legislation:

- Valtioneuvoston asetus kuluttajien kannalta sopimattomasta menettelystä markkinoinnissa ja asiakassuhteissa, 601/2008[220] (Government Decree on Unfair Practices in Consumer Marketing and Customer Relationships)

Other (legally non-binding)

- *Konkurrens och konsumentverket Identifierbar reklam*[221] Finnish Competition and Consumer Authority guidelines on identifiability of advertising[222]
- Liikenne- ja viestintäviraston ohje mainonnan kestosta ja sijoittelusta sekä tuotesijoittelusta ilmoittamisesta ja sponsoritunnisteiden sisällöstä[223] (Traficom guidelines on the duration and insertion of advertising spots, informing the audience of product placement and the content of sponsorship announcements)

## 4.11.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from current laws, rules and practices, as well as from ongoing reforms undertaken as part of the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.11.2.1. Definitions

**Table 37. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes |

[220] https://www.finlex.fi/fi/laki/ajantasa/2008/20080601.
[221] https://www.kkv.fi/sv/konsumentarenden/marknadsforing-erbjudanden-och-pris/marknadsforing-samt-forfaranden-i-kundrelationer/identifierbar-reklam/.
[222] https://www.kkv.fi/en/consumer-affairs/marketing-sales-and-indicating-prices/marketing-and-practices-in-a-customer-relationship/identifiability-of-advertising/.
[223] https://www.traficom.fi/sites/default/files/media/regulation/Liikenne-_ja_viestint%C3%A4viraston_ohje_mainonnan_kestosta_ja_sijoittelusta_sek%C3%A4_tuotesijoittelusta_ilmoittamisesta_ja_sopnsoritunnisteiden_sis%C3%A4ll%C3%B6st%C3%A4.pdf.

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| | |
|---|---|
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | No. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | Under the definition of sponsorship. |
| **Product placement** | Yes. |

*Source: Finnish response to European Audiovisual Observatory standardised survey*

#### 4.11.2.1.1. Audiovisual commercial communications

There is no definition of audiovisual commercial communications, as they are covered under sponsorship, teleshopping and product placement definitions.

#### 4.11.2.1.2. Television advertising

There is no definition of television advertising, as it is also covered under sponsorship, teleshopping and product placement definitions.

#### 4.11.2.1.3. Advertiser

There is no definition of advertiser, as it is covered under sponsorship, teleshopping and product placement definitions.

#### 4.11.2.1.4. Surreptitious commercial communication

There is no definition of surreptitious commercial communications.

#### 4.11.2.1.5. Misleading commercial communication

The Consumer Protection Act, Chapter 2 Section 6, and the Government Decree on Unfair Practices in Consumer Marketing and Customer Relationships, Section 1, provide rules and prohibitions related to misleading commercial communication, as follows:

> *Chapter 2 Section 6. Prohibition on providing false or misleading information*
> *No false or misleading information shall be given in marketing or in a customer relationship where the information is likely to lead to a consumer making a purchase decision or other decision relating to a consumer product which (s)he would not have made without the information provided.*

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…

It further stipulates that the false or misleading information may relate to the existence and the characteristics of the consumer good, its origin, the price, etc.

Further, the Act on Electronic Communications Services in Section 203 provides rules on the identification of direct marketing:

> *The recipient of an email, text, voice, sound or image message sent for the purpose of direct marketing as referred to in Sections 200 and 202 above shall be able to recognise such a message as marketing clearly and unambiguously.*
> *It is prohibited to send such an email, text, voice, sound or image message intended for direct marketing that:*
> *1) disguises or conceals the identity of the sender on whose behalf the communication is made;*
> *2) is without a valid address to which the recipient may send a request that such communications be ended;*
> *3) solicits recipients to visit websites that contravene Chapter 2 of the Consumer Protection Act.*

Finally, the Code on Advertising Practice, Guidelines for Journalists,[224] Section 16 prohibits hidden advertising:

> *There must be a clear demarcation kept between advertising and editorial content. Hidden advertising must be avoided.*

#### 4.11.2.1.6. Virtual advertising

There is no definition of virtual advertising, as all advertising rules (legal and self-regulatory ones) apply in a virtual environment as well.

#### 4.11.2.1.7. Sponsorship

Section 3, subsection 20 of the Act on Electronic Communications Services defines sponsorship as:

> *the financing of an audiovisual content service, an audiovisual programme, radio programme or radio broadcasting, as well as any other financial support intended to promote the sale of the sponsor's goods or to promote its identity, provided that the sponsor is not engaged in the production of programmes or radio programmes or in the provision of content services or radio broadcasting*

[224] Council for Mass Media, Guidelines for Journalists, https://www.jsn.fi/en/guidelines_for_journalists/.

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#### 4.11.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.11.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.11.2.1.10. Product placement

Section 220 of the Act on Electronic Communications Services provide rules for product placement as follows:

> *A product, service or trademark may be placed in an audiovisual programme for remuneration (product placement), with the exception of news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes.*
> *Unremunerated provision of significant valued needs or a product prize for use in an audiovisual programme are also considered to constitute product placement. Such product placement may be used in non-children's programmes.*

#### 4.11.2.1.11. Other definitions

N/A.

### 4.11.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures, as imposed under national legislation.

As a general note, it should be noted that the Act on Electronic Communications Services provides that the obligations apply to VSPs, together with relevant parts of the Consumer Protection Act, Tobacco Act, Alcohol Act and Medicines Act, which are detailed further below.

#### 4.11.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Alcohol Act, in Section 50 Marketing Regulation, provides restrictions on the marketing of alcohol:

> *The marketing of strong alcoholic beverages is prohibited.*

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*The marketing of a spirit drink and the marketing of a spirit drink in combination with the marketing of another product or service is prohibited if:*
*(1) it is directed at or depicts minors or other persons to whom the alcoholic beverage may not be sold under section 37;*
*2) it associates the use of alcohol with driving a vehicle;*
*3) it emphasises the alcoholic strength of the alcoholic beverage as a positive characteristic;*
*4) it portrays heavy drinking in a positive light or sobriety or moderate drinking in a negative light;*
*5) it portrays alcohol consumption as enhancing performance or promoting social or sexual success;*
*6) it portrays alcohol as having medicinal or therapeutic properties or as a stimulant, a sedative or a means of resolving conflict;*
*(7) it is unfair, uses a practice which is unfair to the consumer or otherwise gives untrue or misleading information about alcohol, its use, effects or other properties;*
*8) it is carried out in the context of television and radio broadcasting in accordance with the Electronic Communications Services Act (917/2014) between 7 a.m. and 10 p.m. or in the context of the public showing in a cinema of a visual programme for which the age limit is under 18 years in accordance with the Visual Programme Act (710/2011);*
*9) it is performed or directed to the public in a public place within the meaning of the Public Order Act (612/2003);*
*10) it uses consumer participation in a game, lottery or competition;*
*11) its commercial operator uses verbal or visual content produced by consumers in a service of the information network it manages or makes verbal or visual content produced by it or by consumers available for distribution to consumers through the service.*

*By way of derogation from the provisions of subsection 1, it is allowed to market strong alcoholic beverages following the restrictions laid down in subsection 2:*
*1) on premises where alcoholic beverages are produced or retailed and on licensed premises;*
*2) in a printed retail or on-trade price list or a retail or on-trade price list presented in an information network or manufacturer's or wholesaler's product catalogue so that all beverages available to consumers are presented in a uniform manner; and*
*3) to those involved in the sales of alcoholic beverages, but not in an information network open to consumers.*
*The prohibition laid down in subsection 2(9) does not apply to marketing mild alcoholic beverages with the restrictions laid down in subsection 2:*
*1) at public events referred to in the Assembly Act (530/1999) and in places used for that purpose on a permanent basis;*
*2) on board vessels used for international traffic;*
*3) on retail sale premises and licensed premises;*
*4) outside of retail sale premises and licensed premises in respect of information on the availability and prices of beverages.*
*Subsections 1 and 2 do not apply to the publication and programme operations, referred to in the Act on the Exercise of Freedom of Expression in Mass Media (460/2003), that an operator not established in Finland carries out abroad and that are intended to be available only outside Finland or have the same content irrespective of the country of the recipient.*

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*The provisions are however applied to such advertising of alcoholic beverages placed on the market in Finland that is carried out from abroad and that is intended to be made available in particular in Finland.*

The Tobacco Act, in Section 68, prohibits marketing of tobacco/tobacco-related products:

*The marketing of tobacco products, tobacco substitutes, smoking accessories, tobacco imitations, electronic cigarettes or nicotine-containing liquids is prohibited.*

#### 4.11.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

The Medicines Act, in Sections 91, 91 a, 91 b, 91 c, 92 a, 93, 93 a, 93 b, restricts the marketing of medicinal products and medical treatment, and includes a prohibition on inducing excessive use of these products, restrictions on marketing of a medicinal product's substances (e.g. a prohibition on marketing, to the general public, prescription-only drugs or psychotic substances (Section 91a), with the possibility to market these substances to persons entitled to prescribe them (Section 91b). Further, the provisions stipulate various information requirements for marketing of these products and services:

*Section 91*

*…*
*In addition to what is provided in subsections 1 and 2, the provisions of the Consumer Protection Act (38/1978) on marketing regulation also apply*

*…*
*92 a:*
*Further provisions on the marketing restrictions laid down in Sections 91–92 above may be issued by Government decree …*

*Section 93 specifies sanctions and relevant institutions*
*If provisions laid down in Sections 91, 91a, 91b or 92 or under Section 92a have been violated in marketing a medicinal product, the Finnish Medicines Agency may forbid continuation or renewal of the marketing. The Finnish Medicines Agency may also order a party thus forbidden to correct the marketing if this is definitely considered necessary in terms of risk to medicinal product safety. The Agency may order the list referred to in Section 91c to be published within a deadline set by the Agency.*
*A prohibition or an order to correct marketing material or publish the list can be backed up with a conditional fine. If necessary, a new conditional fine may be imposed in order to make a prohibition more effective.*
*If requested by the Finnish Medicines Agency, a Regional State Administrative Agency will order payment of the conditional fine to make the prohibition more effective …*

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#### 4.11.2.2.3. Surreptitious audiovisual commercial communications

Chapter 2 Section 4 of the Consumer Protection Act and Section 1 subsection 2 of the Unfair Business Practices Act stipulate that: “The commercial purpose of marketing and the party on whose behalf the marketing is done shall be clearly apparent from the marketing.”

Section 1 of the Unfair Business Practices Act and the Government Decree on Unfair Practices in Consumer Marketing and Customer Relationships Section 1 relate to identifiability and good business practices vis-à-vis commercial communications:

> *Section 1.*
> *Good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business.*
> *The commercial purpose of marketing and the party on whose behalf the marketing is done shall clearly appear from the marketing.*

According to Section 214 subsection 1 of the Act on Electronic Communications Services: "Marketing shall be readily recognisable."

#### 4.11.2.2.4. Subliminal techniques in commercial communications

There are no rules pertaining to subliminal techniques in commercial communications.

#### 4.11.2.2.5. Prejudice with regard to human dignity

Chapter 2 Section 2 subsection 1 of the Consumer Protection Act identifies marketing in contrast with good marketing practices:

> *Marketing is considered contrary to good practice if it is in clear contradiction with generally accepted societal values and especially if:*
> *1) it infringes human dignity or religious or political conviction;*

#### 4.11.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Consumer Protection Act, in Chapter 2 Section 2 subsections 1 and 2 identify marketing in contrast with good marketing practices if:

> *1) it infringes human dignity or religious or political conviction;*
> *2) it features discrimination based on sex, age, ethnic or national origin, nationality, language, health, disability, or sexual orientation;*

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#### 4.11.2.2.7. Encouragement of behaviour prejudicial to health or safety

Marketing in contrast with good marketing practices is, in Chapter 2 Section 2 subsection 3 of the Consumer Protection Act, identified if:

> *it shows acceptance towards activity endangering health, safety, or the environment without there being a justification, related to the marketed product, to present such activity.*

#### 4.11.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Marketing in contrast with good marketing practices is, in Chapter 2 Section 2 subsection 3 of the Consumer Protection Act, identified if:

> *it shows acceptance towards activity endagering health, safety, or the environment without there being a justification, related to the marketed product, to present such activity*

#### 4.11.2.2.9. Causing physical, mental or moral detriment to minors

The Consumer Protection Act, in Chapter 2 section 2 subsection 2, declares that marketing to minors or aimed at minors in general:

> *is considered to be contrary to good practice, in particular if it exploits the inexperience or credulity of a minor, if it is likely to have an adverse effect on the balanced development of a minor or if it seeks to ignore the prerogative of parents to raise their children as they choose. When assessing whether marketing is contrary to good practice the age and developmental stage of minors generally reached by the marketing as well as other circumstances shall be taken into account. shall be considered contrary to good practice, in particular if it exploits the inexperience or gullibility of a minor, if it is likely to adversely affect the minor's balanced development or if it aims at disregarding the possibility for parents to act fully as educators. When assessing whether or not such marketing is contrary to good practice, the age and level of development of minors generally reached by marketing, as well as other circumstances, are taken into account.*

#### 4.11.2.2.10. Other

N/A.

## 4.11.3. Sponsorship and product placement

Certain obligations vis-à-vis sponsorship and product placement stem from the revised AVMSD. This part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

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#### 4.11.3.1. Sponsorship

Sections 218 and 219 of the Act on Electronic Communications Services provide applicable rules:

> *218: Requirements for sponsored programmes and services*
> *A sponsor may not influence the content and scheduling of sponsored television or radio programmes or audiovisual content services or the insertion of programmes in such a way as to affect the responsibility and editorial independence of the audiovisual content service provider or radio broadcaster in respect of programmes.*
> *Sponsored audiovisual and radio programmes shall be clearly identified by the name or logo of the sponsor at the beginning or end of the programmes.*
> *Sponsored television or radio programmes must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.*
>
> *219: Forbidden sponsorship*
> *An undertaking principally producing or marketing tobacco products shall not sponsor programmes, audiovisual content services or radio operations.*
> *If the sponsor of a programme is an undertaking whose activities include the manufacture or sale of medicinal products and medical treatment, the name or logo of the undertaking may be shown in connection with the programme, taking into consideration the provisions of section 218. However, a medicinal product or medical treatment available only on prescription in Finland may not be promoted in this context.*
> *News and current affairs programmes broadcast on television or on the radio may not be sponsored.*

The Finnish Competition and Consumer Authority (KKV)[225] has issued guidelines related to identifiability of advertising, which, *inter alia*, emphasise that the sponsor's name or logo must be clearly displayed at the beginning or end of sponsored programmes.

The Finnish Transport and Communications Agency (Traficom)[226] has issued guidelines on the duration and insertion of advertising spots, and on informing the audience about product placement and the content of sponsorship announcements.[227]

[225] Konkurrens och konsumentverket, https://www.kkv.fi/en/information-on-the-finnish-competition-and-consumer-authority/.
[226] Finnish Transport and Communications Agency, https://www.traficom.fi/en/.
[227] https://www.traficom.fi/sites/default/files/media/regulation/Liikenne-_ja_viestint%C3%A4viraston_ohje_mainonnan_kestosta_ja_sijoittelusta_sek%C3%A4_tuotesijoittelusta_ilmoittamisesta_ja_sopnsoritunnisteiden_sis%C3%A4ll%C3%B6st%C3%A4.pdf.

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#### 4.11.3.2. Product placement

While Sections 220 and 221 of the Act on Electronic Communications Services provide the rules for product placement (see under 4.11.2.1.10.), the KKV guidelines related to identifiability of advertising also provide that:

> *Product placement means placing a product, service or trademark in an audiovisual programme in return for payment. Product placement is usually prohibited. However, it is permitted in films and serials as well as sports and entertainment programmes.*
> *Viewers must be told clearly that the programme contains product placement. This information can take the form of either a text or a visual product placement identifier.*

Traficom has issued guidelines on the duration and insertion of advertising spots, and on informing the audience about product placement and the content of sponsorship announcements.

## 4.11.4. Obligations regarding (v)blogs and (v)blogging

As is the case with the applicability of all rules and regulations to VSPs, as the Finnish regulations are technology-neutral, all aforementioned rules, especially those in the Consumer Protection Act, apply to (v)bloggers as well.

The Consumer Ombudsman's guidelines on influencer marketing in social media* instruct companies and influencers on how commercial cooperation should be communicated to consumers in targeted influencer marketing in accordance with the Consumer Protection Act. The guidelines contain, *inter alia*, instructions for labelling advertisements on the most common social media platforms, such as Instagram, YouTube and blogs.[228]

## 4.11.5. Other relevant information

N/A.

[228] The Consumer Ombudsman's guidelines on influencer marketing in social media https://www.kkv.fi/en/consumer-affairs/facts-and-advice-for-businesses/the-consumer-ombudsmans-guidelines/influencer-marketing-in-social-media/.

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## 4.11.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.11.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.11.6.2. Gambling, betting, betting tipsters, etc.

In Finland, Veikkaus Oy[229] has a monopoly on gambling. The Lotteries Act, Section 14 b, provides for the regulation of gambling marketing as follows:

> *14 b*
> *Veikkaus Oy may market gambling and the company if the amount, scope, visibility and frequency of marketing is moderate and necessary to direct the demand for gambling-to-gambling activities under this Act and gambling that causes fewer economic, social and health disadvantages.*

Section 14b further states that, in addition to a prohibition on gambling marketing targeted at minors, gambling marketing must also not encourage gambling which causes economic, social or health damage, such as by glorifying gambling, presenting it in a positive way, etc.

### 4.11.6.3. Environmental or "green" claims for products

No specific provisions deal with this issue.

### 4.11.6.4. Other

N/A.

[229] Finnish government-owned betting agency, https://www.veikkaus.fi/.

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## 4.11.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.11.7.1. Self- and co-regulatory bodies

#### 4.11.7.1.1. Context of establishment and legal background

The existing Finnish institutions, including the Finnish Council for Mass Media (CMM)[230] and the Council of Ethics in Advertising,[231] are there to protect and support both media freedoms and responsible advertising.

Under the scope of work of CMM, media associations, journalists' unions and independent media companies that have affiliated with its Basic Agreement[232] are bound to adhere to its principles. They also endeavour to ensure that their members and those working for them act in accordance with the intentions of this agreement.

The Council of Ethics in Advertising deals with ethical issues pertaining to advertising practices.

#### 4.11.7.1.2. Stakeholders involved

Stakeholders are the CMM and the Council of Ethics in Advertising, as well as industry representatives.

#### 4.11.7.1.3. Scope and objectives

The scope of the self-regulatory mechanisms mentioned under 4.11.7.1.1. relates to self-regulating mass communication for the purpose of interpreting good professional practice and defending freedom of speech and publication (under the CMM) and good marketing practices (under the Council of Ethics in Advertising). The Council is not empowered to give statements regarding misleading advertisements or comparative advertising, as these matters are dealt with by the Board of Business Practice,[233] which was set up in 1937 to promote self-regulation and to prevent unfair competition and illicit trade practices.

[230] Julkisen sanan neuvosto, https://www.jsn.fi/en/.
[231] Keskuskauppakamari, https://kauppakamari.fi/en/services/the-council-of-ethics-in-advertising/.
[232] https://www.jsn.fi/en/Council_for_Mass_Media/basic-agreement-of-the-council-for-mass-media/.
[233] https://kauppakamari.fi/en/services/the-board-of-business-practice/.

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#### 4.11.7.1.4. Code(s) of conduct

The self-regulatory codes include the aforementioned Basic Agreement of the Council for Mass Media, while the Council of Ethics in Advertising issues statements on whether an advertisement or advertising practice is ethically acceptable, and deals with issues like discrimination, decency and social responsibility.

#### 4.11.7.1.5. Role of the (self-)regulatory bodies

See under 4.11.7.1.3.

#### 4.11.7.1.6. Period of activity (if limited)

N/A.

#### 4.11.7.1.7. Role of the regulatory authority in a co-regulatory system:

N/A.

##### *4.11.7.1.7.1. Regulatory body*

Traficom[234], under Section 303, subsection 6 of the Act on Electronic Communications Services, has a duty to promote co-regulation or self-regulation.

##### *4.11.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.11.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.11.7.2. Monitoring/evaluation, compliance and sanctioning powers

The CMM can issue a notice on the breaching of good professional practice, and the Council of Ethics in Advertising can issue statements on whether an advertisement or advertising practice is ethically acceptable. The Board of Business Practice receives complaints related to professional practices, which must be submitted in writing (they may also be submitted in English only). The complaint is then sent to the opposing party for a written response, which is required within two weeks. After adjudicating (under confidentiality rules) and rendering its decision, the Board of Business Practice sends its decision to both parties. In the event of a respondent´s non-compliance, the complainant may be authorised to publish the decision.

[234] http://www.traficom.fi/.

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## 4.11.8. Cross-sector and cross-border collaboration

The Council of Ethics in Advertising is part of the International Chamber of Commerce and the Council for Mass Media is a member of The Alliance of Independent Press Councils of Europe.

Also, the Act on Electronic Communications Services, in Section 308, specifies cooperation among relevant authorities, such as the Ministry of Transport and Communications, Traficom, the Data Protection Ombudsman, competition authorities, consumer authorities, market surveillance authorities and product safety authorities, as a means to fulfilling the duties under the act.

## 4.11.9. Update on plans and practices related to new obligations of VSPs

At the time of preparation of this factsheet, the Act on Audiovisual Programmes was in a reform process, without further public details available.

## 4.11.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- Ministry of Education and Culture – Report on the functioning and need for amending the Act on Audiovisual Programmes (*Kuvaohjelmalain toimivuus ja uudistustarpeet. Selvitysraportti*), 2020[235]

## 4.11.11. Data compilation

This factsheet is based on data compiled by Riku Neuvonen, Senior Lecturer in Public Law at the University of Helsinki.

[235] https://julkaisut.valtioneuvosto.fi/handle/10024/162540.

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# 4.12. FR – France – National legal summary[236]

## 4.12.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication modifiée par la Loi du 25 Octobre 2021*[237] (Law on freedom of communication modified on 25 October, 2021 – Law on Freedom of Communication).
- *Code de la santé publique*[238] (Public Health Code).
- *Loi n° 2020-1266 du 19 octobre 2020 visant à encadrer l'exploitation commerciale de l'image d'enfants de moins de seize ans sur les plateformes en ligne*[239] (Law on commercial use of image of children below 16 years of age on online platforms)
- *Code de la sécurité intérieure*[240] (Homeland Security Code).
- *Loi n° 2010-476 du 12 mai 2010 relative à l'ouverture à la concurrence et à la régulation du secteur des jeux d'argent et de hasard en ligne*[241] (Law about opening of online gambling and money games to competition and regulation).

Secondary legislation:

- *Décret n° 2020-1349 du 4 novembre 2020 relatif aux modalités de régulation de l'Autorité nationale des jeux*[242] (Decree about regulation of the public authority for gambling and money games - VSP Decree implementing the Law on Freedom of Communication).
- *Décret n° 2021-1922 du 30 décembre 2021 pris pour l'application de l'article 60 de la loi n° 86-1067 du 30 septembre 1986 relative à la liberté de communication et fixant les principes généraux applicables aux communications commerciales audiovisuelles fournies sur les plateformes de partage de vidéos*[243] (Decree implementing Law on freedom of communication and fixing general principles about commercial communications on VSP).
- *Décret n°92-280 du 27 mars 1992 pris pour l'application des articles 27 et 33 de la loi n° 86-1067 du 30 septembre 1986 et fixant les principes généraux définissant les*

[236] The factsheet on France incorporates the feedback received from the French Regulatory Authority for Audiovisual and Digital Communication (Arcom), during the checking round with the national regulatory authorities.
[237] https://www.legifrance.gouv.fr/loda/id/LEGITEXT000006068930/.
[238] https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006072665/2022-04-27/.
[239] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042439054/2022-04-13/.
[240] https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000025503132/LEGISCTA000042501521?idSectParent=LEGISCTA000029658632&anchor=LEGISCTA000042501521#LEGISCTA000042501521.
[241] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000022204510/2022-04-27/.
[242] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000042500096/2022-04-20/.
[243] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000044792286.

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*obligations des éditeurs de services en matière de publicité, de parrainage et de télé-achat*[244] (Decree implementing articles 27 & 33 of Law on freedom of communication establishing general principles for advertising, sponsorship and tele-shopping).

- *Décret n° 2021-793 du 22 juin 2021 relatif aux services de médias audiovisuels à la demande*[245] (Decree about VOD services)
- *Délibération du Conseil supérieur de l'audiovisuel du 16 février 2010 relative au placement de produit dans les programmes des services de télévision modifiée par la Délibération du 24 juillet 2012*[246] (Deliberation of Superior Audiovisual Council from February 16, 2010 relating to product placement in the programs of television services modified by the Deliberation of July 24, 2012).
- *Délibération du Conseil supérieur de l'audiovisuel du 22 janvier 2013 relative aux conditions de diffusion des communications commerciales en faveur des opérateurs de jeux d'argent et de hasard*[247] (Deliberation of Superior Audiovisual Council from January 22, 2013 relating to the conditions for the dissemination of commercial communications in favour of gambling operators)

Self- and co-regulatory instruments:

- *Autorité de régulation de la communication audiovisuelle et numérique Arcom La charte alimentaire 2020-2024*[248] (Arcom Food charter 2020-2024).
- *Autorité de régulation de la communication audiovisuelle et numérique Arcom Recommandations sur les mesures de lutte contre la manipulation de l'information en matière de communications commerciales et de promotion de contenus d'information se rattachant à un débat d'intérêt général (n°12, 13 et 14) au titre de la loi 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information*[249] (Arcom's recommendations on measures to combat manipulation of information in commercial communications).
- *Communication n° 2022-C-001 du 17 Février 2022 portant adoption de lignes directrices relatives aux contenus des communications commerciales des opérateurs de jeux d'argent et de hasard, Autorité nationale des jeux – ANJ*[250] (National authority for

[244] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000346165/2022-04-12/.
[245] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000043688681/2022-04-27/.
[246] https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-du-16-fevrier-2010-relative-au-placement-de-produit-dans-les-programmes-des-services-de-television-modifiee-par-la-Deliberation-du-24-juillet-2012.
[247] https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-du-22-janvier-2013-relative-aux-conditions-de-diffusion-des-communications-commerciales-en-faveur-des-operateurs-de-jeux-d-argent-et-de-hasard (en cours de modification : https://www.arcom.fr/vos-services-par-media/consultations-publiques/consultation-publique-sur-un-projet-de-deliberation-relative-aux-jeux-dargent).
[248] https://www.arcom.fr/ressources/espace-juridique/textes-juridiques/la-charte-alimentaire-2020-2024.
[249] https://www.csa.fr/Informer/Toutes-les-actualites/Actualites/Lutte-contre-la-manipulation-de-l-information-le-CSA-publie-le-bilan-des-mesures-mises-en-oeuvre-par-les-plateformes-en-ligne-en-2020.
[250] https://anj.fr/sites/default/files/2022-02/Communication%202022-C-001_Lignes%20directrices%20PUB.pdf.

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games ANJ communication adopting guidelines on the content of commercial communications by gambling operators).

- *Ministère de la Transition Écologique et Arcom : Guide Méthodologique à l'élaboration d'un contrat climat et la déclaration sur la plateforme publicité-responsable*[251] (Ministry of ecological transition and Arcom Guide for drawing up a climate contract and signing in on the platform[252]).

## 4.12.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.12.2.1. Definitions

**Table 38. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

[251] https://www.publicite-responsible.ecologie.gouv.fr/IMG/pdf/guide.pdf.
[252] https://www.publicite-responsable.ecologie.gouv.fr/IMG/pdf/guidelines.pdf.

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| | |
|---|---|
| **Other: (Specify)** | Teleshopping. |

*Source: French response to European Audiovisual Observatory standardised survey*

#### 4.12.2.1.1. Audiovisual commercial communications

Article 2, 1° of VSP Decree implementing the Law on Freedom of Communication defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim as follows:

> *Images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme or a user-generated video in return for payment or for similar consideration or for self-promotional purposes. Audiovisual commercial communications are in particular television advertising, sponsorship, telesales, product placement and any other technically feasible means.*

#### 4.12.2.1.2. Television advertising

Article 2 of Decree implementing articles 27 & 33 of the Law on Freedom of Communication, applicable only to television and on-demand audiovisual media services, defines television advertising by transposing the text of the revised AVMSD verbatim as:

> *any form of television message broadcast against payment or other consideration aimed at either promoting the supply of goods or services, including those presented under their generic name, in connection with a commercial, industrial, craft or professional activity, or at the commercial promotion of a public or private company.*

With regard to video-sharing platforms, Article 2, 2° of the VSP Decree implementing the Law on Freedom of Communication similarly defines advertising as:

> *Any form of announcement whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order either to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment, or promote a company.*

#### 4.12.2.1.3. Advertiser

There is no definition of advertiser.

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#### 4.12.2.1.4. Surreptitious commercial communication

Article 4 of the VSP Decree implementing the Law on Freedom of Communication defines surreptitious commercial communications by transposing the text of the revised AVMSD verbatim as follows:

> *Representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes or user-generated videos when such representation is intended to serve as advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration.*

#### 4.12.2.1.5. Surreptitious advertising

Article 9 of the Decree implementing articles 27 & 33 of the Law on freedom of communication establishing general principles for advertising, sponsorship and tele-shopping provides for the prohibition of surreptitious advertising and defines it on television as:

> *Representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is made for advertising purposes.*

It should be noted that there is a difference between the definition of surreptitious commercial communications on VSPs and the definition of surreptitious advertising on TV: there is a criterion of "intention" in the first definition ("de façon intentionnelle") which doesn't exist in the second one (which was chronologically the first one).

#### 4.12.2.1.6. Misleading commercial communication

Article 6 of the Decree implementing articles 27 & 33 of the Law on Freedom of Communication defines and prohibits this type of communication on television:

> *Advertising must be designed with respect for the interests of consumers. Any advertising containing, in any form whatsoever, claims, indications or presentations that are false or likely to mislead consumers is prohibited.*

#### 4.12.2.1.7. Virtual advertising

There is no definition of virtual advertising.

#### 4.12.2.1.8. Sponsorship

Article 2, 3° of the VSP Decree implementing the Law on Freedom of Communication defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

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*Any contribution made by a public or private undertaking or natural person not engaged in providing a television network, on-demand audiovisual media service or video-sharing platform or in the production of audiovisual works, to the financing of video-sharing platform services, user-generated videos or programmes, with a view to promoting their name, trademark, image, activities, products or services.*

Article 17 of the Decree implementing articles 27 and 33 of the Law on freedom of communication establishing general principles for advertising, sponsorship and tele-shopping defines sponsorship as:

*any contribution made by a public or private undertaking or natural person not engaged in providing television services or on-demand audiovisual media services or providing services of video sharing platforms or in the production of audiovisual works, to the financing of television services or programmes with a view to promoting its name, its trade mark, its image or its activities.*

#### 4.12.2.1.9. Sponsor

There is no definition of sponsor.

#### 4.12.2.1.10. Sponsored content

There is no definition of sponsored content.

#### 4.12.2.1.11. Product placement

Article 2, 5° of the VSP Decree implementing the Law on Freedom of Communication defines product placement by transposing the text of the revised AVMSD verbatim as follows:

*All forms of audiovisual commercial communications consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme or a user-generated video, normally in return for payment or for similar consideration.*

The Conseil Supérieur de l'Audiovisuel (CSA) (now Arcom)[253] deliberation on product placement quotes the definition of the AVMSD and adds that:

*For the purposes of this deliberation, product placement is considered to be placement made in return for payment, i.e., the supply, formalised by a contract, of goods or services whose brand is identifiable within the program.*

[253] Former regulatory body, now called *Autorité de regulation de la communication audiovisuelle et numérique (Arcom* - Regulatory Authority for Audiovisual and Digital Communication: https://www.arcom.fr/.

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#### 4.12.2.1.12. Other definitions

Article 2, 4° of the VSP Decree implementing the Law on Freedom of Communication defines teleshopping as: "Direct offers broadcast to the public in return for payment with a view to the supply of goods or services, including immovable property, rights and obligations."

Article 21 of the Decree implementing articles 27 & 33 of the Law on freedom of communication establishing general principles for advertising, sponsorship and teleshopping defines teleshopping on television as: "Direct offers broadcast to the public in return for payment with a view to the supply of personal or immovable property, services, or rights and obligations."

### 4.12.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, it should be highlighted that Article 60 of the Law on Freedom of Communication, which was modified in 2021 as part of the transposition of the revised AVMSD, provides an obligation for the newly established Regulatory Authority for Audiovisual and Digital Communication (Arcom) to ensure that the VSP providers under French jurisdiction comply with the following provisions vis-à-vis commercial communications:

> *I. – The Audiovisual and Digital Communication Regulatory Authority shall see to it that video-sharing platform providers:*
> *1. Take appropriate measures so that the programmes, user-generated videos and audiovisual commercial communications they provide comply with the provisions of Article 15 of this Law;2. Comply with the requirements laid down by decree of the Council of State concerning audiovisual commercial communications that they market, sell or arrange themselves and take appropriate measures so that those rules are also followed with respect to audiovisual commercial communications marketed, sold or arranged by third parties;*
> *3. Clearly inform users of the existence of such commercial communications within programmes and user-generated videos, where such communications have been declared by the users uploading them or they have knowledge of them.*

The VSP Decree implementing the Law on Freedom of Communication, as well as the Decree implementing articles 27 & 33 of the Law on Freedom of Communication further clarify the obligations related to commercial communications stemming from relevant legislation, details of which can be found further below in this section.

It should be noted that Article 3 of the VSP Decree requires that ACCs be easily recognisable as such.

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#### 4.12.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

According to Article 8 of the Decree implementing articles 27 & 33 of the Law on Freedom of Communication, advertising for alcoholic beverages is prohibited on television when the beverage has an alcohol content of more than 1.2 degrees.

Article 30 of the Decree on VOD refers to the same prohibition with regard to on-demand media services.

It is, however, not forbidden for video-sharing platforms, as Article L. 3323-2, 9° of the Public Health Code only prohibits commercial communications for alcohol on online websites aimed primarily at young people.

With regard to tobacco and tobacco-related products such as electronic cigarettes, all commercial communications for such products are prohibited under Articles L3513-4 and L3512-4 of the Public Health Code. Therefore, it is also forbidden for VSPs to host or edit tobacco ACCs.

#### 4.12.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article L. 5122-6 of the Public Health Code prohibits advertising for medicinal products and medical treatment available only on prescription: “Advertising to the public for a medicinal product is only permitted on the condition that this medicinal product is not subject to medical prescription ...” The general prohibition applies to all media.

#### 4.12.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious audiovisual commercial communications are prohibited as per Article 4 of the VSP Decree implementing the Law on Freedom of Communication.

Surreptitious advertising on television and on on-demand media services is prohibited as per Article 9 of the Decree implementing articles 27 & 33 of the Law on Freedom of Communication and Article 30 of the Decree about VOD services.

#### 4.12.2.2.4. Subliminal techniques in commercial communications

Article 5 of the VSP Decree implementing the Law on Freedom of Communication states that: “Audiovisual commercial communications on video-sharing platforms do not use subliminal techniques.”

The same rule can be found in article 10 of the Decree implementing Articles 27 & 33 of the Law on Freedom of Communication and Article 30 of the Decree about VOD services.

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#### 4.12.2.2.5. Prejudice with regard to human dignity

Article 6, 1° of the VSP Decree implementing the Law on Freedom of Communication specifies that audiovisual commercial communications available on video-sharing platforms "must not undermine the human dignity and image of women".

The same principle can be found in article 3 of the Decree implementing Articles 27 & 33 of the Law on Freedom of Communication and Article 30 of the Decree about VOD services.

#### 4.12.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

As per Article 6, 2° of the VSP Decree implementing the Law on Freedom of Communication:

> *Commercial communications available on video-sharing platforms must not include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation or gender identity.*

#### 4.12.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 6, 3° of the VSP Decree implementing the Law on Freedom of Communication stipulates: "Commercial communications available on video-sharing platforms must not encourage behaviour prejudicial to health or safety".

#### 4.12.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Commercial communications available on video-sharing platforms must not encourage behaviour grossly prejudicial to the protection of the environment as per Article 6, 4° of the VSP Decree implementing the Law on Freedom of Communication.

#### 4.12.2.2.9. Causing physical, mental or moral detriment to minors

According to Article 7 of the VSP Decree implementing the Law on Freedom of Communication,

> *Audiovisual commercial communications available on video-sharing platforms must not cause physical, mental or moral harm to minors; must not directly incite minors to purchase a product or service by exploiting their inexperience or credulity, directly incite them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in their parents, teachers or other persons, or unreasonably show minors in dangerous situations.*

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Besides, Arcom is tasked with promoting the development of codes of conduct for VSPs related to protection of minors, both in relation to commercial use of the image of children under 16 on online platforms, and to reduction of children's exposure to commercial communications with foods and beverages containing nutrients and substances with a nutritional or physiological effect, including fats, trans-fatty acids, salt or sodium and sugars. Both codes of conduct are explained further in section 4.12.7.

#### 4.12.2.2.10. Other

N/A.

## 4.12.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.12.3.1. Sponsorship

Article L. 3323-2, 9° of the Public Health Code prohibits sponsorship for alcohol on an online site aimed primarily at young people and stipulates that direct or indirect propaganda or advertising for alcoholic beverages, the manufacture and sale of which is not prohibited, shall be permitted only for:

> *…9° online communication services, excluding those which, by their nature, presentation or purpose, appear to be mainly aimed at young people, as well as those published by sports associations, companies and federations or professional leagues within the meaning of the Sports Code, provided that the propaganda or advertising is neither intrusive nor interstitial. Any sponsorship operation is prohibited when its purpose or effect is direct or indirect propaganda or advertising for alcoholic beverages.*

Also, as per Articles L3513-4 and L3512-4 of the Public Health Code, any sponsorship or patronage operation is prohibited when it is carried out by manufacturers, importers or distributors of tobacco products or when its purpose or effect is propaganda or direct or indirect advertising in favour of tobacco.

### 4.12.3.2. Product placement

There are no specific rules pertaining to product placement for video-sharing platforms in France.

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Article 2, 1° of VSP Decree defines audiovisual commercial communications and includes product placement as a form of ACC. Thus, all requirements pertaining to ACCs in the VSP Decree apply to product placement as well.

## 4.12.4. Obligations regarding (v)blogs and (v)blogging

There are no specific rules relating to (v)blogs in French law, which means that if a v(blog) qualifies as a VOD service, it is subject to the rules applicable to VOD; if it qualifies as a video-sharing platform, it is subject to the rules applicable to video-sharing platforms. This is because the (v)blog has to be either a VOD service or a VSP, according to Article 2 of the Law on Freedom of Communication, which defines VSP and VOD services respectively along the following lines:

> *1-a service provided by an electronic communications network;*
> *2-the provision of programmes, user-generated videos or both, in order to inform, entertain or educate is the main purpose of the service or a dissociable section of the service or essential functionality of the service;*
> *3-the service provider does not have editorial responsibility over the contents but the organisation is determined by the video-sharing platform provider;*
> *4-a service classed as an economic activity.*

Article 2 provides for the definition of VOD service as an:

> *audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.*

## 4.12.5. Other relevant information

N/A.

## 4.12.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

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#### 4.12.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.12.6.2. Gambling, betting, betting tipsters, etc.

All commercial communications by an operator in the gambling sector are governed by Articles D. 320-2 to D. 320-8 of the Homeland Security Code. These articles require, *inter alia*, that a commercial communication must be accompanied by a clearly readable warning message about the risks of gambling (Article D. 320-2), which must be combined with the telephone number of a gambling help line. For online commercial communications, there must be a clickable link to a website of the gambling help line (Article D.320-8).

In addition, Article D. 320-9 of the same code prohibits the following commercial communication practices for an operator in the gambling sector:

*1° When it encourages excessive gambling, trivializes or promotes this type of practice;*
*2° When it suggests that playing contributes to social success;*
*3° When it contains unfounded statements about the chances that players have of winning or the winnings they can expect to win;*
*4° When it suggests that gambling may be a solution to personal, professional, social or psychological difficulties;*
*5° When it presents the game as an activity to earn a living or as an alternative to paid work.*

Article D. 320-10 prohibits staging of minors, personalities or characters belonging to the world of minors or any representation of minors in a purchasing situation, etc.

Arcom has also developed several texts concerning commercial communications on gambling, but these only concern television and radio services.[254]

Finally, the French administrative authority for gambling and money games[255] is responsible for monitoring and approving the promotional strategy for the coming year of each operator in the gambling sector pursuant to Article 34 paragraph IV of the Law on online gambling and money games. As part of this task, they may, for example, ask a gambling operator to withdraw a commercial communication that suggests gambling to minors or to persons prohibited from gambling or a commercial communication that

[254] See for example, Deliberation of 22 January 2013 on the conditions for the dissemination of commercial communications in favour of gambling operators, https://www.csa.fr/Reguler/Espace-juridique/Les-textes-adoptes-par-l-Arcom/Les-deliberations-et-recommandations-de-l-Arcom/Recommandations-et-deliberations-du-CSA-relatives-a-d-autres-sujets/Deliberation-du-22-janvier-2013-relative-aux-conditions-de-diffusion-des-communications-commerciales-en-faveur-des-operateurs-de-jeux-d-argent-et-de-hasard. This deliberation will soon be modified, after an ongoing public consultation: https://www.arcom.fr/vos-services-par-media/consultations-publiques/consultation-publique-sur-un-projet-de-deliberation-relative-aux-jeux-dargent.
[255] "Autorité national des jeux" (hereinafter, "ANJ"), https://anj.fr/

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promotes excessive gambling.[256] Furthermore, the ANJ, an independent administrative authority for the gambling sector, has also published specific guidelines for gambling commercial communications. The guidelines specify the regulatory and legal framework for the commercial communications of gambling operators and, in particular, excessive gambling and protection of minors against gambling. The ANJ can ask for the withdrawal of such commercial communications.

#### 4.12.6.3. Environmental or "green" claims for products

Following the amendment of Article 14 of the Law on Freedom of Communication by Law n°2021-1104 of 22 August 2021 on climate change,[257] Arcom will be annually reporting on and promoting codes of good conduct (climate contracts) whose objective is to reduce commercial communications that have a negative effect on the environment, particularly in terms of greenhouse gas emissions, damage to biodiversity and use of natural resources. These codes should also prevent commercial communications that contain "greenwashing".[258] The environmental impact is communicated to consumers through environmental labelling. This article is applicable to VSPs.

A dedicated website was recently initiated,[259] on which companies interested in climate contracts and those with mandatory obligations must register. A list of the companies that have registered a climate contract, as well as the contents of these contracts, was published on the website on 15 July 2022.

Arcom, together with the Ministry of ecological transition[260] issued a guide for drawing up a climate contract and signing in on the platform, detailing the information vis-à-vis the aforementioned climate contracts.

#### 4.12.6.4. Other

N/A.

[256] See for example a recent decision taken in this regard, Decision No. 2022-073 of 17 March 2022 ordering the company Winamax to withdraw the "Tout pour la daronne" commercial https://anj.fr/sites/default/files/2022-03/D%C3%A9cision%202022-073%20prescrivant%20%C3%A0%20WINAMAX%20de%20retirer%20la%20com%20cciale%20TOUT%20POUR%20LA%20DARONNE%20LA%20DARONNE.pdf.

[257] https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043956924.

[258] Law n°2021-1104 of August 22nd 2021 on climate change also forbids commercial communications promoting fossil fuels and major greenhouse gas emitters: new passenger cars.

[259] https://www.publicite-responsable.ecologie.gouv.fr/.

[260] Ministère de la Transition écologique, https://www.ecologie.gouv.fr/en.

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## 4.12.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.12.7.1. Self- and co-regulatory bodies

#### 4.12.7.1.1. Context of establishment and legal background

The Law on Freedom of Communication stipulates that Arcom will foster the elaboration of a “Code of Good Administrative Behaviour”, the climate contracts, and the charter on the commercial use of children’s images by VSPs for with regard to the obligatory measures mentioned in Article 60 of the said law. These codes and charters were in a preparatory phase at the time of preparing this factsheet.

#### 4.12.7.1.2. Stakeholders involved

With regard to the Code of Good Administrative Behaviour, the climate contracts, and the charter on the commercial use of children’s images, the stakeholders involved in the development of these tools will include Arcom, Child Protection Associations, VSPs, food industry companies (for the Code of Good Administrative Behaviour), and advertisers.

#### 4.12.7.1.3. Scope and objectives

With regard to the Code of Good Administrative Behaviour, the aim is to reduce children's exposure to commercial communications about foods and beverages containing nutrients and substances with a nutritional or physiological effect, including fats, trans-fatty acids, salt or sodium and sugars, whose excessive consumption in the general diet is not recommended.

With regard to the climate contracts, the aim is to reduce commercial communications that have a negative impact on the environment, particularly in terms of greenhouse gas emissions, damage to biodiversity and use of natural resources. These codes should also prevent commercial communications that contain "greenwashing". Environmental impacts are communicated to consumers through environmental labelling.

With regard to the charter on the commercial use of children’s images, as mentioned in section 4.12.2.2.10. and 4.12.7.1.1. of this factsheet, these charters must be adopted by VSPs and will need to meet a range of objectives aimed at protecting children under 16 from commercial use that could harm their rights and dignity.

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#### 4.12.7.1.4. Code(s) of conduct

The Law on Freedom of Communication, Article 61, provides a mandate for Arcom to foster the elaboration of a “Code of good behaviour” by the VSPs with regard to all the measures mentioned in Article 60 of the said law, within which, VSPs are required to take measures protecting minors (as well measures related to media education, claims resolution, etc.) Emphasis on the protection of minors appears in Article 15 too, which is referred by Article 60 too. Besides, Article 15-1 of the Law on Freedom of Communication provides that Arcom will be tasked with promoting the development of a charter for VSPs on the commercial use of the image of children under 16 on online platforms, as prescribed under Article 4 of Law on commercial use of images of children below 16 years of age on online platforms, which article applies directly and only to VSPs and requires them to adopt charters to, *inter alia*, inform users about the relevant law concerning the commercial use of children (under 16), promote links with child protection associations, in particular to inform them about children's rights, encourage users to report audiovisual content that violates the dignity of children, protect children's personal data, improve reporting, in conjunction with child protection associations, of audiovisual content that violates children's dignity, and facilitate the right to erasure of personal data of minors.

Furthermore, Article 14 of the Law on Freedom of Communication states that Arcom is also responsible for promoting the development of a "Code of Good Administrative Behaviour" by VSPs, which also applies to VOD and TV services, concerning the reduction of children's exposure to commercial communications with foods and beverages containing nutrients and substances with a nutritional or physiological effect, including fats, trans-fatty acids, salt or sodium and sugars, the excessive consumption of which in the overall diet is not recommended. This has not yet been drafted.

Finally, with regard to the codes of good conduct (climate contract), as mentioned in section 4.12.6.3. of this factsheet, Article 14 of the Law on Freedom of Communication also requires Arcom to promote those climate contracts whose objective is to reduce commercial communications that have a negative effect on the environment.

The aforementioned codes and charters were in a preparatory phase at the time of preparing this factsheet.

While the Code of Good Administrative Behaviour has not yet been drafted, there is nevertheless a food charter signed on 30 January 2020 (before the implementation of the AVMS Directive in French law) which applies to television, radio and the digital industry. The charter provides that the voluntary digital actors make their best efforts to promote good eating habits and physical activity. They are also encouraged to suggest partnerships with other signatories and public authorities to optimise the messages in favour of a healthy diet. The charter has not been signed by any major player in the digital industry, but it incorporates the new amended Article 14 of the Law on Freedom of Communication. The objective of the charter is to

> *reduce children's exposure to commercial communications relating to foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fats, trans-fatty acids, salt or sodium and sugars, excessive consumption of which in the*

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*general diet is not recommended". The Charter is assessed by ARCOM every year and does not provide for any sanctions if the Charter is not implemented by a signatory.*

#### 4.12.7.1.5. Role of the (self-)regulatory bodies

Arcom shall encourage the drafting of the codes (Article 60), especially for measures mentioned in Article 60.

#### 4.12.7.1.6. Period of activity (if limited)

The period of activity is not limited.

In the case of the charter on the commercial use of children's image, Arcom is required to publish a periodic report about the related measures.

#### 4.12.7.1.7. Role of the regulatory authority in a co-regulatory system:

##### *4.12.7.1.7.1. Regulatory body*

Arcom will be responsible for promoting the codes and charters to be applied and respected by VSPs. According to the new Article 61 of the 1986 Act, it is implied that Arcom will promote the development of codes of conduct for all the provisions of Article 60, which includes all areas affecting VSPs even if these do not appear explicitly in Article 60. At the time of writing of this report, no code of good conduct had been elaborated on the basis of Article 61.

Arcom is obliged to publish a report on the implementation of these codes of conduct, as per Article 61 of the Law on Freedom of Communication, as well as to present the reports to the French Parliament (Article 18, 17° of the Law on Freedom of Communication).

##### *4.12.7.1.7.2. Co-regulatory scheme*

See under 4.12.7.1.1.

##### *4.12.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.12.7.2. Monitoring/evaluation, compliance and sanctioning powers

Arcom will be assessing the application and effectiveness of the commitments made under the charters and codes, mentioned under 4.12.7.1.1. and 4.12.7.1.4. of this factsheet, through periodic reports.

For the climate contracts, the environmental impacts of commercial communication will be communicated to consumers via an environmental display.

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The issue of monitoring and supervision vis-à-vis the Code of Good Administrative Behaviour on the commercial use of children's images had not been elaborated at the time of preparation of this factsheet.

## 4.12.8. Cross-sector and cross-border collaboration

N/A.

## 4.12.9. Update on plans and practices related to new obligations of VSPs

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to new VSP obligations.

## 4.12.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- Marc Le Roy, Le nouveau droit des plateformes de partage de vidéos, 2021, Légipresse, May 2021, page 205[261]
- Loïc Peyen, La publicité, l'argument environnemental et la loi Climat et Résilience : halte au greenwashing ? JCP A, 20 September 2021, n° 2277[262]
- Laurent Carrié, Enfant influenceur : le contrôle parental sous contrôle de l'administration, du juge, des plateformes de partage de vidéos, du CSA ... et de l'enfant. Légipresse 2020, p. 687[263]

## 4.12.11. Data compilation

This factsheet is based on data compiled by Marc Le Roy, PhD in Law.

[261] https://www.legipresse.com/011-51181-le-nouveau-droit-des-plateformes-de-partage-de-videos.html
[262] https://www.lexiskiosque.fr/catalog/jcp-a/jcp-a/n38-2021
[263] https://www.legipresse.com/011-51014-enfant-influenceur-le-controle-parental-sous-controle-de-ladministration-du-juge-des-plateformes-de-partage-de-videos-du-csa-et-de-lenfant.html

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# 4.13. GR – Greece – National legal summary[264]

## 4.13.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Ενσωμάτωση στην εθνική νομοθεσία της Οδηγίας (ΕΕ) 2010/13 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 10ης Μαρτίου 2010 για τον συντονισμό ορισμένων νομοθετικών, κανονιστικών και διοικητικών διατάξεων των κρατών μελών σχετικά με την παροχή υπηρεσιών οπτικοακουστικών μέσων, όπως έχει τροποποιηθεί με την Οδηγία (ΕΕ) 2018/1808 του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 14ης Νοεμβρίου 2018 και άλλες διατάξεις αρμοδιότητας της Γενικής Γραμματείας Επικοινωνίας και Ενημέρωσης[265] (Law no 4779/2021 on incorporation into national legislation of Directive (EU) 2010/13 of the European Parliament and Council of 10th March 2010 for the co-ordination of specific legislative, regulatory and administrative provisions of member states concerning the provision of audiovisual media services, as amended by Directive (EC) 2018/1808 of the European Parliament and Council of 14th November 2018, and other provisions within the purview of the General Secretariat of Communication and Information – Law 4779/2021)

Secondary legislation:

- *Κανονισμός υπ΄αριθμόν 3/1991 του Εθνικού Συμβουλίου Ραδιοτηλεοράσεως «Περί δεοντολογίας ραδιοτηλεοπτικών διαφημίσεων» (Κώδικας Δεοντολογίας Ραδιοτηλεοπτικών Διαφημίσεων) ΦΕΚ Β΄ 538/18.07.1991*[266] (NCRTV Regulation No 3/1991 on the conduct of radio and television advertising, Government Gazette B 538/18.071991 – NCRTV Code)
- *Κοινή Υπουργική Απόφαση Υ1/Γ.Π.οικ.81248/2005, Διαφήμιση και χορηγία προϊόντων καπνού σε συμμόρφωση προς την Οδηγία 2003/33/ΕΚ (EEL 152/20.6.2003) του Ευρωπαϊκού Κοινοβουλίου και Συμβουλίου*[267] (Common Ministerial Decision Υ1/Γ.Π.οικ.81248/2005, Advertisement and sponsorship of tobacco products in compliance with Directive 2003/33/EC (EEL 152/20.6.2003) of the European Parliament and the Council)
- *Κ.Υ.Α. με αριθμ. ΔΥΓ3α/Γ.Π.32221/2013 (ΦΕΚ 1049 Β΄/29-4-2013 σχετικό 4) σε συμμόρφωση προς την Οδηγία 2001/83/ΕΚ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου της 6ης Νοεμβρίου 2001 για τα φάρμακα που προορίζονται για ανθρώπινη*

[264] The factsheet on Greece incorporates the feedback received from Persa Lambropoulou, Legal Advisor at the National Council for Radio and Television, during the checking round with the national regulatory authorities.
[265] https://eur-lex.europa.eu/legal-content/EL/TXT/PDF/?uri=NIM:202101621
[266] http://www.et.gr/api/DownloadFeksApi/?fek_pdf=19910200538
[267] https://www.e-nomothesia.gr/kat-epikheireseis/kapnos-kapnisma/ya-y1-gp-oik-81348-2005.html

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*χρήση*[268] (Common Ministerial Decision ΔΥΓ3α/Γ.Π.32221/2013, Official Gazette 1049 Β΄/29-4-2013, in compliance with Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use)

- *Υπουργική Απόφαση 93/2/28–1–2014, Γενικές Αρχές και Κανόνες Διεξαγωγής των Τυχερών Παιγνίων που διεξάγονται μέσω ραδιοτηλεοπτικών και τηλεπικοινωνιακών μέσων σύμφωνα με το άρθρο 53 παράγραφος 6 του ν. 4002/2011 (Α' 180), όπως ισχύει*[269] (Ministerial Decision 93/2/28–1–2014, General rules and principles on gambling conducted through audiovisual or telecommunication organizations)
- *ΥΑ 798//2020 (ΥΑ 79835 ΕΞ ΦΕΚ Β 3265 2020): Θέσπιση Κανονισμού Παιγνίων για Διοργάνωση και Διεξαγωγή Τυχερών Παιγνίων μέσω Διαδικτύου*[270] (Ministerial Decision 79835/2020, Official Gazette B 3265, Adoption of Gaming Regulations for the Organization and Conduct of Games of Chance in the Internet)

Self and co-regulatory instruments:

- *Καταστατικοσ χαρτησ και κατευθυντηριεσ αρχεσ για την υπευθυνη διαφημιση και επικοινωνια marketing*[271], (SEE Guide: Charter and guiding principles for responsible advertising and communication marketing).

## 4.13.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

[268] https://www.e-nomothesia.gr/kat-paignia-kazino-internet-kafe/upourgike-apophase-79835-eks-2020.html.
[269] https://www.gamingcommission.gov.gr/images/nomiki-vivliothiki/radiotileoptika/fek_b_205_2014.pdf.
[270] https://www.e-nomothesia.gr/kat-paignia-kazino-internet-kafe/upourgike-apophase-79835-eks-2020.html.
[271] http://www.see.gr/%ce%ba%cf%8e%ce%b4%ce%b9%ce%ba%ce%b1%cf%82/.

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### 4.13.2.1. Definitions

**Table 39. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | Marketing communications, mobile advertising, display advertising |

*Source: Greek response to European Audiovisual Observatory standardised survey*

#### 4.13.2.1.1. Audiovisual commercial communications

Article 2§1 (xii) of Law 4779/2021 defines audiovisual commercial communication by transposing the text of the revised AVMSD verbatim as follows:

> *Images with or without sound are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity. Such images accompany or are included in a programme or user-generated video in return for consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.*

#### 4.13.2.1.2. Television advertising

Law 4779/2021 provides for the definition of television advertising by transposing the text of the revised AVMSD verbatim as follows:

> *Any form of television announcement broadcast whether in return for consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or a set of rights and obligations.*

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#### 4.13.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.13.2.1.4. Surreptitious commercial communication

Article 2§1 (xiv) of Law 4779/2021, by transposing the text of the revised AVMSD verbatim, defines surreptitious audiovisual commercial communication as:

> *The representation in words or pictures of goods, services,, the name, the trademark or the activities of a producer of goods or a provider of services, in programmes when such representation is intended by the media service provider to serve as surreptitious advertising and might mislead the public as to the nature. Such representation shall, in particular, be considered intentional if it is done in return for consideration.*

#### 4.13.2.1.5. Misleading commercial communication

A definition of misleading commercial communication is included in the secondary legislative act of the Greek audiovisual regulatory authority, the National Council for Radio and Television (NCRTV)[272] - the NCRTV Code - in Article 2 (d):

> *Any advertisement that could in any way, including its presentation, mislead the persons to whom it is addressed and could, for that reason, have an influence over their economic behaviour, or is or could be detrimental to a competitor.*

#### 4.13.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.13.2.1.7. Sponsorship

Law 4779/2021, in Article 2 paragraph 1 (xv), defines sponsorship by transposing the text of the revised AVMSD verbatim:

> *Any contribution made by public or private undertakings or natural person, which are not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works, to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trademark, image, activities or products.*

[272] Εθνικό Συμβούλιο Ραδιοτηλεόρασης, http://www.esr.gr/

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#### 4.13.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.13.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.13.2.1.10. Product placement

Article 2§1 (xvii) of Law 4779/2021, by transposing the text of the revised AVMSD verbatim, defines product placement as:

> *Any form of audiovisual commercial communication consisting in the inclusion of, or reference to, a product, a service or the trademark thereof so that it is featured within a programme or a user-generated video, in return for consideration.*

#### 4.13.2.1.11. Other definitions

The Greek Advertising Self-Regulation Council (SEE)[273] in 2017 issued a Best Practice Guide on Digital Marketing which defines marketing communications, mobile advertising and display advertising, in its appendix:

> *Marketing Communications*
> *The term marketing communications includes advertising as well as other techniques, such as promotions, sponsorships and direct marketing, and should be interpreted broadly to mean any communications produced directly by or on behalf of marketers intended primarily to promote products or to influence consumer behaviour.*
> *Mobile Advertising*
> *A form of advertising via mobile phones or other wireless devices (excluding laptops). This type of mobile advertising includes mobile web banner ads, mobile internet sponsorship and interstitials (which appear while a requested mobile web page is loading) as well as mobile paid-for search listings. Mobile internet advertising does not include other forms of mobile marketing such as SMS and MMS.*
> *Display Advertising*
> *A form of online advertising where an advertiser's message is shown on a destination web page, generally set off in a box at the top or bottom or to one side of the content of the page.*

[273] Συμβούλιο Ελέγχου Επικοινωνίας, http://www.see.gr

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#### 4.13.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

In general terms, it should be noted that Law 4779/2021, in Article 32 paragraph 2, relates to audiovisual commercial communications on VSPs:

> *Video-sharing platform providers under the jurisdiction of Greece:*
> *[a] shall comply with the requirements set out in Article 14(1) with respect to audiovisual commercial communications that are marketed, sold or arranged by those video-sharing platform providers;*
> *(b) shall take appropriate measures to comply with the requirements set out in Article 14(1) with respect to audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.*
>
> *Article 32 paragraph 3:*
> *Video-sharing platforms under Greek jurisdiction shall clearly inform users where programmes and user-generated videos contain audiovisual commercial communications, provided that such communications are declared according to point (c) of paragraph 6 of Article 32 or the provider has knowledge of that fact.*

Restrictions stemming from the aforementioned provisions are provided below.

##### 4.13.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 18(5) of Law 4419/2016 prohibits the advertising of electronic cigarettes and refill containers on the Internet.

Further, the common Ministerial Decision on advertising and sponsorship of tobacco products, in Article 3(2) provides that the restrictions on the advertising of tobacco products applicable in mass media are also applicable in information society services. Article 2 b of this act provides that the term "advertisement" is understood to be any kind of commercial communication that aims at the direct or indirect promotion of a tobacco product.

The Ministry of Health's related interpretation mentions that the direct or indirect use of information society services, such as the Internet and social media, for the promotion of tobacco products, is prohibited.

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Regarding alcoholic beverages, there is an indirect prohibition on advertising products that might impair the physical development of minors (see under section 4.13.2.2.9).

#### 4.13.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

According to Article 120(1) of the Common Ministerial Decision on the Community code relating to medicinal products for human use, the prohibition on commercial communications for medicinal products and medical treatment available only on prescription is laid out as follows:

> *(1). It is prohibited to advertise medicines to the public:*
> *(a) which can only be obtained on prescription in accordance with Part VI;*
> *b) containing psychotropic or narcotic substances, within the meaning of international conventions, such as the United Nations Conventions of 1961 and 1971;*
> *c) reimbursed by social security agencies.*

#### 4.13.2.2.3. Surreptitious audiovisual commercial communications

Law 4779/2021, in Article 32 paragraphs 2(a) - (b), in conjunction with Article 14 paragraph 1(a), prohibits surreptitious audiovisual commercial communications when they are marketed, sold or arranged by VSPs under Greek jurisdiction. In cases where the audiovisual commercial communications are not marketed, sold or arranged by VSPs, the platforms must take appropriate measures to comply with the above restriction to the extent of the limited control that they can exercise over commercial communications (Article 32 paragraph 2(b)).

#### 4.13.2.2.4. Subliminal techniques in commercial communications

While the prohibition of subliminal techniques in commercial communications when they are marketed, sold or arranged by VSPs under Greek jurisdiction is stipulated in Article 32 paragraph 2(a) - (b) in conjunction with Article 14 par. 1(b) of Law 4779/2021, in cases where the audiovisual commercial communications are not marketed, sold or arranged by VSPs, the platforms must take appropriate measures to comply with the above restriction to the extent of the limited control that they can exercise over commercial communications (Article 32 par. 2(b)).

Further, Article 14(8) of the Law 4779/2021 prohibits misleading commercial communications:

> *Audiovisual commercial communications shall not mislead the public, especially in relation to the properties of the products and services offered and the conditions of their acquisition or attribute to these products non-scientifically substantiated medical and therapeutic properties violating the provisions of law 2251/1994 on consumer protection (A' 191).*

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#### 4.13.2.2.5. Prejudice with regard to human dignity

There are no restrictions on this matter for VSPs under Greek jurisdiction, as, in Greek law, the concept of human dignity contributes to human rights interpretation and adjudication, but is not a standalone human right.

#### 4.13.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Article 32 paragraph 1b of Law 4779/2021 provides for the protection of the general public from, *inter alia*, audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on race, colour, descent, national or ethnic origin, religion, disabilities, sex, sexual or other identity.

#### 4.13.2.2.7. Encouragement of behaviour prejudicial to health or safety

There are no restrictions on this matter for VSPs under Greek jurisdiction.

#### 4.13.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

There are no restrictions on this matter for VSPs under Greek jurisdiction.

#### 4.13.2.2.9. Causing physical, mental or moral detriment to minors

Article 32(1) (a) of Law 4779/2021 provides that VSPs should take appropriate measures to protect:

> *minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 9(1) [*(that is, art 6a(1) of the directive)].

Art. 32(4) of Law 4779/2021 provides that:

> *Video-sharing platforms under the jurisdiction of Greece shall be encouraged to take measures to prevent the excessive intake by minors of foods and beverages which are not recommended for them. Such measures shall be taken by adopting codes of conduct or standard terms and conditions of business to prevent the presentation of such foods and beverages which are not recommended for minors.*

#### 4.13.2.2.10. Other

N/A.

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## 4.13.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.13.3.1. Sponsorship

According to Article 32 paragraph 3 of Law 4779/2021, VSPs under Greek jurisdiction must clearly inform users of any audiovisual commercial communications contained in user-generated programs or videos, provided that these communications are either declared in accordance with the provisions of this Law or the provider is aware of them. The use of the general term "audiovisual commercial communications" implies that sponsorship and product placement are included in the scope the above provision.

### 4.13.3.2. Product placement

See under 4.13.3.1.

## 4.13.4. Obligations regarding (v)blogs and (v)blogging

N/A.

## 4.13.5. Other relevant information

N/A.

## 4.13.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

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#### 4.13.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue, subject to possible inclusion in the envisaged national code of conduct on commercial communications in VSPs. However, the general provisions of Article 32 (1b) of Law 4779/2021 provide for protection of the general public from, *inter alia*, commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on, for instance, religion (see under section 4.13.2.2.6.)

#### 4.13.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue, subject to possible inclusion in the envisaged national code of conduct on commercial communications in VSPs (see under 4.13.7.1.).

According to Article 7 of Ministerial Decision 2014, any gambling advertising on TV stations or gambling websites must clearly mention that the participation of minors is prohibited.

According to Article 7.5 of Ministerial Decision 798/2020, games of chance offered by a licensee over the Internet may be placed with commercial communications, provided that the webpage installs special filters and applications to block access to persons under the age of 21.

Finally, Article 7.6 of Ministerial Decision 798/2020 also provides that:

> *Advertising, promotion and display of online games conducted using a random number generator (RNG), as defined in the second case of Article 25 of the law, is permitted exclusively through the website of the licensee, in which the said games are held.*

The abovementioned provisions cover specific advertising activities conducted on the Internet by providers licensed in Greece.

#### 4.13.6.3. Environmental or “green” claims for products

No specific provisions deal with this issue, subject to possible inclusion in the envisaged national code of conduct on commercial communications in VSPs (see under 4.13.7.1.).

There is only a general reference to “green” claims in Article 3 of Annexe III: Ecology and Environment, of the aforementioned self-regulatory code of conduct issued by the SEE, which is not directly applicable to VSPs. According to article 3, expressions in advertising such as "environmentally friendly", or "ecologically safe" etc. which imply that a product or activity has no impact, or has a positive effect on the environment, should not be used unless fully documented.

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#### 4.13.6.4. Other

N/A.

## 4.13.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.13.7.1. Self- and co-regulatory bodies

#### 4.13.7.1.1. Context of establishment and legal background

There is no specific mention in the explanatory memorandum of draft Law 4779/2021 related to this provision.

Law 4779/2021, in Article 6, provides that VSPs established in Greece are encouraged to adopt national codes of conduct in order to further protect consumers and minors, as well as public health and fair competition. Paragraph 2 of the same Article details how these codes should be drafted and how their implementation should be assessed (i.e., be broadly accepted by the relevant stakeholders, set out clearly and unambiguously their objectives, provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed and include provisions to ensure their effective compliance). In addition to this, Article 32 paragraph 8 gives NCRTV the competence to initiate the process for the drafting of a code with regard to matters relating to the implementation of the measures set out in the Article 32.

#### 4.13.7.1.2. Stakeholders involved

The existing Greek self-regulatory body SEE is an independent national self-regulatory organisation of the Greek advertising industry. SEE was established by Article 9 of Law 2863/2000, which, in paragraph 1, provides that free-to-air radio and TV stations, pay-TV platforms as well as the Association of Advertising Companies of Greece, the Association of Advertisers of Greece and any other representative organisation of advertisers, shall jointly draw up a code of conduct regulating the content of commercial communications and manner of their display in electronic media.

Besides, Law 4779/2021, in Article 6 paragraph 1, stipulates that the stakeholders in relation to the self-regulatory related measures are VSPs established in Greece, advertisers and consumer associations:

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*Media service providers, video-sharing platform and advertising and communication service providers, as well as any associations thereof, shall be encouraged to adopt national codes of conduct in order to further protect consumers and minors, as well as public health and fair competition.*

#### 4.13.7.1.3. Scope and objectives

In the codes mentioned under 4.13.7.1.1., VSPs must clearly and unambiguously set out their objectives which should aim to protect consumers and minors as well as public health and fair competition. In a general approach, self-regulatory measures are considered to be more effective. In the emerging sector of VSPs, measures adopted on the basis of a national code of conduct are expected to have the active support of the providers.

#### 4.13.7.1.4. Code(s) of conduct

Besides the awaited codes of conducts to be adopted by VSPs (see under 4.13.7.1.1.), it should be mentioned that the existing Greek Best Practice Guide on Digital Marketing, adopted by SEE, confirms that digital advertising techniques are subject to the same rules as traditional advertising and points out the importance of the general principle of separation between commercial communications and editorial content.

#### 4.13.7.1.5. Role of the (self-)regulatory bodies

As mentioned under 4.13.7.1.1., the codes of conduct to be adopted by VSPs must clearly and unambiguously set out their objectives. The main role of the bodies is to provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives set up under the relevant codes of conduct, as well as to ensure effective compliance by their members (Article 6 paragraph 2 of the Law 4779/2021).

#### 4.13.7.1.6. Period of activity (if limited)

N/A.

#### 4.13.7.1.7. Role of the regulatory authority in a co-regulatory system:

##### *4.13.7.1.7.1. Regulatory body*

According to Article 6 paragraph 3, the codes of conduct to be adopted by VSPs (see under 4.13.7.1.1. ) can be adopted in cooperation with the NCRTV and/or consumer associations.

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*4.13.7.1.7.2. Co-regulatory scheme*

According to Article 6 of Law 4779/2021, VSPs are encouraged to adopt codes of conduct either on a self-regulatory level or on a co-regulatory level in cooperation with the NCRTV.

In order to fulfil this obligation, the NCRTV is in the process of creating a national register, which will include: a) the identity of VSPs established in Greece, b) their contact details, c) the identity of their legal representative. This process is still ongoing.

*4.13.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.13.7.2. Monitoring/evaluation, compliance and sanctioning powers

Article 32 paragraph 1 of Law 4779/2020 provides that VSPs under Greek jurisdiction shall take appropriate measures to protect minors and the general public from inappropriate commercial communications (such as incitement to violence, hate messages, child pornography, racism, xenophobia).

VSPs have to comply with the obligations concerning surreptitious audiovisual commercial communications or subliminal techniques, as mentioned in Article 32 paragraph 2 of Law 4779/2021.

Compliance of VSPs with these obligations is entrusted to the NCRTV which may conduct audits via its employees or third parties to whom such audits shall be assigned (Article 32 paragraph 9, law 4779/2021).

Violations of this obligation can be sanctioned by the NCRTV. According to Article 36 paragraph 3, the sanctions that can be imposed can be: (a) a recommendation, (b) an administrative fine from EUR 1 000 to 500 000, (c) a pause of transmission from 1 day to 3 months, and (d) a permanent shutdown in proportion to the kind and gravity of the violation.

Besides, according to Article 31 paragraph 5, the NCRTV has to compile a register containing all VSPs established in Greece. The information that VSPs have to submit will be determined in a directive issued by NCRTV.

## 4.13.8. Cross-sector and cross-border collaboration

N/A.

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### 4.13.9. Update on plans and practices relative to new obligations of VSPs

N/A.

### 4.13.10. Studies, reports and research

N/A.

### 4.13.11. Data compilation

This factsheet is based on data compiled by Charis Tsigou, attorney-at-law at Markoulakis & Tsigou Law Firm.

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# 4.14. HR – Croatia – National legal summary[274]

## 4.14.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Zakon o elektroničkim medijima NN 111/21*[275] (Electronic Media Act, Official Gazette 111/21 – EMA).
- *Zakon o nedopuštenom oglašavanju 43/09*[276] (Act on illegal advertising, Official Gazette 43/09)).
- *Zakon o elektroničkoj trgovini*[277] (Electronic Commerce Act, Official Gazette 173/03, 67/08, 36/09, 130/11, 30/14, 32/19 – ECA).
- *Zakon o igrama na sreću*[278] (Act on Games of Chance, Official Gazette no. 87/09, 35/13, 158/13, 41/14, 143/14).

Secondary legislation

- *Pravilnik o načinu oglašavanja o lijekovima*[279] (Regulations on advertising of medicinal products).
- *Pravilnik o tehničkim i drugim mjerama kojima se gledatelji obavještavaju o plasmanu proizvoda u programima*[280] (Ordinance on technical and other measures by which viewers are informed about product placement in programs – Ordinance).

Self- and co-regulatory instruments:

- *Hrvatska udruga društava za tržišno komuniciranje HURA Kodeks oglašavanja i tržišnog komuniciranja*[281] (Code for advertising and market communication of the Croatian Association of Communications Agencies).

[274] The factsheet on Croatia incorporates feedback received from Sanja Pančić, Advisor to the Director for International Cooperation and Public Relations, at the Agency for Electronic Media (AEM) during the checking round with the national regulatory authorities.
[275] https://narodne-novine.nn.hr/clanci/sluzbeni/2021_10_111_1942.html.
[276] https://narodne-novine.nn.hr/clanci/sluzbeni/2009_04_43_984.html.
[277] https://narodne-novine.nn.hr/clanci/sluzbeni/2003_10_173_2504.html.
[278] https://narodne-novine.nn.hr/clanci/sluzbeni/2009_07_87_2128.html.
[279] https://narodne-novine.nn.hr/clanci/sluzbeni/2015_04_43_884.html.
[280] https://narodne-novine.nn.hr/clanci/sluzbeni/2022_09_106_1563.html.
[281] https://hura.hr/wp-content/uploads/2016/11/hura_kodeks-oglasavanja-i-trzisnog-komuniciranja.pdf.

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## 4.14.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.14.2.1. Definitions

**Table 40. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | No. |

*Source: Croatian response to European Audiovisual Observatory standardised survey*

#### 4.14.2.1.1. Audiovisual commercial communications

Article 3 paragraph 1, subparagraph 1, of the EMA defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim, as follows:

> *Audiovisual commercial communication means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in, a*

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*programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television and radio advertising and teletext, sponsorship, teleshopping and product placement*

#### 4.14.2.1.2. Television advertising

Article 3 paragraph 1, subparagraph 19, of the EMA defines television advertising by transposing the text of the revised AVMSD almost verbatim as follows:

*advertising means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations.*

#### 4.14.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.14.2.1.4. Surreptitious commercial communication

Article 3 paragraph 1, subparagraph 24, of the EMA defines surreptitious commercial communications as follows:

surreptitious audiovisual commercial communication means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. In accordance with Article 21 paragraph 2 of the EMA, which is applicable to VSPs, surreptitious commercial communications are prohibited on VSPs.

#### 4.14.2.1.5. Misleading commercial communication

Article 3 paragraph 1, subparagraph 41, of the EMA defines misleading commercial communications as:

*Misleading advertising: any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor.*

The same definition of misleading advertising can be found in Article 3 paragraph 2 of the Act on illegal advertising.

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In the EMA there are no specific rules for misleading commercial communications that are applicable to VSPs, but since the Act on illegal advertising is *lex specialis* in this case, according to Article 4 paragraph 1 of that Act, misleading advertising is prohibited.

#### 4.14.2.1.6. Virtual advertising

There is no definition of virtual advertising and there are no applicable rules pertaining to VSPs.

#### 4.14.2.1.7. Sponsorship

Article 3 paragraph 1, sub paragraph 23, of the EMA defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

> *sponsorship means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products;*

In the EMA, there are no specific applicable rules for sponsorship pertaining to video VSPs.

#### 4.14.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.14.2.1.9. Sponsored content

There is no definition of sponsored content. However, Article 22 of the Electronic Media Act pertains to the attributes of sponsored content by setting the general requirements that must be observed by sponsored programmes or services, in the sense of Article 11 of the AVMSD.

In the EMA, there are no specific applicable rules for sponsored content pertaining to VSPs.

#### 4.14.2.1.10. Product placement

Article 3 paragraph 1, subparagraph 22, of the Electronic Media Act defines product placement by transposing the text of the revised AVMSD verbatim as follows:

> *product placement means any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trade mark thereof so that it is*

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*featured within a programme or a user-generated video in return for payment or for similar consideration*

In the EMA, there are no specific applicable rules for product placement pertaining to VSPs.

In September 2022, the Croatian media authority, the Electronic Media Council (EMC),[282] adopted the Ordinance on technical and other measures by which viewers are informed about product placement in programs. This Ordinance includes applicable provisions for product placement, and specifically regulates technical and other measures by which viewers are informed about product placement in audiovisual programmes, radio programmes, on-demand audiovisual media services and user-generated content.

In Article 2 paragraph 1 of the Ordinance, the definition of product placement is almost verbatim to that of the EMA:

*"Product placement": any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration or for commercial purposes*

Other provisions applicable to product placement with regard to user-generated content that are included in the Ordinance are found under 4.14.3.2.

#### 4.14.2.1.11. Other definitions

N/A.

### 4.14.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for VSPs to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

Article 96 paragraph 2 of the EMA provides that while publishing audiovisual commercial communications, VSP providers must comply with the requirements set out in Article 21, paragraphs 1-8 of the Act (which are presented below). In addition, Article 96 paragraph 3 stipulates that they should also take appropriate measures with respect to user-generated content that contains audiovisual commercial communications, to comply with the requirements set out in Article 21 paragraphs 1 to 8. of the Act. A breach of the provisions set out in Article 21 paragraphs 1 to 8 by a legal person will result in a fine from HRK 100 000.00 to HRK 1 000 000.00 as per Article 98 paragraphs 4 to 17.

Article 96 paragraph 1, subparagraphs 2 and 3, of the EMA sets out the general requirements for video-sharing platforms and audiovisual commercial communications

[282] Vijeće za elektroničke medije, https://aem.hr.

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provided by VSPs, to protect the public against incitement to violence or hatred directed against a group of persons or a member of a group, thus transposing in substance the provisions of section 28b of the AVMS.

Specifically, Article 96 paragraph 1, subparagraph 2, imposes the obligation to protect the public against user-generated content and audiovisual commercial communications on VSPs that contain incitement to violence or hatred directed against a group of persons or a member of a group as prescribed in Article 14 of the EMA which stipulates that it is prohibited to promote, favour the promotion of or spread hatred or discrimination based on race or ethnic affiliation or colour, gender, language, religion, political or other beliefs, national or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, native identity, expression or sexual orientation, as well as antisemitism and xenophobia, and ideas of fascist, nationalist, communist and other totalitarian regimes.

Furthermore, Article 96 paragraph 1, subparagraph 3, imposes the obligation to protect the public against user-generated content and audiovisual commercial communications on VSPs with content the dissemination of which constitutes activity that is a criminal offence, including public incitement to commit the criminal offense of terrorism under Article 99 of the Croatian Penal Code (Official Gazette, no 125/11., 144/12., 56/15., 61/15., 101/17., 118/18., 126/19. i 84/21.), criminal offences related to child pornography referred to in Article 163. of the Penal Code and criminal offenses relating to racism and xenophobia under Article 125 of the Penal Code.

#### 4.14.2.2.1. Audiovisual commercial communications related to alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

VSPs must comply with the requirement set out in Article 21 paragraph 5 which states that:

> *All forms of audiovisual commercial communications related to cigarettes and other tobacco products including electronic cigarettes and refill containers shall be prohibited*

and the requirements in Article 21 paragraph 6 which prescribe that:

> *Audiovisual commercial communications promoting alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages or depict children and youth who consume such beverages.*

According to Article 6. of the aforementioned Ordinance:

> *Product placement of cigarettes and other tobacco products, as well as electronic cigarettes and refill containers, special drugs, treatments and medicinal products available only with a doctor's prescription is not allowed.*

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#### 4.14.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 21 paragraph 7 of the EMA prohibits audiovisual commercial communications for medicinal products and medical treatment available only on prescription. Other restrictions can be found in section 4 of the Regulations on advertising of medicinal products dealing with advertising of medicinal products on the Internet.

According to Article 6. of the aforementioned Ordinance:

> *Product placement of cigarettes and other tobacco products, as well as electronic cigarettes and refillable containers, special drugs, treatments and medical products available only with a doctor's prescription is not allowed.*

#### 4.14.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious advertising is prohibited according to Article 21 paragraph 2 of the EMA.

#### 4.14.2.2.4. Subliminal techniques in commercial communications

The use of subliminal techniques in commercial communications is prohibited under Article 21 paragraph 3 of the EMA.

#### 4.14.2.2.5. Prejudice with regard to human dignity

According to Article 21 paragraph 4, first point of the EMA, commercial communications must not prejudice respect for human dignity:

> *Audiovisual commercial communications shall not:*
> *- prejudice respect for human dignity"*

#### 4.14.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

Article 21 paragraph 4, second point of the EMA prohibits commercial communications from including any discrimination based on the following grounds:

> *on race or ethnicity or colour, sex, language, religion, political or other belief, nationality or social origin, property, trade union membership, education, social status, marital or family status, age, health condition, disability, genetic heritage, gender identity, expression or sexual orientation;*

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#### 4.14.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour prejudicial to health or safety is prohibited in commercial communications under Article 21 paragraph 4, third point, of the EMA.

#### 4.14.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Encouraging behaviour grossly prejudicial to the protection of the environment is prohibited in commercial communications under Article 21 paragraph 4, fourth point of the EMA.

#### 4.14.2.2.9. Causing physical, mental or moral detriment to minors

Requirements pertaining to the protection of minors in relation to commercial communication are laid down in Article 21 paragraph 8 of the EMA which states:

> *Audiovisual commercial communications shall not:*
> *- cause physical, mental or moral detriment to minors;*
> *- directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity;*
> *- directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;*
> *- exploit the special trust minors place in parents, teachers or other persons;*
> *- unreasonably show minors in dangerous situations*

In relation to the protection of the personal data of minors, Article 96 paragraph 8 of the EMA stipulates that personal data of minors that are collected by VSPs through established age-verification systems required by Article 96 paragraph 7, subparagraph 6, of the EMA and parental control systems required by Article 96 paragraph 7, subparagraph 8, of the EMA cannot be used for commercial purposes, such as direct marketing, profiling and targeted behavioural advertising.

#### 4.14.2.2.10. Other

N/A.

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## 4.14.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.14.3.1. Sponsorship

There are no specific rules pertaining to sponsorship for VSPs in Croatia.

### 4.14.3.2. Product placement

At present, there are no specific rules pertaining to product placement for VSPs in Croatia.

It should be noted that the aforementioned Ordinance is applicable to user-generated content, in addition to business media service providers.

Article 3 paragraph 1 of the Ordinance pertains to the obligation of providers to inform viewers about product placement. They must identify product placement and provide information about the duration of the placement (via a graphic mark, text and audio signal). They are prohibited from providing surreptitious audiovisual commercial communication.

According to Article 4 paragraph 1 of the Ordinance, all programmes (according to Article 4 paragraph 2, this also apply *mutatis mutandis* to user-generated content) containing product placement must meet all of the following conditions:

*- their content and organisation within the schedule, in the case of television broadcasting or within the catalogue, in the case of on-demand audiovisual media services, in no case is affected in a way that affects the responsibility and editorial independence of the media service provider;*
*- they must not directly encourage the purchase or rental of goods or services, especially by special promotional reference to those goods or services;*
*- they must not inappropriately highlight the product in question;*
*- viewers must be clearly informed about the existence of product placement during the announcement and/or exit credits and when the audiovisual program continues after the advertising break, so as not to confuse viewers.*

## 4.14.4. Obligations regarding (v)blogs and (v)blogging

Blogs and vlogs are not considered audiovisual media services in Croatia, as they are not included in the scope of Article 3 paragraph 2 of the Electronic Media Act, which defines audiovisual media services. Instead, they are considered as information society services under the Electronic Commerce Act.

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Article 2 paragraph 2 of this Act provides for the definition of “information society service”: it is any service normally provided in return for remuneration, at a distance, by electronic means and at the individual request of a recipient of services, in particular Internet sales of goods and services, the provision of information on the Internet, advertising on the Internet, search engines, and intermediaries for network access or storage of user data. With regard to advertising, Article 2 paragraph 7 of the ECA defines commercial communication as any form of communication designed to promote, directly or indirectly, the goods, services or image of a company, organisation or person exercising a regulated profession except for:

- information allowing direct access to the activity of the company, organisation or person, in particular a domain name or an electronic-mail address,
- communications relating to the goods, services or image of the company, organisation or person compiled in an independent manner, particularly when this is without financial consideration.

In terms of requirements, in the section "Content of commercial communication", Article 7 of this Act requires service providers to ensure that all information in commercial communications which are part of, or constitute, an information society service, clearly and unambiguously comply with the following terms:

- the commercial communication shall be clearly identifiable as such;
- the person on whose behalf the commercial communication is made shall be clearly identifiable;
- all promotional offers in commercial communications shall be clearly identifiable as such;
- conditions that must be met for accepting offers from commercial communications shall be easily accessible and be presented clearly and unambiguously.

## 4.14.5. Other relevant information

N/A.

## 4.14.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

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#### 4.14.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.14.6.2. Gambling, betting, betting tipsters, etc.

A general ban is established under Article 68 paragraph 1, subparagraph 4, of the Act on Games of Chance on advertising or any other form of marketing of games of chance from foreign countries on the territory of the Republic of Croatia.

Besides, Article 96 paragraph 1, first point, of the Electronic Media Act requires VSPs to take appropriate measures with regard to the protection of minors according to Article 24 of the Act. Article 24 paragraph 3 outlines some of the requirements which media services must meet regarding the protection of minors, including that VSPs indicate to minors that they are using games of chance.

Finally, Article 6 of the Ordinance, to be enacted by the EMC, prohibits the product placement of gambling or betting products.

#### 4.14.6.3. Environmental or “green” product claims

There are no legislative rules for VSPs regarding environmental or "green" claims related to products or services. However, for the members of the Croatian Association of Communication Agencies (HURA)[283] there are self-regulatory provisions with regard to "green" claims in marketing, in particular in section D of the "Code for advertising and market communication".

#### 4.14.6.4. Other

N/A.

### 4.14.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

[283] Hrvatska udruga društava za tržišno komuniciranje, https://hura.hr/.

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### 4.14.7.1. Self- and co-regulatory bodies

#### 4.14.7.1.1. Context of establishment and legal background

The Electronic Media Council is encouraged under Article 96 paragraph 5 of the Electronic Media Act to use co-regulation and promote self-regulation through codes of conduct, as provided for in Article 12, to effectively prevent excessive consumption by minors of food and beverages that are not recommended for them.

With regard to advertising and market communications, self-regulatory mechanisms have been established in Croatia. In May 2020, HURA adopted a self-regulatory code of conduct, the "Code for advertising and market communication", which was revised according to the ICC Advertising and Marketing Communications Code (2018).[284] It focuses on direct marketing and digital market communications. This Code includes clear separations of commercial, editorial, and user-generated content, and the applicability of the Code to all marketing actors (influencers, bloggers, vloggers, adtech companies...), and all media and communication platforms, including social networks.

#### 4.14.7.1.2. Stakeholders involved

At the time of preparation of this factsheet, there were 55 members in HURA.[285]

#### 4.14.7.1.3. Scope and objectives

Article 12 of the Electronic Media Act provides that "(1) pursuant to this Act, particular issues may be regulated by self-regulatory and/or co-regulatory regimes through codes of conduct for the purpose of standardising their application in practice", and specifies the criteria that must be respected by these codes as follows:

*(2) The codes referred to in paragraph 1 of this article shall:*
*1. be accepted by the main stakeholders;*
*2. set out clear and unambiguous objectives;*
*3. provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives pursued; and*
*4. provide for effective enforcement, including effective and proportionate sanctions.*
*(5) Established codes of conduct by the European Union that are published shall not affect implementation of national codes of conduct.*

[284] The ICC's Advertising and Marketing Communications Code – or the ICC Marketing Code – is a globally-applicable self-regulatory framework, developed by experts from all industry sectors worldwide, https://iccwbo.org/publication/icc-advertising-and-marketing-communications-code/.
[285] https://hura.hr/hura-clanovi/.

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Moreover, as mentioned in the previous section, the Croatian Association of Communications Agencies adopted a revised self-regulatory code-of-conduct "Code for advertising and market communication" in May 2020.

#### 4.14.7.1.4. Code(s) of conduct

The Code for advertising and market communication represents the minimum standards of ethics and professional practice that stakeholders must observe in advertising and other forms of communication. It also includes rules governing sales enhancement, sponsorship, direct marketing and digital marketing communications, as well as environmental protection claims in marketing communications.

#### 4.14.7.1.5. Role of (self-)regulatory bodies

HURA represents its members in lobbying, negotiations on legislation, advocacy, research and other matters. It has also established the Court of Honour of HURA, which is authorised to conduct proceedings and decide on complaints regarding violations of the code. HURA's Court of Honour can initiate court proceedings against offenders against the Code of Honour or can submit a proposal for expulsion of the offender from HURA to the assembly of HURA.

The HURA Court of Honour has issued guidelines on interpretation of the Code and proposes sanctions that are defined by the Code.

#### 4.14.7.1.6. Period of activity (if limited)

Not limited.

#### 4.14.7.1.7. Role of the regulatory authority in a co-regulatory system:

The Electronic Media Council is encouraged under Article 96 paragraph 5 of the Electronic Media Act to use co-regulation and promote self-regulation through codes of conduct. At present, there is no additional information on this process.

##### *4.14.7.1.7.1. Regulatory body*

N/A.

##### *4.14.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.14.7.1.7.3. Relationship and roles of stakeholders*

N/A.

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#### 4.14.7.2. Monitoring/evaluation, compliance and sanctioning powers

N/A.

## 4.14.8. Cross-sector and cross-border collaboration

N/A.

## 4.14.9. Update on plans and practices related to new obligations of VSPs

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to the new VSP obligations.

## 4.14.10. Studies, reports and research

N/A.

## 4.14.11. Data compilation

This factsheet is based on data compiled by Hrvoje Lisičar, Associate Professor of Law at the Faculty of Law, University of Zagreb.

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# 4.15. HU – Hungary – National legal summary[286]

## 4.15.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *2010. évi CLXXXV. törvény a médiaszolgáltatásokról és a tömegkommunikációról*[287] (Act CLXXXV of 2010 on Media Services and on the Mass Media – Media Act).[288]
- *2010. évi CIV. Törvény a sajtószabadságról és a médiatartalmak alapvető szabályairól*[289] (Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content – Free Press Act). [290]
- 2001. évi CVIII. Törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről[291] (Act CVIII of 2001 on Electronic Commerce and on Information Society Services – E-commerce Act).[292]
- 2020. évi XXIV. Törvény az elektronikus kereskedelmi szolgáltatások, valamint az információs társadalommal összefüggő szolgáltatások egyes kérdéseiről szóló 2001. évi CVIII. törvény módosításáról[293] (Act XXIV of 2020 on the Amendment of the E-Commerce Act CVIII 2001 implements the Directive's rules on video-sharing platforms
- *2008. évi XLVIII. Törvény a gazdasági reklámtevékenység alapvető feltételeiről és egyes korlátairól*[294] (Act XLVIII of 2008 on the Basic Requirements and Certain Restrictions of Commercial Advertising – Advertising Act).
- 2006. évi XCVIII. Törvény a biztonságos és gazdaságos gyógyszer- és gyógyászatisegédeszköz-ellátás, valamint a gyógyszerforgalmazás általános szabályairól[295] (Act XCVIII of 2006 on the General Provisions Relating to the Reliable and Economically Feasible Supply of Medicinal Products and Medical Aids and on the Distribution of Medicinal Products – Medical Act).

[286] The factsheet on Hungary incorporates the feedback received from György Ocskó, International Legal Advisor at the National Media and Infocommunications Authority (NMHH), during the checking round with the national regulatory authorities.
[287] https://net.jogtar.hu/jogszabaly?docid=a1000185.tv.
[288] https://english.nmhh.hu/document/106487/act_clxxx_on_media_services_and_mass_media.pdf.
[289] https://net.jogtar.hu/jogszabaly?docid=a1000104.tv.
[290] https://nmhh.hu/dokumentum/162262/smtv_110803_en_final.pdf.
[291] https://net.jogtar.hu/jogszabaly?docid=a0100108.tv.
[292] https://nmhh.hu/document/213838/act_cviii_of_2001.pdf.
[293] https://njt.hu/jogszabaly/2020-24-00-00.
[294] https://net.jogtar.hu/jogszabaly?docid=a0800048.tv.
[295] https://net.jogtar.hu/jogszabaly?docid=a0600098.tv.

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- 2008. évi XLVII. törvény a fogyasztókkal szembeni tisztességtelen kereskedelmi gyakorlat tilalmáról[296] (Act XLVII of 2008 on the Prohibition of Unfair Business-to-Consumer Commercial Practices).
- *1997. évi CLV. törvény a fogyasztóvédelemről*[297] (Act CLV of 1997 on Consumer Protection).

Self- and co-regulatory instruments:

- *A Magyarországi Tartalomszolgáltatók Egyesületének Társszabályozási Magatartási Kódexe*[298] (Co-regulatory Code of Association of Hungarian Content Providers –Code of Content Providers).
- *Magyar Reklámetika Kódex*[299] (The Hungarian Code of Advertising Ethics – Advertising Ethics Code).[300]

## 4.15.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.15.2.1. Definitions

**Table 41. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |

[296] https://net.jogtar.hu/jogszabaly?docid=a0800047.tv.
[297] https://net.jogtar.hu/jogszabaly?docid=99700155.tv.
[298] http://archiv.mte.hu/dokumentumok/MTE_Tarsszabalyozasi_Magatartasi_Kodex_20110630.pdf.
[299] http://www.ort.hu/wp-content/uploads/2018/09/magyar-reklametikai-kodex-2015.pdf.
[300] http://www.ort.hu/wp-content/uploads/2020/01/code-2015.pdf.

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| | |
|---|---|
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | Yes. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | Digital advertisements and marketing communications, individually targeted communication and online behavioural advertising (OBA). |

*Source: Hungarian response to European Audiovisual Observatory standardised survey*

#### 4.15.2.1.1. Audiovisual commercial communications

Section 203 paragraph 20 of the Media Act and Article 1 paragraph 9 of the Free Press Act define audiovisual commercial communications in the same manner by transposing the text of the revised AVMSD verbatim, as follows:

> *Commercial communication shall mean any media content shall mean the media content aimed at promoting, directly or indirectly, the goods, services or image of a natural or legal person carrying out business activities. Such content accompanies or is included in media content or user-generated videos against payment or similar consideration or for the purpose of self-promotion. Forms of commercial communication include, amongst others, advertisements, the display of the name, the trademark, the image or the products of the sponsor, or the teleshopping or and product placement.*

The same definition can also be found in Article 37 paragraph, subparagraph 6, of the Code of Content Providers, and a reference to this definition is made in Article 2, letter r, of the E-Commerce Act.

#### 4.15.2.1.2. Television advertising

There is no definition of television advertising, but Section 203 paragraph 59 of the Act CLXXXV on Media Services and Mass communication defines advertisement as:

> *Advertisement shall mean any communication, information or representation, qualifying as a programme, intended to promote the sale or other use of marketable tangible assets - including money, securities, financial instruments and natural resources that can be utilised as tangible assets - services, real estates or pecuniary rights or to increase, in connection with the above purposes, the public awareness of the name, designation or activities of an undertaking, or any merchandise or brand name.*

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#### 4.15.2.1.3. Advertiser

Article 3 paragraph 1 of the Advertising Act defines advertiser as follows: "[a]dvertiser shall mean a person on whose behalf advertisements are disseminated, or who orders the publication of advertisements".

#### 4.15.2.1.4. Surreptitious commercial communication

Section 203 paragraph 4 of the Media Act and Article 1 paragraph 10 of the Free Press Act define surreptitious commercial communications in the same manner by transposing the text of the revised AVMSD verbatim, as follows:

> *Surreptitious commercial communication shall mean any commercial communication, the publication of which deceives the audience about its nature. Communications serving the purposes of commercial communications may qualify as surreptitious commercial communications, even if no consideration is paid for their publication.*

A shortened version of this definition can also be found in Article 37 paragraph 2, subparagraph 1, of the Code of Content Providers referring to "a commercial notice the nature of whose publication may mislead the public".

#### 4.15.2.1.5. Misleading commercial communication

Article 10 paragraph 2 of the Advertising Ethics Code,[301] also applicable to video-sharing platforms (VSPs), defines misleading commercial communications as follows:

> *An advertisement is considered to be misleading when it misleads or might mislead a reasonably informed consumer acting with the care and consciousness that may be expected under the circumstances. The advertisement shall not be and cannot operate as a substitute for the briefing on and acknowledgement of the conditions of sale and contracting terms of rendering the services.*

Also, Article 6 paragraph 1 of the Act on the Prohibition of Unfair Business-to-Consumer Commercial Practices states that a commercial practice is to be regarded as misleading:

> *[i]f it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more of the following elements, and in either case*

[301] This Code is applicable according to Article 1 (2) to members of the signatory organisations and to all those who volunteer their adherence to the Code, inclusive of the two Hungarian VSP providers (videa, https://videa.hu/ and indavideo, https://indavideo.hu).

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*causes or is likely to cause him or her to make a transactional decision that he or she would not have taken otherwise.*

#### 4.15.2.1.6. Virtual advertising

Section 203 paragraph 72 of the Media Act defines virtual advertising as: "Virtual advertisement shall mean an advertisement inserted into the program signal or the program itself subsequently through a digital technology or by any other method."

#### 4.15.2.1.7. Sponsorship

Article 3, letter p, of the Advertising Act defines sponsorship as follows:

*Sponsorship shall mean any form of public or private contribution to any event or activity, or to any individual in connection with an event or activity with the aim or having the direct or indirect effect of promoting the purchase or use of a product.*

Article 203 paragraph 63 of the Media Act, Article 1 paragraph 12 of the Free Press Act and Article 37 paragraph 2, subparagraph 18 of the Code of Content Providers[302] define sponsorship in the same manner by transposing the text of the revised AVMSD verbatim, as follows:

*Sponsorship shall mean any contribution provided by an undertaking to finance a media service providers, media services, video-sharing platform services, user-generated videos or a programme with the purpose of promoting its name, trade mark, image, activities or products.*

Furthermore, Article 5 paragraph 7 of the Code of Content Providers stipulates requirements for sponsors and sponsorship, as follows:

*(7) The name of the supporting organisation (sponsor) or the brand name, trademark or logo it so requests must be published in a way that all participants, viewers, readers or audience of the sponsored publication, programme, event, etc. should be aware of the support (sponsorship).*

#### 4.15.2.1.8. Sponsor

There is no definition of sponsor.

[302] This Code is applicable to the two Hungarian VSP providers (mentioned in footnote 291), as they are members of the Association of Hungarian Content Providers.

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#### 4.15.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.15.2.1.10. Product placement

Section 203 paragraph 68 of the Media Act and Article 37 paragraph 2, subparagraph 19, of the Code of Content Providers define product placement in the same manner by transposing the text of the revised AVMSD verbatim, as follows:

> *"Product placement" means a commercial communication consisting of the inclusion of, or reference to, a product, a service or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.*

#### 4.15.2.1.11. Other definitions

Article 24 in Chapter III of the Advertising Ethics Code includes several definitions of other techniques of online commercial communications, such as: digital advertisements and marketing communications, individually targeted communication and OBA, as follows:

> *(1) Digital advertisements and marketing communications: these are marketing communications using the tools of digital interactive media to promote products, or to influence the behaviour of consumers.*
> *(2) Individually targeted communication: a communication sent to an e-mail address or mobile number (e.g. via SMS) or to some similar address that can be associated with a concrete, identifiable person.*
> *(3) Behavioural advertising (OBA): a practice using data derived from the online behaviour of users. Behavioural data are gathered with the help of a device from pages not belonging to the business group of the advertiser, so that on their basis the advertiser could develop an interest-based consumer segment, so that the ads that may be of interest to them could be communicated to these consumers. The activity of businesses operating websites and context-based advertising (e.g. an advertisement that has been published on the basis of the actual behaviour of consumers or a search) do not fall into this category.*

This chapter contains technical requirements for digital advertisements regarding available bandwidth and browsing possibilities. The provisions also require the advertisement and the advertiser to be identifiable and contain rules on data protection and child protection.

### 4.15.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under

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national legislation on media service providers, including VSP providers related to commercial communications.

Article 15/D paragraph 1, letter d, of the E-commerce Act extends the restrictions of the Free Press Act (subsections (1)-(7) of Article 20) and the Media Act (Article 24) to VSPs. The restrictions in these articles of the Media Act and the Free Press Act are described in detail in the following sub-sections.

Section 15/D paragraph 1, letter d, provides that:

> *(1) In order to protect users of the service, a video-sharing platform provider shall implement the measures and technological solutions provided for in Section 15/F where: (d) the commercial communication broadcast by the user of the video-sharing platform service fails to comply with the requirements laid down in Section 20(1) to (7) of Act CIV of 2010 on freedom of the press and on the basic rules relating to media content (Act CIV of 2010) or Section 24 of Act CLXXXV of 2010.*

#### 4.15.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco related products, including electronic cigarettes and refill containers

Articles 18 to 20 of the Advertising Act set out general restrictions on the communication of alcoholic beverages and tobacco products respectively. With regard to alcoholic beverages, advertisements are not allowed to state that drinking alcohol can improve physical performance while driving, contribute to social or sexual success, have therapeutic, stimulating or sedative properties, etc., nor may they depict children. In particular, the advertising of alcohol to children or adolescents is prohibited. Advertisements may not be placed, for example, outside the front page of any printed media or on the home page of a website and in the vicinity of public educational and health care institutions. No advertising for alcohol may be shown, for example, in theatres or cinemas before 8 p.m. Article 24 paragraph 2 of the Media Act contains similar prohibitions for alcoholic beverages.

In addition to these general restrictions, Article 19 of the Advertising Ethics Code provides for additional prohibitions, e.g. related to drinking while driving or consuming alcohol in the workplace, and provides that age verification tools must be established to prevent minors from accessing the websites of alcohol-producing companies.

With regard to tobacco products, any direct or indirect advertising of tobacco products (including complementary products such as paper or electronic cigarettes) is prohibited.

#### 4.15.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

According to Article 17 paragraphs (4) and (5) of the Medical Act, which is applicable to VSPs, the advertising of prescription medication is prohibited, with some exceptions, e.g. in brochures made available in pharmacies and on the websites of manufacturers, distributors

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and sellers with the aim of providing objective information to patients. Similar prohibitions are contained in Article 20 paragraph 7 of the Free Press Act.

With regard to non-prescription medicines and medical aids, these products may only be advertised according to Article 17 paragraphs (1) to (3) of the Medical Act if the product is clearly identified, if the advertisement includes the name of the product and the information necessary for its correct use, and if the advertisement contains an explicit and legible invitation to read the instructions for use carefully. The advertisement must not contain claims or impressions, such as that consultation with a doctor or surgery is not necessary, that the effects are guaranteed, that the product is safe because it is natural, and it must not refer to a recommendation by scientists, health professionals or celebrities.

#### 4.15.2.2.3. Surreptitious audiovisual commercial communications

No surreptitious commercial communication may be published in media content according to Article 20 paragraph 3 of the Free Press Act.

#### 4.15.2.2.4. Subliminal techniques in commercial communications

Commercial communications in media content, including VSPs, may not use techniques that cannot be perceived by the conscious mind according to Article 20 paragraph 4 of the Free Press Act. A similar prohibition is set out in Article 11 of the Advertising Act, which prohibits the dissemination of subliminal advertising.

#### 4.15.2.2.5. Prejudice with regard to human dignity

According to Article 24 paragraph 1 of the Media Act, commercial communications must not prejudice respect for human dignity. Furthermore, Article 8 of the Advertising Ethics Code states that an advertisement may not use the name, image – including a drawing, graphic representation or caricature – sound recording or statement of a person in an unjustified way, and may not damage the reputation (commercial recognition) of another natural or legal person or organisations without legal personality. An advertisement must not undermine the human dignity, piety and historical or cultural honour of deceased persons.

#### 4.15.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

Article 24 of the Media Act prohibits commercial communications from including any discrimination based on sex, racial or ethnic origin, citizenship, nationality, religion or belief, physical or mental disability, age or sexual orientation. Furthermore, Article 4 paragraphs 5-6 of the Advertising Ethics Code specifies that advertising may not insult any ideology and that an advertisement must not contain elements of negative discrimination

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between nations, nationalities, ethnic groups, genders or age groups; nor may it discriminate on the basis of sexual orientation, religious beliefs or disability(ies) that one may live with. Similarly, an advertisement may not support discriminatory ideas on any of these grounds.

#### 4.15.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour harmful to health, safety or the environment is prohibited in commercial communications under Article 20 paragraph 6 of the Free Press Act. In addition, Articles 7 paragraph (1) and 14 paragraphs (1-2) of the Advertising Act, also applicable to VSPs, stipulate that no advertisement may be broadcast if it contains violence or encourages behaviour that may endanger personal or public safety. Weapons, ammunition, explosives, and other means considered extremely dangerous to public safety may not be advertised.

#### 4.15.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

As mentioned in the previous section, encouraging behaviour harmful to health, safety or the environment is prohibited in commercial communications under Article 20 paragraph 6 of the Free Press Act. In addition, Article 7 paragraph 2 of the Advertising Act prohibits the broadcasting of advertisements encouraging any behaviour likely to endanger the natural or artificial environment.

#### 4.15.2.2.9. Causing physical, mental or moral detriment to minors

Article 24 paragraph 1, letters c-f, of the Media Act prohibits advertisements that directly urge minors to persuade their parents or others to buy the products or services being advertised, that exploit the special trust of minors in their parents, teachers or other persons, or the inexperience and credulity of minors, or that show minors in dangerous situations without reason. In addition, Article 8 of the Advertising Act prohibits advertisements that are likely to harm the physical, intellectual, or moral development of children and adolescents, especially those that depict or refer to gratuitous violence or sexual content, or that are dominated by conflict situations resolved by violence. The law also prohibits advertisements that present children or adolescents in dangerous or violent situations, or in situations with sexual connotations. The Advertising Act was amended by a provision in 2021 that prohibits the provision of advertisements containing pornography, sexually dominated content and content that promotes the misuse of one's biological sex, sex change or homosexuality to minors.

#### 4.15.2.2.10. Other

N/A.

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## 4.15.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.15.3.1. Sponsorship

Some requirements pertaining to sponsorship are laid down in Article 20 paragraphs 8-10 of the Free Press Act, which provides that the sponsoring party must be named at the same time as, or immediately before or after, the publication of the media content. In addition, audiovisual media services and their programmes may not be sponsored by other companies providing audiovisual media services or producing audiovisual programmes or cinematographic works. The media content published and sponsored in the media service may not encourage, call for or discourage the purchase or use of products or services of the sponsor or of a third party defined by the sponsor. The sponsor may not influence the media content or its publication in a way that could affect the responsibility or editorial freedom of the media content provider.

The Media Act also provides for certain restrictions in Articles 26-28 which, *inter alia*, prevent entities from sponsoring any audiovisual media content if their activity is related to political parties or to the gambling or tobacco industry. In addition, Article 11 of the Co-regulatory Code of the Association of Hungarian Content Providers contains similar provisions.

In addition, Article 5 paragraph 7 of the Advertising Ethics Code specifies that the name, logo and brand of the sponsor must be published so that viewers are aware of the existence of the sponsorship.

### 4.15.3.2. Product placement

Articles 30 and 31 of the Media Act stipulate a series of requirements regarding product placement, including:

- in which programmes product placement is prohibited, such as news programmes and programmes aimed at minors under 14;
- which entities may not provide product placement in programmes, such as entities from the tobacco and gambling industries;
- that viewers must be clearly informed – by optical or acoustic means – of the existence of product placement by appropriate identification;
- that product placement should not directly encourage the purchase or rental of goods or services and should not give undue prominence to the product in question.

Similar provisions are laid down in Article 13 of the Code of Association of Hungarian Content Providers.

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## 4.15.4. Obligations regarding (v)blogs and (v)blogging

There are no specific rules for v(blogs) and (v)bloggers. The general rules and prohibitions of the Advertising Act as set out in the previous sections of this factsheet apply to them, since E-commerce law establishes that VSPs are to respect the applicable general legislation, including the Advertising Act as a general law, reference to which is made in the aforementioned provisions of the Free Press Act and Media Act.

Also, if they qualify as a media content provider, all advertising restrictions of the Free Press Act will also apply. If they qualify as a media service provider, the restrictions of the Media Act and the Code of Content Providers will also apply, as per the scope of the Free Press Act and Media Act.

## 4.15.5. Other relevant information

N/A.

## 4.15.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.15.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

As explained at the beginning of section 4.15.2.2 of this factsheet, the restrictions found in paragraphs 1-7 of Article 20 of the Free Press Act and Article 24 of the Media Services Act are applicable to VSPs.

Article 20 paragraph 5 of the Free Press Act specifies that no commercial communication may be presented in media content which is likely to offend religious or ideological convictions. A similar restriction is contained in Article 24 of the Media Act, which provides that commercial communications broadcast in the media shall not include or promote discrimination on the grounds of religion or belief. The article further specifies that such communications shall also not express religious, philosophical or other similar beliefs, with the exception of commercial communications broadcast in media services

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specialising in religion and shall not offend the dignity of a national symbol or religious belief.

A prohibition on any form of discrimination against, *inter alia*, a church, or religious group in commercial communication is also established under Article 10 of the Code of Content Providers. In addition, as mentioned under Section 4.15.2.2.6. of this factsheet, Article 4 paragraphs 5-6 of the Advertising Ethics Code states that an advertisement may not insult any ideology (and in this context, any religious belief). Religious symbols and motifs may only be used in advertising within the limits of good taste and in such a way that their use is appropriate to the subject matter.

### 4.15.6.2. Gambling, betting, betting tipsters, etc.

Commercial communication promoting gambling may not be broadcast to children and young people, and in any case, may not be broadcast without the authorisation of the state tax authority as per Article 20 paragraph 7 of the Free Press Act and Article 21 of the Advertising Act. Similarly, sponsorship or product placement by companies engaged in the pursuit of gambling activities without the gaming supervisory authority's authorisation is prohibited under Articles 27, paragraph 1 and 30 paragraph 4 of the Media Act.

Furthermore, Article 21 of the Advertising Ethics Code specifies additional requirements pertaining to commercial communication promoting gambling, which:

- may not suggest that gambling may be a tool to reach financial safety, or to be an alternative for work, and thus a tool to solve financial problems or to be a substitute for wages;
- may not encourage spending beyond the financial possibilities of the individual;
- may not be addressed to minors, feature or depict minors, or even use the symbols of the subculture typical to them;
- may not contain misleading information, especially regarding the chances of winning and the prizes.

### 4.15.6.3. Environmental or "green" claims for products

Article 22 of the Advertising Ethics Code sets out a series of requirements for environmental and protection claims in commercial communications, including, *inter alia*, that:

- such claims must be clear, understandable and, if necessary, justified by the qualifications of the competent authority;
- such claims should refer to a specific environmental benefit or a general environmental impact, which can be published only if the company has carried out an environmental impact assessment prior to its publication;
- the donation or support of a third party or organisation claimed in such an advertisement can only be included if it is true;

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- claims such as "environmentally friendly" may only be used in statements from persons authorised to make them, unless the advertiser can prove that the product has no harmful effect on the environment during the entire life cycle of the product;
- comparative statements and references are acceptable if the advertiser can prove that the product is the result of an environmentally friendly development compared to competitors or the advertiser's previous products, but without unduly suggesting that the product as a whole is environmentally friendly.

#### 4.15.6.4. Other

N/A.

## 4.15.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.15.7.1. Self- and co-regulatory bodies

#### 4.15.7.1.1. Context of establishment and legal background

Commercial communications on VSPs, whether organised, marketed by platform providers or broadcast by users of VSPs must comply with the relevant provisions of the Free Press Act and the Media Act. VSP providers must implement measures to ensure compliance with these provisions. Finally, the Office of the National Media and Infocommunications Authority (NMHH)[303] may authorise the self-regulatory body (the Association of Hungarian Content Providers), under an administrative agreement, to perform self-management tasks (Article 15/J, paragraph 3, of the E-commerce Act).

#### 4.15.7.1.2. Stakeholders involved

As part of the objective of Article 15/J of the E-commerce Act to facilitate voluntary compliance with the law, the various stakeholders involved in such cooperation would be the NMHH and the self-regulatory bodies of VSPs.

[303] https://english.nmhh.hu/.

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As mentioned previously, at present, the two Hungarian VSP services are members of the Association of Hungarian Content Providers, signatories to the Co-regulatory Code of the Association of Hungarian Content Providers and the Advertising Ethics Code.

#### 4.15.7.1.3. Scope and objectives

Apart from other objectives stated under Articles 15/K (paragraph 2) and 15/D (paragraph 1, letter d, and paragraphs 2-3) of the E-commerce Act, the main objective is the control of measures taken by VSP providers regarding commercial communications organised, marketed by the platform providers and disseminated by users.

#### 4.15.7.1.4. Code(s) of conduct

The Hungarian Advertising Ethics Code has been drawn up with the purpose of providing professional and ethical norms for those engaged in advertising activities in Hungary. It was first established in 1981 as a collection of norms based on the International Chamber of Commerce (ICC) Advertising and Marketing Communication Practice and on the social and economic structure of that time and its resulting circumstances. It was further revised to fulfil the co-regulatory requirements of the Media Act.

It is envisaged that self-regulation is recognised by the Hungarian Parliament in the preamble to the Act on fundamental conditions of economic advertising activities and the Act on prohibiting unfair commercial practices towards consumers:

> *Having regard to the protection of the health of citizens, with particular attention to minors, to the suppression of incidents that may be detrimental to public policy, and – with a view to sustaining market competition which serves economic efficiency and social welfare – protecting the interests of enterprises which honour the requirements of fair business practices, recognising the weight of self-governance and – for this purpose –fostering the enforcement of codes of conduct established within the framework of self-governance, Parliament has adopted the following Act.*

#### 4.15.7.1.5. Role of the (self-)regulatory bodies

According to the different provisions of Article 15/J (paragraphs 1-3), Article 15/K (paragraph 3, letters a-c), and Article 15/M (paragraphs 1-2 and 5) of the E-commerce Act, the self-regulatory bodies of VSPs will have the following responsibilities:

- cooperate with the NMHH;
- conclude administrative agreements with the NMHH;
- carry out self-management tasks beyond the scope of administrative competences;
- prepare a professional code of conduct (Code) defining the autonomous execution of self-management tasks, and manage the affairs of the business entities covered by this Code;

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- settle disagreements and disputes between the companies covered by the Code within the scope of authorisation;
- supervise the operation and conduct of business entities covered by the Code in relation to the licence;
- encourage their members to introduce appropriate measures through codes of conduct aimed at effectively reducing children's exposure to electronic and commercial communications for foods and beverages whose excessive consumption in the overall diet is not recommended.

#### 4.15.7.1.6. Period of activity (if limited)

There is no time-limited period of activity; administrative agreements can be concluded in an indefinite period and can be terminated by either party with thirty days' notice, as specified under section 15/O paragraph 2 of the E-commerce Act.

#### 4.15.7.1.7. Role of the regulatory authority in a co-regulatory system

The NMHH shall oversee the self-regulatory bodies' activities.

##### *4.15.7.1.7.1. Regulatory body*

According to the different provisions of Articles 15/J (paragraph 3), 15/K (paragraph 1), 15/L (paragraph 3), 15/N (paragraph 3), and 15/S (paragraph 1) of the E-commerce Act, the NMHH will have the following responsibilities:

- to cooperate with self-regulatory bodies by providing them with support and incentives to carry out their tasks;
- to authorise the self-regulatory bodies to perform self-management tasks (in the scope of the authorisation granted in the administrative contract) towards its registered members and VSP providers;
- to conclude administrative agreements with the self-regulatory bodies;
- to provide financial support to the self-regulatory bodies for the performance of their tasks;
- to access – after the conclusion of the administrative agreement – the register kept by the self-regulatory bodies on the commercial entities covered by the Code with the option of requesting information in relation to the data in the register in order to be able to carry out its functions regarding the self-regulatory body.

The NMHH is planning to cooperate with the Association of Hungarian Content Providers, with a view to extending the co-regulatory Code to include the regulations pertaining to VSPs; this is expected in the autumn of 2022.

In terms of monitoring, the responsibilities of the NMHH are set out in Articles 15/R (paragraph 1), 15/T (paragraphs 1-2) and 15/U (paragraph 1) of the E-commerce Act, and include:

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- reviewing some of the self-regulator's decisions that contain obligations - when the self-regulator acts as a litigation body - (and where such a review is requested by the petitioner or the party on whom the decision has been imposed, the NMHH must review it within 30 days);
- supervising the activities of the self-regulatory organisation under the administrative agreement, including regular monitoring of the self-regulatory organisation's compliance with the provisions of the administrative agreement with the NMHH, as well as their implementation in accordance with the agreement;
- subjecting the procedures and decisions of the self-regulatory body in carrying out the tasks under the administrative agreement to a full audit. Accordingly, it assesses the decisions of the self-regulatory body – in terms of compliance with the provisions of the administrative agreement and the code of conduct which forms an integral part of it – on a case-by-case basis and as a whole.

#### *4.15.7.1.7.2. Co-regulatory scheme*

See under 4.15.7.1.7.

#### *4.15.7.1.7.3. Relationship and roles of stakeholders*

As for the self-regulatory body, it should be responsible for preparing a report to the NMHH on its activities and the tasks carried out within the framework of the administrative agreement on a regular or at least annual basis, and every six months in writing regarding its procedures, content, subjects, types, and the implementation of its decisions within the framework of its self-regulation procedure.

### 4.15.7.2. Monitoring/evaluation, compliance and sanctioning powers

With regard to compliance and sanctioning powers, the NMHH, while having an obligation to maintain a list of registered VSPs under its jurisdiction (according to Article 15/C paragraph 1), may withdraw the registration of a VSP service in the case of a violation of the requirements set out in Articles 15/D to 15/G of the E-commerce Act. Additional compliance and sanctioning powers of the NMHH are detailed in Articles 15/I, 15/O (paragraph 1), 15/R (paragraph 2) and 15/T (paragraphs 3-5), which include, *inter alia*:

- Prohibiting unlawful conduct and ordering the VSP provider to cease the infringement by possibly imposing a fine of up to one hundred million forints on the VSP or suspending its services for a period of up to one week (Article 15/I (paragraph 2)).
- Terminating the administrative agreement with immediate effect, if the self-regulatory organisation seriously and/or repeatedly violates the provisions of the administrative agreement or has performed its tasks as defined in the administrative agreement in a way that does not comply with the terms and conditions of the agreement or the terms of the code of conduct (Article 15/O (paragraph 1)).

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- If the decision of the self-regulatory body is not in accordance with the provisions of the administrative agreement concluded, including the provisions of the code of conduct, or if, in the opinion of the NMHH, the decision violates the provisions of the relevant legislation or the NMHH finds that the self-regulatory body is not able to execute its decision, it shall initiate an administrative procedure in the case referred to in the petition (Article 15/R (paragraph 2)).
- In the event of irregularities on the part of the self-regulatory body in cases to which the authorisations granted under the administrative agreement pertain, the NMHH may request the self-regulatory body to proceed in accordance with the provisions of the administrative agreement within the prescribed period. If it does not comply with this request within the prescribed period, the NMHH may terminate the administrative agreement under the conditions laid down in the E-commerce Act (Article 15/T (paragraphs 3-4)).
- If, on the basis of the audit, the NMHH finds procedures or decisions of the self-regulatory organisation which are contrary to the relevant legislation or to the provisions of the administrative agreement or the code of conduct, it may open an administrative procedure in the area covered by the decision (section 15/T (paragraph 5)).

## 4.15.8. Cross-sector and cross-border collaboration

N/A.

## 4.15.9. Update on plans and practices related to new obligations of VSPs

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to the new VSP obligations.

## 4.15.10. Studies, reports and research

N/A.

## 4.15.11. Data compilation

This factsheet is based on data compiled by Zsuzsa Detrekői, Fellow at the Centre for Media, Data and Society.

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# 4.16. IE – Ireland – National legal summary[304]

## 4.16.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Broadcasting Act 2009[305]
- Online Safety and Media Regulation Bill 2022[306] (OSMR Bill 2022)
- Data Protection Act 2018[307]
- ePrivacy Regulations, SI 336/2011[308]
- Electoral Reform Act[309]

The OSMR Bill has been signed into law by the President on 10 December 2022, after the completion of this mapping. Relevant updates have been made through additional desk research.

Secondary legislation:

- Statutory Instrument No 258 of June 2010 of the Minister of Communications, Energy and Natural Resources[310] (Statutory Instrument No 258 of 2010), as amended by S.I. 247/2012, EC (Audiovisual Media Services) (Amendments) Regulations 2012
- Broadcasting Authority of Ireland (BAI), General Commercial Communications Code[311]
- Broadcasting Authority of Ireland (BAI) rules on Advertising and Teleshopping[312]
- Broadcasting Authority of Ireland (BAI), Children's Commercial Communications Code[313]
- Data Protection Commission Guidance – Children Front and Centre: Fundamentals for a Child-Oriented Approach to Data Processing (the Fundamentals)[314]

[304] The factsheet on Ireland incorporates the feedback received from Declan McLoughlin, Senior Manager at the Broadcasting Authority of Ireland (Údarás Craolacháin na hÉireann), during the checking round with the national regulatory authorities.
[305] https://www.irishstatutebook.ie/eli/2009/act/18/enacted/en/pdf
[306] https://www.oireachtas.ie/en/bills/bill/2022/6/
[307] https://data.oireachtas.ie/ie/oireachtas/act/2018/7/eng/enacted/a0718.pdf
[308] https://www.irishstatutebook.ie/eli/2011/si/336/
[309] http://www.legislation.ie/eli/2022/en/act/pub/0030/index.html
[310] https://www.irishstatutebook.ie/eli/2010/si/258/made/en/pdf
[311] https://www.bai.ie/en/codes-standards/#al-block-2
[312] Ibid.
[313] Ibid.
[314] https://www.dataprotection.ie/en/news-media/consultations/children-front-and-centre-fundamentals-child-oriented-approach-data-processing

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- Data Protection Commission Rules for Direct Electronic Marketing[315]

Self and co-regulatory instruments:

- Code of Standards for Advertising and Marketing Communications in Ireland[316]
- On-Demand Audiovisual Services Group (ODAS) Code of Conduct for On-Demand Audiovisual Media Services[317]

## 4.16.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.16.2.1. Definitions

**Table 42. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Covered under television advertising. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | Yes. |
| **Sponsorship** | Yes. |
| **Sponsor** | Covered under sponsorship. |
| **Sponsored content** | Covered under sponsorship. |

[315] https://www.dataprotection.ie/en/organisations/rules-electronic-and-direct-marketing
[316] https://www.asai.ie/wp-content/uploads/ASAI-CODE_2015_DEC15_Revision.pdf.
[317] https://www.asai.ie/wp-content/uploads/On-Demand-Audiovisual-Media-Services-Code-Final-_May-2011_.pdf.

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| | |
|---|---|
| **Product placement** | Yes. |
| **Other:** | Direct marketing, commercial profiling, behaviourally targeted advertising, micro-targeting, online political advertising. |

*Source: Irish response to European Audiovisual Observatory standardised survey*

#### 4.16.2.1.1. Audiovisual commercial communications

Statutory Instrument No. 258 of 2010, in Article 2(1), defines audiovisual commercial communication as images with or without sound which:

> *(a) are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity, and*
> *(b) accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes.*
>
> *Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement, but do not include public service announcements and charity appeals broadcast free of charge.*

The same definition is used in the ODAS Code of Conduct for On-Demand Audiovisual Media Services.

Also, the OSMR Act 2022, in Section 3, Paragraph 2 (a), defines audiovisual commercial communication as: "a commercial communication consisting of images with or without sound".

It goes on to describe commercial communication as images or sound or both (Section 3, Paragraph 2 (d)):

> *(a) designed to promote, directly or indirectly, the goods, services or image of a person pursuing an economic activity, and*
> *(b) included in or accompanying a programme or user-generated content in return for payment or for similar consideration or for self-promotional purposes*

Section 46N(1) of the OSMR Act 2022 also makes provision for the Media Commission "makes codes ('media service codes') governing the standards and practices of broadcasters and providers of audiovisual on-demand media services."

#### 4.16.2.1.2. Television advertising

Statutory Instrument No 258 of 2010, Article 2(1) defines television advertising as:

> *any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking*

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*or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment*

The Broadcasting Authority of Ireland (BAI)[318] rules on advertising and teleshopping define advertising as:

*Images with or without sound and radio announcements broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of products or services, including immovable property, rights and obligations, in return for payment.*

Section 42(2)(g) of the existing Broadcasting Act 2009 states:

*Advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, in particular advertising and other such activities which relate to matters likely to be of direct or indirect interest to children, must protect the interests of children having particular regard to the general public health interests of children.*

It is the BAI's Children's Commercial Communications Code that outlines the relevant rules.

Section 42(2)(h) of the existing Broadcasting Act 2009 and the OSMR Act 2022 state that "advertising, teleshopping material, sponsorship and other forms of commercial promotion employed in any broadcasting service, other than advertising and other activities as aforesaid falling within paragraph (g), must protect the interests of the audience". The BAI's General Commercial Communications Code outlines the current rules.

#### 4.16.2.1.3. Advertiser

There is no statutory definition of advertiser – which is covered under the definition of television advertising (see under 4.16.2.1.2.). However, a definition of advertiser is included in the ASAI's self- regulatory code.

Section 1.1 (d) of that code contains the following:

*An advertiser includes anyone disseminating marketing communications, including promoters and direct marketers. References to advertisers should be interpreted as including intermediaries and agencies unless the context indicates otherwise.*

[318] https://www.bai.ie/

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#### 4.16.2.1.4. Surreptitious commercial communication

Section 2(1) of Statutory Instrument No 258 of 2010 defines surreptitious audiovisual commercial communication as:

> *Representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.*

The same definition is used in the BAI's General Commercial Communications Code and a similar definition is used in the ODAS Code of Conduct for On-Demand Audiovisual Media Services.

#### 4.16.2.1.5. Misleading commercial communication

As per the requirements of sections 42(2) (h) and (j) of the Broadcasting Act 2009 (which include a requirement to transpose the relevant provisions of the AVMS Directive), the BAI's General Commercial Communications Code defines misleading commercial communication as:

> *Commercial communications that contain any element of spoken or visual presentation which misleads or is likely to mislead, either directly or by implication, by act or omission, with regard to the merits of the product or service promoted or its suitability for the purpose recommended and which, by reason of its misleading nature, is likely to prejudice the interests of individuals or a competitor.*

The same definition is also included in the ODAS Code of Conduct for On-Demand Audiovisual Media Services.

#### 4.16.2.1.6. Virtual advertising

As per the requirements of sections 42(2) (h) and (j) of the Broadcasting Act 2009, (and the OSMR Act 2022), the BAI's General Commercial Communications Code defines virtual advertising as:

> *An advertising technique which allows broadcasters to electronically insert virtual commercial messages into broadcasts by altering the broadcast signal itself, for example, by replacing existing advertising boards on a field or by superimposing new (e.g. three-dimensional) images.*

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#### 4.16.2.1.7. Sponsorship

As per the requirements of sections 42(2) (h) and (j) of the Broadcasting Act 2009,, the BAI's General Commercial Communications Code defines sponsorship as:

> *Any contribution made by a public or private undertaking or natural person not engaged in providing radio or television services or in the production of sound broadcasting or audiovisual works, to the financing of television and/or radio services or programmes with a view to promoting its name, its trademark, its image, its activities, its products or its services. Sponsor announcements or references may be shown during a programme but shall not be part of the plot or narrative, that is, they are limited to announcements declaring the sponsorship arrangement (e.g. "sponsored by", "brought to you by", etc) and announcements for sponsored competitions. References to a product or service that are built into the action of a programme constitute product placement, where such references meet the definition of paid product placement or prop placement.*

According to Statutory Instrument No 258 of 2010, sponsorship means:

> *Any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trademark, its image, its activities or its products.*

#### 4.16.2.1.8. Sponsor

There is no definition of sponsor: it is covered under the definition of sponsorship.

#### 4.16.2.1.9. Sponsored content

There is no definition of sponsored content: it is covered under the definition of sponsorship.

#### 4.16.2.1.10. Product placement

As per the requirements of sections 42(2) (h) and (j) of the Broadcasting Act 2009, the BAI's General Commercial Communications Code defines product placement as:

> *Any form of commercial communication on television consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme. The decisive criterion distinguishing product placement from sponsorship is the fact that in product placement the reference to a product or service is built into the action of a programme. In contrast, sponsor announcements or references may be shown during a programme but are not part of the plot or narrative of the programme. The display of logos or branding in programme content (and outside of sponsorship announcements or references) is considered product placement if it meets the definition of product placement.*

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There is a distinction between two types of product placement as follows: paid product placement and prop placement.

According to Statutory Instrument No 258 of 2010, product placement means:

> *Any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme, in return for payment or for similar consideration.*

This definition is also used in the Code of Conduct for On-Demand Audiovisual Media Services.

#### 4.16.2.1.11. Other definitions

In relation to definitions and/or considerations of the techniques of online commercial communications, it should be noted that several such techniques are defined and regulated under Irish legislation, including:

- Direct Marketing: Under the Rules for Direct Electronic Marketing, the Data Protection Commission (DPC)[319] describes direct marketing as involving: "a person being targeted as an individual, and the marketer attempting to promote a product or service, or attempting to get the person to request additional information about a product or service". It adds: "In addition to attempt to promote a product or service, direct marketing also extends to other promotional content such as, for example, event promotion, the promotion of the ethos or culture of an organisation, group or body, the promotion of a 'Yes' or 'No' vote in a referendum, and the canvassing of support for candidates standing for elective office."
- The general rule for electronic direct marketing is that it requires the affirmative consent of the recipient under Regulation 13 of the ePrivacy Regulations, SI 336/2011. Even where a direct marketer has the consent of a data subject, that consent may be withdrawn by the data subject, and in all cases of direct marketing, the data subject has the right to object at any time to the use of their personal data for such marketing, which includes profiling related to such direct marketing. This right to object must be explicitly brought to the attention of the data subject and presented clearly and separately from any other information. It is an offence, under the Data Protection Act 2018, section 30 (2) (h), for any company or corporate body to process the personal data of a child as defined by section 29 for the purposes of direct marketing, profiling or micro-targeting.
- Commercial profiling: The Fundamentals (DPC guidance), set out the standards that all organisations should follow when collecting and processing children's data. A precautionary approach to profiling children is recommended in the guidance which states that: "Online service providers should not profile children and/or carry out automated decision making in relation to children, or otherwise use their personal

[319] https://www.dataprotection.ie/en/organisations/rules-electronic-and-direct-marketing.

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data, for marketing/advertising purposes due to their particular vulnerability and susceptibility to behavioural advertising, unless they can clearly demonstrate how and why it is in the best interests of the child to do so."

- Behaviourally targeted advertising: The Advertising Standards Authority for Ireland (ASAI)[320] has produced a Code of Standards for Advertising and Marketing Communications in Ireland. Section 18 of the Code deals with online behavioural advertising (OBA). Section 18.1 (a) defines online behavioural advertising as: "the collection, over a period of time, by a third party of web viewing behaviour data from a particular computer or device which takes place across multiple web domains not under common control, and which is used by the third party to deliver advertising to that particular computer or device based on the preferences or interests inferred from the data by the third party's technology".[321]

The rules require an OBA third party to provide notice to web users in or around an online display advertisement if they are undertaking OBA. The notice should link to a relevant mechanism whereby a web user can opt out of the collection and use of web viewing behaviour data for OBA purposes by that third party, or that third party and other parties.

- Online political advertisement: The 2022 Electoral Reform Bill (Article 119), which only covers political advertising during an electoral period, defines online political advertising as: "any form of communication in a digital format for political purposes purchased for placement, display, promotion or dissemination on an online platform during an electoral period and for which a payment or payment in kind is made to the online platform concerned".
- Micro-targeting: The 2022 Electoral Reform Bill (Article 119), which only covers political advertising during an electoral period, defines micro-targeting as: "a targeting method involving the use of data analysis techniques, tools or other methods to address, transmit or communicate a tailored online political advertisement either to a specific person or group of persons or to increase the circulation, reach or visibility of an online political advertisement".

### 4.16.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

It should be noted that there are currently no legal restrictions imposed on VSPs in Ireland with regards to the categories of commercial communications, which are covered in this section below, unless covered by general consumer law.

[320] https://www.asai.ie/

[321] These preferences or interests are often categorised into "interest segments" which are then used to target multiple web users with a specific preference or interest.

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However, Section 139K (2), as amended by the OSMR Act 2022 makes a provision for the creation of online safety codes by the Media Commission to ensure:

> *(a) that service providers take appropriate measures to minimise the availability of harmful online content and risks arising from the availability of and exposure to such content,*
> *(b) that service providers take any other measures that are appropriate to protect users of their services from harmful online content,*
> *(c) that service providers take any other measures that are appropriate to provide the protections set out in Article 28b(1)(a), (b) and (c) of the Directive, and*
> *(d) that service providers take any measures in relation to commercial communications on their services that are appropriate to protect the interests of users of their services, and in particular the interests of children.*

Section 139K (3), as amended by the OSMR Act 2022 reads:

> *In the case of video-sharing platform services, the Commission shall exercise its powers under this section with a view to ensuring (without prejudice to any other exercise of those powers in relation to video-sharing platform services) that service providers—*
> *(a) take appropriate measures to provide the protections referred to in subsection (2)(c), including appropriate measures referred to in Article 28b(3) of the Directive,*
> *(b) comply with the requirements set out in Article 9(1) of the Directive with respect to audiovisual commercial communications that are marketed, sold or arranged by them, and*
> *(c) take appropriate measures to comply with the requirements set out in Article 9(1) of the Directive with respect to audiovisual commercial communications that are not marketed, sold or arranged by them, taking into account the limited control they exercise over those communications.*

Restrictions and prohibitions on the related provisions regarding VSPs, as presented below, will hence be the focus during adoption of the rules in the forthcoming period.

#### 4.16.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

To be adopted in the forthcoming period.

#### 4.16.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

To be adopted in the forthcoming period.

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#### 4.16.2.2.3. Surreptitious audiovisual commercial communications

To be adopted in the forthcoming period.

#### 4.16.2.2.4. Subliminal techniques in commercial communications

To be adopted in the forthcoming period.

#### 4.16.2.2.5. Prejudice with regard to human dignity

To be adopted in the forthcoming period.

#### 4.16.2.2.6. Inclusion or promotion of any discrimination (e.g., sex, racial or ethnic origin, nationality, religion, etc.)

To be adopted in the forthcoming period.

#### 4.16.2.2.7. Encouragement of behaviour prejudicial to health or safety

To be adopted in the forthcoming period.

#### 4.16.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

To be adopted in the forthcoming period.

#### 4.16.2.2.9. Causing physical, mental or moral detriment to minors

To be adopted in the forthcoming period.

#### 4.16.2.2.10. Other

N/A.

## 4.16.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

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#### 4.16.3.1. Sponsorship

There are currently no rules pertaining to sponsorship for VSPs in Ireland. However, the OSMR Act 2022 makes a provision for the creation of such rules by the Media Commission (see under 4.16.2.2.).

#### 4.16.3.2. Product placement

There are currently no rules pertaining to product placement for VSPs in Ireland. However, the OSMR Act 2022 makes a provision for the creation of such rules by the Media Commission (see under 4.16.2.2.).

### 4.16.4. Obligations regarding (v)blogs and (v)blogging

(V)logs are not currently considered audiovisual media services and the definition included in the Online Safety and Media Regulation Act 2022 does not explicitly include them in its scope [section 2(b)].

### 4.16.5. Other relevant information

N/A.

### 4.16.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

#### 4.16.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

There are currently no rules applicable to VSPs. In the case of broadcasters, it is worth noting Section 46 M (2)(b), as amended by the OSMR Act 2022, states that:

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*A broadcaster shall not broadcast, and a relevant media service provider shall not make available in a catalogue of the relevant service, an advertisement which—*
*(a) is directed towards a political end or has any relation to an industrial dispute, or*
*(b) addresses the issue of the merits or otherwise of adhering to any religious faith or belief, or of becoming a member of any religion or religious organisation.*

The 2022 Electoral Reform Bill provides for the establishment of an Electoral Reform Commission which would, among other duties, be required: to provide a framework for the regulation of online political advertising during election periods; to provide for the labelling of online political advertisements; to provide for transparency notices for online political advertisements; to confer on the Commission the power to monitor compliance, carry out investigations and take enforcement action under this Act in so far as it relates to online political advertising; to facilitate elections during a pandemic or Covid-19; and to provide for related matters.

Section 119(1) of the same Bill defines online platform as:

*Any provider of a website, web application, digital application or other seller of an online political advertisement accessible to the general public or a section of the public that— (a) has not less than 100,000 unique monthly users in the State for a period of not less than 7 months during the 12 months immediately preceding the date of the making of a polling day order, and (b) receives payment or payment in kind for the placement, display, promotion or dissemination of an online political advertisement on the provider's website, web application or digital application.*

#### 4.16.6.2. Gambling, betting, betting tipsters, etc.

There are currently no rules applicable to VSPs. In the case of broadcasters, it is worth noting that section 46J. (1), as amended by the OSMR Act 2022 states that:

*A broadcaster shall not broadcast, and a provider of an audiovisual on-demand media service shall not make available in a catalogue of the service— (a) anything which may reasonably be regarded as causing harm or undue offence.*

Section 46N. (1) as amended by the OSMR 2022 Act gives the Media Commission the power to make media service codes governing the standards and practices of broadcasters and providers of audiovisual on-demand media services to provide for standards and practices.

Also, section 10 of the ASAI's self-regulatory Code of Standards for Advertising and Marketing Communications, which covers online advertisements in a paid-for space, deals with gambling, and paragraph 10 states that:

*All marketing communications for gambling services or products shall contain a message to encourage responsible gambling and shall direct people to a source of information about gambling and gambling responsibly.*

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#### 4.16.6.3. Environmental or "green" claims for products

There are currently no rules applicable to VSPs, but section 46J. (1) as amended by the OSMR Act 2022 could apply as explained above. Besides, codes governing the standards and practices of broadcasters and providers of audiovisual on-demand media services could set rules dealing with environmental or "green" claims too (section 46N. (1) as amended by the OSMR Act 2022).

Section 15 of the ASAI's Code of Standards for Advertising and Marketing Communications deals with environmental claims and paragraph 8 states that:

> *Marketing communications should not mislead consumers about the environmental benefit that a product offers; for example, by highlighting the absence of an environmentally damaging ingredient if that ingredient is not usually found in competing products or by highlighting an environmental benefit that results from a legal obligation if competing products are subject to that legal obligation.*

#### 4.16.6.4. Other

N/A.

## 4.16.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.16.7.1. Self- and co-regulatory bodies

#### 4.16.7.1.1. Context of establishment and legal background

Statutory Instrument No 258 of 2010 provides for a system of co-regulation by media-services providers of on-demand audiovisual media services, including the creation of codes of conduct for on-demand audiovisual media service providers.

Subsequent to this, the On-demand Audiovisual Media Services Group (ODAS) was established under the auspices of the IBEC and a code of conduct for on-demand audiovisual media service providers was created.

The following sections are relevant only when the VSPs provide an on-demand service. Other than that, the subsections do not apply to VSPs.

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#### 4.16.7.1.2. Stakeholders involved

The self-regulatory Code for On-demand Services was developed by the On-Demand Audiovisual Services Group (ODAS) under the auspices of the Irish Business and Employers Confederation (IBEC).[322] It comprises the Advertisers Association of Ireland AAI,[323] the Institute of Advertising Practitioners in Ireland (IAPI),[324] ASAI, and a representative group of broadcasters, telecommunication companies and other service providers.

The self-regulatory code does not apply to VSPs other than where they provide an on-demand service.

#### 4.16.7.1.3. Scope and objectives

The Code for On-demand Services covers all on-demand audiovisual services made available under the jurisdiction of the Republic of Ireland. It does not apply to VSPs other than where they provide an on-demand service. The basis of the Code is that all commercial communications should be legal, decent, honest and truthful. They should not mislead and should be prepared with a sense of responsibility to consumers and society and should respect the principles of fair competition generally accepted in business. The Code covers sponsorship, product placement, community standards, protection of minors, accessibility, rights, and European works.

#### 4.16.7.1.4. Code(s) of conduct

The ASAI's Code of Standards for Advertising and Marketing Communications in Ireland asserts that marketing communications in the media and sales promotions should be legal, decent, honest and truthful and should not mislead the consumer.

Also, the ODAS's self-regulatory Code for On-demand Services covers all on-demand audiovisual services made available under the jurisdiction of the Republic of Ireland.

Finally, section 34. (1) as amended by the OSMR Act 2022 states that the Media Commission:

> *May co-operate with, or give assistance to, a person or group of persons, whether established in the State or elsewhere—*
> *(a) in the preparation by that person or group of standards, or*
> *(b) in the establishment and administration by that person or group of a self-regulatory system,*
> *relating to the regulation of programme material, user-generated video or other content.*

[322] https://www.ibec.ie/about-us.
[323] http://www.aai.ie/.
[324] https://iapi.ie/index.html.

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#### 4.16.7.1.5. Role of the (self-)regulatory bodies

ASAI is the independent self-regulatory body set up and financed by the advertising industry, adopting and implementing the Code of Standards for Advertising and Marketing Communications, with the members of ASAI being required to abide by the Code and not to publish an advertisement or conduct a promotion which contravenes Code rules. ASAI processes complaints about the content of an advertisement or promotion that appeared in the media (including online and digital media), how a promotion was run or in relation to the receipt of online behavioural advertising without consent, publishing the decisions on its website.

The ODAS Code for On-demand Services sets out the minimum standards required of service providers and provides for a complaint mechanism for the public and is provided under the auspices of IBEC, Ireland's largest lobby and business representative group, with the involvement of ASAI, whose role has been elaborated above, AAI, which is a forum for exchange of practices in commercial communications, IAPP as a representative body for commercial creativity and communications in Ireland, etc.

#### 4.16.7.1.6. Period of activity (if limited)

N/A.

#### 4.16.7.1.7. Role of the regulatory authority in a co-regulatory system:

##### *4.16.7.1.7.1. Regulatory body*

The Code for On-Demand Services is prepared in cooperation with the BAI and is subject to BAI's approval.

In the future, it is anticipated that the proposed Media Commission (which will replace the BAI as per Section 6 of the OSMR Act 2022) will be empowered to assist this self-regulatory scheme and engage in co-regulatory agreements relative to the regulatory matters pertaining to VSPs.

Similarly, the Electoral Reform Commission (as proposed in the Electoral Reform Bill) will be empowered through its competencies vis-à-vis online political advertisement to co-operate and collaborate with other statutory authorities whether in the State or elsewhere in connection with online political advertising and related matters [Section 125(3)].

##### *4.16.7.1.7.2. Co-regulatory scheme*

Section 32 (1), as amended by the OSMR Act 2022, provides for the Media Commission to seek co-operation with other bodies and enter into co-operation agreements.

##### *4.16.7.1.7.3. Relationship and roles of stakeholders*

N/A.

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#### 4.16.7.2. Monitoring/evaluation, compliance and sanctioning powers

In the future, it is anticipated that the proposed Media Commission (which will replace the BAI as per the OSMR Act 2022) will be empowered to monitor activity, draw up codes, oversee compliance and where necessary sanction bodies in breach of codes.

## 4.16.8. Cross-sector and cross-border collaboration

While the arrangements vis-à-vis the collaborative aspects of the regulation of VSPs will be visible in the future with the establishment of the proposed Media Commission (which will replace the BAI as per the OSMR Act 2022), examples of collaboration can be seen in, for example, the ERGA Memorandum of Understanding.[325]

## 4.16.9. Update on plans and practices relative to new obligations of VSPs

N/A.

## 4.16.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- Joint Committee on Tourism, Culture, Arts, Sport and Media, Report of the Joint Committee on the Pre-Legislative Scrutiny of the General Scheme of the Online Safety and Media Regulation Bill 2021[326]

## 4.16.11. Data compilation

This factsheet is based on data compiled by Martina Chapman, independent consultant, Mercury Insights.

[325] https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_l.pdf

[326] https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_tourism_culture_arts_sport_and_media/reports/2021/2021-11-02_report-of-the-joint-committee-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-online-safety-and-media-regulation-bill_en.pdf.

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# 4.17. IT – Italy – National legal summary[327]

## 4.17.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Decreto Legislativo n. 208/2021 "Attuazione della direttiva (UE) 2018/1808 del Parlamento europeo e del Consiglio, del 14 novembre 2018, recante modifica della direttiva 2010/13/UE, relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri, concernente il testo unico per la fornitura di servizi di media audiovisivi in considerazione dell'evoluzione delle realtà del mercato".*[328] (Legislative Decree No. 208/2021 "Implementation of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the single text for the provision of audiovisual media services, taking account of changing market realities" – AVMS Code).
- *Decreto Legislativo n. 206/2005 "Codice del consumo, a norma dell'articolo 7 della legge 29 luglio 2003, n. 229"*[329] (Legislative Decree No. 206/2005 – "Consumer Code, pursuant to article 7 of Law no. 229 of 29 July 2003" – Consumer Code).
- *Decreto Legislativo n. 145/2007 "Attuazione dell'articolo 14 della direttiva 2005/29/CE che modifica la direttiva 84/450/CEE sulla pubblicità ingannevole"*[330] (Legislative Decree No. 145/2007 "Implementation of Article 14 of Directive 2005/29/EC amending Directive 84/450/EEC on misleading advertising" - Law on misleading advertising).
- *Legge n. 125/2001 "Legge quadro in materia di alcol e di problemi alcolcorrelati"*[331] (Law No. 125/2001 "Law on alcohol and alcohol-related problems").
- *Decreto Legge n. 87/2018 "Disposizioni urgenti per la dignità dei lavoratori e delle imprese"*[332] (Law Decree No. 87/2018 "Urgent measures for the dignity of workers and companies" - Law on dignity of workers and companies).
- *Legge n. 249/1997 "Istituzione dell'Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo"*[333] (Law No. 249/1997:

[327] The factsheet on Italy incorporates feedback received from Francesco Di Giorgi, Digital Services Directorate, AGCOM (*Autorità per le garanzie nelle comunicazioni*), during the checking round with the national regulatory authorities.
[328] https://www.gazzettaufficiale.it/eli/id/2021/12/10/21G00231/sg.
[329] https://www.gazzettaufficiale.it/eli/id/2005/10/08/005G0232/sg.
[330] https://www.gazzettaufficiale.it/eli/id/2007/09/06/007G0160/sg.
[331] https://www.gazzettaufficiale.it/eli/id/2001/04/18/001G0181/sg.
[332] https://www.gazzettaufficiale.it/eli/id/2018/07/13/18G00112/sg.
[333] https://www.gazzettaufficiale.it/eli/id/1997/08/25/097A6686/sg.

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"Establishment of the Italian Communications Authority and rules on telecommunications and radio").

Secondary legislation:

- *Decreto Ministeriale n. 581/1993 "Regolamento sulle sponsorizzazioni di programmi radiotelevisivi e offerte al pubblico"*[334] (Ministerial Decree No. 581/1993 "Regulation on sponsorship of radio-television programs and offerings to the public" - Regulation on sponsorship of radio-television programmes).
- *Agcom, All. A, Delibera n. 132/19/CONS recante "Linee guida sulle modalità attuative dell'art. 9 del Decreto Legge 12 luglio 2018, n. 87, recante 'disposizioni urgenti per la dignità dei lavoratori e delle imprese', convertito con modificazioni dalla Legge 9 agosto 2018, n. 96"*[335] (Agcom, Annex A, Resolution No. 132/19/CONS "Guidelines on the implementation measures of art. 9 of Law Decree No. 87 of 12 July 2018 'Urgent measures for the dignity of workers and companies', as converted with amendments by Law No. 96 of 9 August 2018").

Self and co-regulatory instruments:

- *Codice di Autodisciplina della Comunicazione Commerciale, 68° edizione*[336] (Self-regulatory Code on Commercial Communication, 68th edition[337] - IAP Code).
- *Regolamento Digital Chart sulla riconoscibilità della comunicazione commerciale diffusa attraverso internet*[338] (Digital Chart Regulation on the identifiability of commercial communications disseminated online[339]).
- *Regolamento sulla pubblicità comportamentale online*[340] (Regulation on Online Behavioural Advertising).

## 4.17.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which

[334] https://www.gazzettaufficiale.it/eli/id/1994/01/12/094G0011/sg.
[335] https://www.agcom.it/documents/10179/14467561/Allegato+26-4-2019/7e8dd234-9b83-4e2a-bc5a-f912bc6cdfa2?version=1.0.
[336] Self-Regulatory Code for Commercial Communications of the self-regulatory body Instituto dell'Autodisciplina Pubblicitaria (IAP) https://www.iap.it/, available at: https://www.iap.it/codice-e-altre-fonti/il-codice/. Further details on IAP are provided in section 4.17.7.1.5 of this factsheet.
[337] https://www.iap.it/about/the-code/?lang=en.
[338] https://www.iap.it/wp-content/uploads/2020/06/Regolamento-Digital-Chart.pdf.
[339] https://www.iap.it/wp-content/uploads/2020/06/Digital-Chart-Regulations.pdf.
[340] https://www.iap.it/wp-content/uploads/2015/11/All-3-Regolamento-OBA.pdf.

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are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.17.2.1. Definitions

**Table 43. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | Yes. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other: (Specify)** | Online behavioural advertising. |

*Source: Italian response to European Audiovisual Observatory standardised survey*

#### 4.17.2.1.1. Audiovisual commercial communications

Article 3 paragraph 1 letter oo) of the AVMS Code defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim as follow:

> *Audiovisual commercial communication: images, with or without sound, which are designed to promote, directly or indirectly, the goods, services, or image of a natural or legal person pursuing an economic activity and including, inter alia, television advertising, sponsorship, telepromotion, teleshopping, and product placement, included in or accompanying a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes.*

#### 4.17.2.1.2. Television advertising

Article 3 paragraph 1 letter pp) of the AVMS Code defines television advertising by transposing the text of the revised AVMSD verbatim as follows:

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*Television advertising: any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.*

#### 4.17.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.17.2.1.4. Surreptitious commercial communication

Article 3 paragraph 1 letter rr) of the AVMS Code defines surreptitious commercial communications[341] as follows:

*Surreptitious commercial communication means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature.*

#### 4.17.2.1.5. Misleading commercial communication

Article 18, paragraph 1, letter d) of the Consumer Code defines commercial practice as any act, omission, course of conduct or representation, or commercial communication, including advertising and marketing, by a trader that is directly connected with the promotion, sale or supply by that trader of a product to consumers. In this respect, Article 21 paragraph 1 of the Consumer Code considers a commercial practice misleading if it contains information which is not true or which, although factually correct, deceives or is likely to deceive the average consumer in respect of particular matters (e.g., the nature of the products, their main characteristics, their price, etc.) and, in any event, if it causes or is likely to cause the consumer to take a transactional decision which he or she would not otherwise have taken. This applies to business-to-consumer relationships.

Moreover, a definition of misleading advertising is found under Article 2, paragraph. 1, letter b) of the Law on misleading advertising which states the following:

*Misleading advertising: any advertising that in any way, including overall presentation, deceives or is likely to deceive the natural or legal persons to whom it is addressed or whom it reaches and which, because of its misleading character, may prejudice their economic behaviour or which, for this reason, is likely to harm a competitor.*

This also applies to business-to-consumer relationships.

[341] Further details are provided in section 4.17.2.1.11. of this factsheet.

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A similar definition of misleading commercial communication is established under Article 2 of the IAP Code:

> *Any statement or representation that is likely to mislead consumers, including through omissions, ambiguities or exaggerations that are not obviously hyperbolic, particularly regarding the characteristics and effects of the product, price, free offers, conditions of sale, distribution, the identity of the depicted persons, prizes or awards.*

According to this Article, commercial communications must not be misleading.

#### 4.17.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.17.2.1.7. Sponsorship

Article 3 paragraph 1 letter ss) of the AVMS Code defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

> *Sponsorship: any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trademark, image, activities or products.*

#### 4.17.2.1.8. Sponsor

Article 2, paragraph 2 of the Regulation on sponsorship of radio-television programs defines a sponsor as: “any given subject who has sponsored the radio or television program".

#### 4.17.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.17.2.1.10. Product placement

Article 3 paragraph 1 letter uu) of the AVMS Code defines product placement as follows:

> *Any form of audiovisual commercial communication consisting of the inclusion of, or reference to, a product, a service, or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.*

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#### 4.17.2.1.11. Other definitions

As part of its mission to control online behavioural advertising, the IAP defines this type of advertising as:

> *The collection of data on the online browsing activities of a given device, over time and on different websites, which are not under the direct or indirect control of the subject undertaking such data collection activity, carried out with the aim of identifying segments of interest in order to send online advertising to that terminal/device in accordance with the interests manifested through the web.*

### 4.17.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general remark, it should be noted that according to Article 42 paragraph 2 of the AVMS Code, VSPs subject to Italian jurisdiction must comply with the provisions of Article 43 of the said Code, which contains general requirements regarding commercial communications: "The providers of VSPs subject to Italian jurisdiction are required to comply with the requirements of Article 43."

The AVMS Code attributes to the Italian Communications Authority Agcom[342] the power to ensure that:

> *the suppliers of platforms for sharing videos adopt adequate measures to comply with the requirements of article 43 in relation to audiovisual commercial communications not commercially promoted, sold or organised by them.*

This provision, although not explicitly specified in the law, should apply to audiovisual commercial communications marketed, sold or arranged by VSPs. Further details regarding the specific restrictions stemming from Article 43 of the AVMS Code are presented below in this section.

It should also be pointed out that Article 43 of the AVMS Code lays the ground for the establishment of self- and co-regulation with regard to, *inter alia*, adoption and implementation of codes of conduct concerning audiovisual commercial communications relating to alcoholic beverages and inappropriate audiovisual commercial communications for children, food products including supplements, or beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, sugar, sodium or salt, excessive intakes of which in the general diet are not recommended.

[342] Autorità per le Garanzie nelle Comunicazioni https://www.agcom.it/.

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#### 4.17.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 43 paragraph 1 letter d) of the AVMS Code prescribes a general ban on audiovisual commercial communications for cigarettes and other tobacco and nicotine products, including electronic cigarettes and refill containers, and even for communications with indirect references or elements that characterise tobacco products or companies whose main activity consists in the production or sale of such products. With regard to alcoholic beverages, Article 43 paragraph 1 letter e) of the AVMS Code requires that audiovisual commercial communications relating to alcoholic beverages should not be aimed at minors and should not encourage excessive consumption of such beverages.

Other requirements may apply to audiovisual commercial communications on VSPs, such as Article 13 of the Law on alcohol and alcohol-related problems, which contains certain restrictions on the advertising of alcoholic beverages (e.g., it may not attribute to the beverages therapeutic effects or properties, may not contain images that portray the consumption of alcohol in a positive light, etc.).

At a self-regulatory level, rules on alcohol advertising are also set out in Article 22 of the Self-Regulatory Code on Commercial Communications. Although this provision is included in a self-regulatory code, the Italian legislator has made it mandatory for all types of advertising and for all operators. Article 22 specifies that advertising for alcoholic beverages must not contradict the obligation to represent styles of drinking behaviour that project moderation, health and responsibility. Specifically, advertising must not:

*(i) encourage the excessive, uncontrolled, and therefore dangerous use of alcoholic beverages;*
*(ii) portray images of alcohol dependency or suggest that the consumption of alcohol can solve personal problems;*
*(iii) address or refer, even indirectly, to minors, or represent minors drinking alcohol;*
*(iv) associate alcoholic consumption with driving;*
*(v) lead the public to believe that the consumption of alcoholic beverages increases mental lucidity and physical and sexual capability, or that abstention from these beverages produces physical, psychological and social inferiority;*
*(vi) represent sobriety and abstention from alcohol as negative values; (vii) lead the public to neglect the more sensible manners of consumption in relation to the characteristics of each alcoholic product and to each individual;*
*(viii) use the high alcoholic volume as the principal theme of the advertisement.*

#### 4.17.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 43 paragraph 1 letter f) of the AVMS Code prohibits audiovisual commercial communications relating to medicinal products and medicinal treatments available only on prescription in Italy.

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#### 4.17.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious audiovisual commercial communications are prohibited according to Article 43 paragraph 1 letter a) of the AVMS Code:

> *Article 43*
> ...
> *(a) audiovisual commercial communications shall be readily recognisable as such and surreptitious audiovisual commercial communications shall be prohibited*

#### 4.17.2.2.4. Subliminal techniques in commercial communications

The use of subliminal techniques in audiovisual commercial communications is prohibited under Article 43 paragraph 1 letter b) of the AVMS Code:

> *Article 43*
> ...
> *(b) audiovisual commercial communications shall not use subliminal techniques and must maintain a sound level no higher than the ordinary sound level of the programmes*

#### 4.17.2.2.5. Prejudice with regard to human dignity

According to Article 43 paragraph 1 letter c) of the AVMS Code, audiovisual commercial communications must not prejudice respect for human dignity:

> *Article 43*
> ...
> *(c) audiovisual commercial communications shall not*
> *1) prejudice respect for human dignity*

#### 4.17.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

Article 43 paragraph 1 letter c) (2) of the AVMS Code prohibits commercial communications that entail or promote any discrimination based on the following grounds: “sex, race, ethnicity, nationality, religion or personal convictions, disabilities, age or sexual orientation”.

#### 4.17.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour prejudicial to health or safety is prohibited in audiovisual commercial communications under Article 43 paragraph 1 letter c) (3) of the AVMS Code.

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#### 4.17.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Encouraging behaviour grossly prejudicial to the protection of the environment is prohibited in audiovisual commercial communications under Article 43 paragraph 1 letter c) (4) of the AVMS Code.

#### 4.17.2.2.9. Causing physical, mental or moral detriment to minors

Requirements pertaining to the protection of minors in relation to commercial communication are laid down in Article 43 paragraph 1 letter g) of the AVMS Code which requires that audiovisual commercial communications do not cause physical, mental or moral detriment to minors. In this vein, such communications should not encourage minors from buying or leasing a product or service by exploiting their inexperience or incredulity, nor should they encourage minors to persuade their parents or others to buy the goods and services advertised, exploit the particular trust that minors have in their parents, teachers or other persons, or portray minors in dangerous situations.

#### 4.17.2.2.10. Other

As mentioned in section 4.17.2.1.11. of this factsheet, the IAP is in charge also of monitoring online behavioural advertising, notably by ensuring compliance with the following principles of the Regulation on Online Behavioural Advertising:

- Transparency obligations, which include the obligation to adopt a proper icon issued by the European Interactive Digital Advertising Alliance - EDAA[343];
- Users must be able to express a choice and to consent to such advertising practices;
- Online behavioural advertising segments may not be created for advertisements directed at minors under the age of 12.

Marketing in general and profiling is also regulated under the applicable European and Italian legal framework on privacy and the protection of personal data, including Regulation (EU) No. 2016/679 (General Data Protection Regulation).[344]

In addition, restrictions apply to commercial communications about gambling and are detailed under section 4.17.6. of this factsheet.

[343] https://edaa.eu/
[344] https://eur-lex.europa.eu/eli/reg/2016/679/oj?locale=en

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## 4.17.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.17.3.1. Sponsorship

There are no specific rules pertaining to sponsorship for VSPs in Italy.

### 4.17.3.2. Product placement

There are no specific rules pertaining to product placement for VSPs in Italy.

## 4.17.4. Obligations regarding (v)blogs and (v)blogging

Generally, (v)blogs published online by users or influencers are not considered audiovisual media services and, therefore, they are not subject to the rules of the AVMS Code. This is because (v)blogs do not fall within the definition of an audiovisual media service provided under Article 3(1)(a)-(b) of the AVMS Code, since Article 3(1)(a)-(b) of the AVMS Code defines audiovisual media services according to the following principles:

> *(a) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, to the general public, in order to inform, entertain or educate, by means of electronic communications networks within the meaning of Article 2(1) of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018;*
>
> *(b) Audiovisual media service, within the meaning of point a), means a television broadcast as defined under point p) [of the AVMS Code] or an on-demand audiovisual media service as defined under point q) [of the AVMS Code] or an audiovisual commercial communication.*

However, (v)blogs are subject to the general rules provided by the Consumer Code for the protection of consumers (e.g., prohibition of misleading commercial practices) and to the specific rules established by the Italian advertising self-regulatory body in the Digital Chart Regulation on the identifiability of commercial communications disseminated online. More specifically, under Article 3 of the Digital Chart Regulation, in cases where a (v)log produced or disseminated online is:

- of a commercial nature: written warnings should be included in the description of the video and in the initial scenes in such a way as to be immediately noticeable and to make the promotional purpose clear.

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- not resulting from a commission but limited to a casual relationship between the author of the video and the advertiser with the latter occasionally sending its products free of charge or for a modest value: if the products in question are mentioned or framed in the video, then the video must contain an introductory disclaimer, either verbal or written, informing that the product has been sent or offered at a discount by the advertiser, who is obliged to inform the author of the video of the existence of this disclaimer.

### 4.17.5. Other relevant information

It should be noted that Article 41, paragraph 7 of the AVMS Code provides Agcom's powers with regard to commercial communications broadcast by VSPs operating in Italy but subject to the jurisdiction of another member state. In particular, the said provisions provide that:

> *free circulation of programs, user-generated videos and audiovisual commercial communications conveyed by a video-sharing platform whose supplier is established in another member state and directed to the Italian public may be limited*

The said limitations are provided for the following purposes: a) the protection of minors from content that may harm their physical, mental or moral development (pursuant to Article 38, paragraph 1; b) the fight against incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity and c) the protection of consumers, including investors.[345]

### 4.17.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

[345] As this provision is not stipulated by the revised AVMSD, Italy has notified this provision to the European Commission (n.2021/676) before its entry into force without exceptions being raised by the European Commission. More details are available at: https://ec.europa.eu/growth/tools-databases/tris/it/search/?trisaction=search.detail&year=2021&num=676.

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#### 4.17.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

In addition to the general prohibition on advertising prejudicing human dignity and promoting any discrimination provided in sections 4.17.2.2.5. and 4.17.2.2.6 of this factsheet, under Article 10 of the IAP Code, commercial communications must not offend the moral, civil and religious beliefs of individuals. In addition, they must also respect the dignity of the individuals in all its forms and expressions and must avoid any discrimination.

### 4.17.6.2. Gambling, betting, betting tipsters, etc.

With regard to gambling, as a general principle, any form of gambling in audiovisual commercial communications is prohibited under Article 43 paragraph 1 letter h) of the AVMS Code. Moreover, Article 9 of the Law on dignity of workers and companies introduced a general ban on any form of advertising, also indirectly, related to gambling, carried out in any way and on any medium, except for national lotteries with deferred drawing, local lotteries and the logos on safe and responsible gaming of the Customs and Monopolies Agency. This Law Decree No. 87/2018 did not repeal the pre-existing regulations on gambling advertising (e.g., some provisions of Law Decree No. 158/2012[346] and of Law No. 208/2015[347]) which provide, *inter alia*, for several restrictions on gambling advertising based on its content (e.g., content addressed to minors or instigating the game). In addition, promoting illegal gambling (i.e., gambling carried out without a proper license) is a crime pursuant to Article 4 of Law No. 401/1989.

Nevertheless, some exceptions to application of the ban on advertising of gambling were introduced by Articles 5 and 7 of AGCOM Resolution No. 132/19/CONS, which allow for instance specific promotional and/or informative activities related to gambling.[348] More precisely, specific promotional and/or informative activities related to gambling are allowed, such as the use of the gambling brand's distinctive signs, only when they strictly identify the space where the gambling services are carried out (for example mere signs or domain names of online websites); communications limited to the characteristics of the gambling products and services, only where issued in the context in which the gambling services are offered; the free indexing services provided by search engines or marketplaces, that enable the gambling brand to have a better position in the user's search results.

Law on dignity of workers and companies, Article 9, paragraph 2, provides for the possibility of sanctioning various recipients (client, the owner of the vehicle or site of diffusion or destination and the organiser) in case of breaches of relevant provisions, in addition to the applicable financial sanctions, as follows:

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[346] www.gazzettaufficiale.it/eli/id/2012/09/13/012G0180/sg.
[347] www.gazzettaufficiale.it/eli/id/2015/12/30/15G00222/sg.
[348] E.g. the use of the gambling brand's distinctive signs, only when they strictly identify the space where the games services are offered - e.g. simple signs or domain names of online websites; communications limited to the characteristics of the gambling products and services, only when issued in the context in which the gambling services are offered; the free indexing services provided by search engines or marketplaces, that enable the gambling brand to have a better position in the user's search results, etc. Ibid.

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*Non-compliance with the provisions referred to in paragraph 1 involves the client, the owner of the medium or the dissemination site or of destination and the organiser of the show, event or activity, pursuant to law no. 689 of 24 November 1981, the application of a commensurate administrative fine in the amount of 20% of the value of the sponsorship or advertising and in any case not less than 50 000 euros for each violation.*

The aforementioned provision has allowed Agcom to sanction the creator of channels containing advertising videos of online games with cash winnings (Spike) and YouTube as the holder of a specific partnership contract with the creator (for *culpa in vigilando*, i.e., for not blocking the dissemination of such videos) in August 2022 for a violation of the ban on advertising gambling with cash winnings. The sanction was inclusive of a financial penalty of €750 000, as well as the notice and takedown order for 635 videos and, for the first time, the notice and stay-down order for similar content from the same creator.[349]

#### 4.17.6.3. Environmental or "green" claims for products

At the time of preparing this factsheet, there are no law provisions specifically regulating the environmental and sustainability matter, including "green" claims. However, Article 12 of the IAP Code states that commercial communications claiming or suggesting environmental or ecological benefits must be based on truthful, relevant, and scientifically verifiable data. Such communications must clearly indicate to which aspect of the product or activity being advertised the claimed benefits relate.

Furthermore, the Italian Competition Authority[350] has enforced the general provisions on unfair commercial practices of the Consumer Code to sanction the use of environmental claims that, for instance, provided misleading information on the actual scope of the claim, or were not strongly substantiated.

#### 4.17.6.4. Other

N/A.

### 4.17.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the

[349] Agcom Resolution no.288 / 22/CONS, available at: https://www.agcom.it/documentazione/documento?p_p_auth=fLw7zRht&p_p_id=101_INSTANCE_FnOw5lVOIXoE&p_p_lifecycle=0&p_p_col_id=column-1&p_p_col_count=1&_101_INSTANCE_FnOw5lVOIXoE_struts_action=%2Fasset_publisher%2Fview_content&_101_INSTANCE_FnOw5lVOIXoE_assetEntryId=27603176&_101_INSTANCE_FnOw5lVOIXoE_type=document.
[350] Autorità garante della Concorrenza e del Mercato, https://www.agcm.it/.

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identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.17.7.1. Self- and co-regulatory bodies

#### 4.17.7.1.1. Context of establishment and legal background

Under Article 42 paragraph 3 of the AVMS Code, Agcom, upon consulting the committee for the application of the self-regulatory code on media and minors, must promote forms of co-regulation and self-regulation through the adoption of codes of conduct, in accordance with the provisions set forth under Articles 4a and 28b of the AVMS Directive. In addition, as per Article 42 paragraph 5 of the AVMS Code and upon consulting with the Italian Childhood and Adolescence Authority and the above-mentioned committee, it must, by means of its own resolution, adopt specific guidelines in which it sets out the principles which should inspire the codes of conduct referred to above.

#### 4.17.7.1.2. Stakeholders involved

Agcom is an independent administrative authority with regulatory and enforcement powers in the field of telecommunications, audiovisual media services, editorial and postal services. Law No. 249/1997 defines its role and structure as well as its general competences. Based on this legal framework, a variety of provisions under Italian law vest Agcom with specific powers to regulate certain content.

Other relevant stakeholders in Italy are:

- The committee for the application of the self-regulatory code on media and minors (Comitato per l'applicazione del Codice di autoregolamentazione media e minori)
- Italian Childhood and Adolescence Authority (Autorità garante per l'infanzia e l'adoscenza)

  Providers of VSP services defined under Article 3, para. 1, letter l), AVMS Code, as the natural or legal person that provides a VSP service

#### 4.17.7.1.3. Scope and objectives

Article 42 of the AVMS Code provides that the different codes of conduct promoted by Agcom should meet the following objectives:

- identify measures aimed at effectively reducing the exposure of minors under the age of 12 to audiovisual commercial communications relating to food products, including supplements, or beverages containing nutrients and substances with a nutritional or physiological effect, such as, in particular, fats, trans-fatty acids, sugars, sodium and salt, the excessive intake of which in the general diet is not

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recommended. The codes must also ensure that audiovisual commercial communications do not accentuate the positive quality of the nutritional aspects of such foods and beverages. (Article 42 paragraph 4)

- identify measures aimed at protecting (i) minors from content which may impair their physical, mental or moral development; (ii) the general public from content containing incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity; and (iii) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under Union law, namely public provocation to commit a terrorist offence, offences concerning child pornography and offences concerning racism and xenophobia (Article 42 paragraph 3)
- identify appropriate measures to comply with the rules on advertising set forth by Article 43 AVMS Code (Article 42 paragraph 3)

Furthermore, under Article 42 paragraph 9 of the AVMS Code, Agcom must also adopt procedures for alternative dispute resolutions between users and VSPs.

#### 4.17.7.1.4. Code(s) of conduct

N/A.

#### 4.17.7.1.5. Role of the (self-)regulatory bodies

The IAP was established more than 50 years ago with the aim of outlining the parameters to ensure "honest, truthful and fair" commercial communications to protect consumers and fair competition among companies. With this mission, the IAP issued the IAP Code.

The IAP Code is binding only on voluntary basis, i.e., for those companies investing in communications, agencies, consultants, media and other subjects which choose to adhere to the IAP Code or to sign an advertising contract with an adhering party. However, under a practical standpoint, many Italian operators adhere to the IAP Code and include an acceptance clause of the IAP Code in their advertising contracts, asking the other contracting parties to comply with the IAP Code and self-regulatory policies. Moreover, although the IAP Code is binding on a voluntary basis, according to case law of the Italian Court of Cassation, the breach of its rules (also by companies which did not adhere to it) may be deemed as constituting unfair competition under Article 2598 of the Italian Civil Code, as behaviour which does not meet market standards of professional ethics.

#### 4.17.7.1.6. Period of activity (if limited)

N/A.

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#### 4.17.7.1.7. Role of the regulatory authority in a co-regulatory system

Agcom, plays a major role in the co-regulatory system: it approves stakeholders' codes of conduct and monitors their implementation.

##### *4.17.7.1.7.1. Regulatory body*

Under Article 42 paragraph 3 of the AVMS Code, Agcom must verify the conformity of the codes of conduct with the law and Agcom's regulations.

##### *4.17.7.1.7.2. Co-regulatory scheme*

Under Article 42 paragraph 3 of the AVMS Code, Agcom must promulgate the codes of conduct by its own resolution, also monitoring their implementation.

##### *4.17.7.1.7.3. Relationship and roles of stakeholders*

Article 42 paragraph 3 of the AVMS Code refers to Article 4a of the AVMS Directive according to which the regulatory body (Agcom) may foster codes of conduct drawn up by stakeholders.

### 4.17.7.2. Monitoring/evaluation, compliance and sanctioning powers

Under Article 42 paragraph 3 of the AVMS Code, Agcom must also adopt the monitoring procedure for the follow-up and periodic evaluation of the compliance with codes of conduct, in accordance with the principles of transparency, non-discrimination and proportionality.

Also, Article 67, paragraph 9, provides sanctioning powers to Agcom, which is obliged to apply, on the basis of principles of proportionality, adequacy and compliance with the cross-examination:

> *a pecuniary administrative sanction from 30 000 euros to 600 000 euros, or up to one percent of the annual turnover, when the value of this percentage is higher than 600 000 euros of the turnover achieved in the last financial year closed prior to notification of the dispute.*

## 4.17.8. Cross-sector and cross-border collaboration

N/A.

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## 4.17.9. Update on plans and practices related to new obligations of VSPs

In the context of the implementation of the AVMS Directive, Agcom will also issue several regulations in connection with VSPs, among others those on:

- implementing provisions on the limitation of the free circulation of programs, user-generated videos and audiovisual commercial communications conveyed by a VSP whose provider is established in another member state and directed to the Italian public to protect (i) minors from content which may impair their physical, mental or moral development; (ii) the general public from content containing incitement to racial, sexual, religious or ethnic hatred, as well as against the violation of human dignity; and (iii) consumers (set out in Articles 28a of the AVMS Directive), pursuant to the new Article 41 AVMS Code;
- procedures for alternative dispute resolutions between users and VSPs (set out in Articles 28b of the AVMS Directive), pursuant to the new Article 42 AVMS Code; and
- appropriate guidelines for the codes of conduct to be adopted by VSPs (set out in Articles 28b of the AVMS Directive), pursuant to the new Article 42 AVMS Code.

## 4.17.10. Studies, reports and research

With Resolution No. 44/21/CONS, on 4 February 2021, Agcom launched a survey[351] on the services offered by online platforms aiming, among other things, to carry out a classification of online platforms and related services; to identify the issues raised by online platforms and their effect on information/democracy; to recognise the existing regulatory framework; and to analyse and compare best practices of other countries. The results of this survey have not yet been published.

## 4.17.11. Data compilation

This factsheet is based on data compiled by Ernesto Apa, lawyer and partner at Portolano Cavallo, and Fabiana Bisceglia and Eugenio Foco, lawyers at Portolano Cavallo.

[351] https://www.agcom.it/documents/10179/21649104/Delibera+44-21-CONS/2ed0f672-ed0a-4b8a-8d0b-108e104f2dcf?version=1.0.

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# 4.18. LT – Lithuania – National legal summary[352]

## 4.18.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Lietuvos Respublikos visuomenės informavimo įstatymas (suvestinė redakcija 2022-09-30*[353]) (Republic of Lithuania Law on the Provision of Information to the Public, consolidated version 30/09/2022, Law on the Provision of Information to the Public]
- *Lietuvos Respublikos Lietuvos nacionalinio radijo ir televizijos įstatymo*[354] (Republic of Lithuania Law on Lithuanian National Radio and Television)
- *Lietuvos Respublikos nepilnamečių apsaugos nuo neigiamo viešosios informacijos poveikio įstatymo*[355] (Republic of Lithuania Law on the Protection of Minors against the Detrimental Effect of Public Information)
- *Lietuvos Respublikos reklamos įstatymas (suvestinė redakcija nuo 2022-05-26*[356]*)* (Republic of Lithuania Law on Advertising (consolidated version valid as of 26/05/2022) – Law on Advertising)
- *Lietuvos Respublikos elektroninių ryšių įstatymo*[357] (Republic of Lithuania Law on Electronic Communications)
- *Lietuvos Respublikos asmens duomenų teisinės apsaugos įstatymas*[358] (Republic of Lithuania Law on Legal Protection of Personal Data)
- Lietuvos Respubikos alkoholio kontrolės įstatymas[359] (Republic of Lithuania Alcohol Control Law)
- *Lietuvos Respublikos tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymas*[360] (Republic of Lithuania Law on the Control of Tobacco, Tobacco Products and Related Products)
- *Lietuvos Respublikos nesąžiningos komercinės veiklos vartotojams draudimo įstatymo*[361] (Republic of Lithuania Law on the Prohibition of Unfair Business-to-Consumer Commercial Practices)

[352] The factsheet on Lithuania incorporates feedback received from Nerijus Maliukevičius, market research analyst at the Radio and Television Commission of Lithuania, during the checking round with the national regulatory authorities.
[353] https://www.e-tar.lt/portal/lt/legalAct/TAR.065AB8483E1E/KKBAHKYvgy.
[354] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.31934/asr.
[355] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.183129/asr.
[356] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.106104/asr.
[357] https://www.e-tar.lt/portal/lt/legalAct/TAR.82D8168D3049/asr.
[358] https://www.e-tar.lt/portal/lt/legalAct/TAR.5368B592234C/asr.
[359] https://www.e-tar.lt/portal/lt/legalAct/TAR.9E5C5C16B6E6/asr.
[360] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.24500/asr.
[361] https://www.e-tar.lt/portal/lt/legalAct/TAR.55FFE350795A/asr.

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Secondary legislation:

- *Lietuvos Respublikos kultūros ministro įsakymas dėl Metinės įmokos už transliavimo ir retransliavimo licenciją dydžio nustatymo tvarkos aprašo patvirtinimo*[362] (Republic of Lithuania minister of culture decision regarding the approval of the description of the procedure for determining the amount of the annual fee for a broadcasting and retransmission license)
- *Lietuvos radijo ir televizijos komisijos Sprendimas dėl reikalavimų komerciniams audiovizualiniams pranešimams ir reklamos transliavimui, radijo programų ir atskirų programų rėmimo radijo ir (ar) televizijos programose įgyvendinimo tvarkos aprašo patvirtinimo*[363] (The Radio and Television Commission of Lithuania decision regarding the description of the procedure for implementing the requirements for audiovisual commercial communications and advertising broadcasting, support for radio programs and individual programs in radio and or television programs)
- *Vaistinių preparatų reklamos taisyklės, patvirtintos Lietuvos Respublikos sveikatos apsaugos ministro įsakymu*[364] (the rules for advertising medicinal products approved by the order of the minister of health protection of the Republic of Lithuania)

Self- and co-regulatory instruments

- *Lietuvos Marketingo asociacijos narių etikos ir gerosios praktikos parincipų kodeksas*[365] (Code of ethics in providing information to the public of Lithuania of the Ethics Commission on Public Information)[366]
- *Lietuvos reklamos etikos kodeksas*[367] (Lithuanian Code of Advertising Ethics)
- *Lietuvos radijo ir televizijos komisijos priimtas Audiovizualinės žiniasklaidos paslaugų teikėjų ir dalijimosi vaizdo medžiaga platformos paslaugų teikėjų taikomų etikos kodeksų veiksmingumo nustatymo tvarkos aprašas*[368] (The Radio and Television Commission of Lithuania description of the procedure for determining the effectiveness of the codes of ethics applied by audiovisual media service providers and video-sharing platform service providers)
- *Lietuvos radijo ir televizijos komisijos Gairės dėl audiovizualinės žiniasklaidos paslaugų teikėjų, teikiančių paslaugas naudojantis dalijimosi vaizdo medžiaga platformų, kvalifikavimo ir jiems taikomų reikalavimų*[369] (The Radio and Television Commission of Lithuania guidelines on the qualification and requirements of audiovisual media service providers providing services using video-sharing platforms)

[362] https://www.e-tar.lt/portal/lt/legalAct/TAR.A56EAD0EA429/asr.
[363] https://www.e-tar.lt/portal/lt/legalAct/TAR.A56EAD0EA429/asr.
[364] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.290261/asr.
[365] https://www.etikoskomisija.lt/teisine-informacija/etikos-kodeksai/item/215-visuomenes-informavimo-etikos-kodeksas.
[366]https://www.etikoskomisija.lt/teisine-informacija/etikos-kodeksai/item/216-code-of-ethics-in-providing-information-to-the-public-of-lithuania.
[367] https://www.vvtat.lt/data/public/uploads/2019/02/reklamoskodeksas.pdf.
[368] https://www.e-tar.lt/portal/lt/legalAct/e57ce400113c11ec9f09e7df20500045.
[369] https://www.rtk.lt/uploads/solutions/docs/3145_3bd5c547ff57aff62e7580afbce82f41.pdf.

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- *Lietuvos radijo ir televizijos komisijos Užsakomųjų audiovizualinės žiniasklaidos paslaugų reguliavimas ir priežiūra*[370] (The Radio and Television Commission of Lithuania guidelines on the regulation and supervision of on-demand audiovisual media services)
- *Lietuvos Respublikos Konkurencijos Tarybos Klaidinančios ir neleidžiamos lyginamosios reklamos vertinimo gairės*[371] (Guidelines of the Competition Council of the Republic of Lithuania for the evaluation of misleading and prohibited comparative advertising)

## 4.18.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.18.2.1. Definitions

**Table 44. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |

[370] https://www.rtk.lt/lt/administracine-informacija/uzsakomuju-audiovizualines-ziniasklaidos-paslaugu-reguliavimas-ir-prieziura.
[371] https://kt.gov.lt/uploads/documents/files/Reklamos_vertinimo_gaires.pdf.

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| | |
|---|---|
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | Direct marketing. |

*Source: Lithuanian response to European Audiovisual Observatory standardised survey*

#### 4.18.2.1.1. Audiovisual commercial communications

Article 2(21) of the Law on the Provision of Information to the Public defines commercial audiovisual communication as:

> *'Audiovisual commercial communication' means information disseminated by images, with or without sound, which is intended to promote, directly or indirectly, goods, services or the image of a person engaging in an economic activity (name, logo or other identifying mark) and which is included in or disseminated together with a programme or user-generated video in return for payment or other consideration or for self-promotional purposes. Audiovisual commercial communications include television advertising, sponsorship, teleshopping and product placement.*

#### 4.18.2.1.2. Television advertising

Article 2(68) of the Law on the Provision of Information to the Public defines television advertising as:

> *'Television advertising' means information announced in any form by a provider of audiovisual media services whether in return for payment or for similar consideration which a person engaged in economic, commercial or professional activities orders to be disseminated or disseminates for self-promotional purposes or in order to promote the goods or services, including immovable property, rights and obligations*

#### 4.18.2.1.3. Advertiser

The Law on Advertising, in Article 2(9) and (10), defines the advertiser, the provider of advertising services, as the subject of the advertising activity: "a person whose initiative and interests use (order, produce, spread) advertising".

#### 4.18.2.1.4. Surreptitious commercial communication

Article 2 (35) of the Law on the Provision of Information to the Public defines surreptitious advertising as:

> *'Surreptitious audiovisual commercial communication' means information disseminated in any form and by any means for advertising purposes about the name and/or activities, goods, services or the trade mark of a producer of goods and/or provider of services presented in a*

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*way that the user may fail to understand that it is audiovisual commercial communication. Such presentation of information shall be considered as surreptitious audiovisual commercial communication in particular when it is done in return for payment or for similar consideration.*

The aforementioned definition is included in the Code of Ethics and Good Practice for Members of the Lithuanian Marketing Association, as well.

Further, Article 2(35) of the Law on the Provision of Information to the Public defines a surreptitious commercial audiovisual message as:

*Information disseminated in any form and by any means for the purpose of advertising about the name and/or activity, goods, services or brand or other image of the manufacturer of the goods and/or the service provider, presented in such a way that the consumer may not understand that it is a commercial audiovisual message. Such representation of information shall be considered a surreptitious commercial audiovisual announcement in all cases, in particular when it is done in return for payment or other remuneration.*

#### 4.18.2.1.5. Misleading commercial communication

Article 2(3) of the Law on Advertising defines misleading advertising as:

*Advertising which, in any way, including the manner in which it is presented, misleads or is likely to mislead the individuals to whom it is addressed or whom it reaches, and which by reason of its misleading nature is likely to affect their economic behaviour or which for these reasons is harmful or may harm another person's ability to compete.*

#### 4.18.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.18.2.1.7. Sponsorship

Article 2(54) of the Law on the Provision of Information to the Public defines sponsorship as:

*'Sponsorship' means support by a person not engaged in the broadcasting of the radio programme and/or provision of the audiovisual media services and/or in the production of audiovisual or sound works for the financing of audiovisual media services and/or programmes, radio programmes, video-sharing platform services and/or programmes or user-generated videos with a view to disseminating information on its name, trade mark, image, activities, products or services.*

#### 4.18.2.1.8. Sponsor

There is no definition of sponsor.

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#### 4.18.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.18.2.1.10. Product placement

Article 2(37) of the Law on the Provision of Information to the Public defines product placement as including: "any form of audiovisual commercial communication in which, in return for payment or other consideration, information is overtly presented on, and/or references are made to, a product, service or trade mark in a programme or a user-generated video".

#### 4.18.2.1.11. Other definitions

The Law on Electronic Communications permits the use of electronic communication services, including the sending of electronic mail messages, for the purpose of direct marketing, unless a person explicitly objects to it (according to Article 13 of the Law on Advertising). The "direct marketing" definition is provided in Article 2(1) of the Law on Legal Protection of Personal Data: "Direct marketing is an activity aimed at offering goods or services to individuals by mail, telephone or other direct means and/or asking for their opinion on the offered goods or services."

### 4.18.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating information related to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, it should be mentioned that when VSPs provide audiovisual media services and/or television programs and/or individual program distribution services on the Internet, they are bound only by certain provisions of the Law on the Provision of Information to the Public (as stipulated by Article 40(4), setting VSPs obligations). In addition, VSPs must respect the Law on the Protection of Minors against the Detrimental Effect of Public Information.

Section 3 of the Law on the Provision of Information to the Public, namely Articles 40(3) to 40(5), explicitly relates to VSPs and regulates the jurisdiction of VSPs, lists the requirements regarding the activity of the service providers of the video-sharing platforms (i.e., which provisions of the Law on the Provision of Information to the Public apply to VSPs), and sets out the responsibility of video-sharing platform service providers and the protection of personal rights.

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Article 40(4) of the said legislation sets out the VSP obligations, such as the obligation to observe the requirements regarding protection of minors from applications, user-generated videos and commercial audiovisual messages that disseminate information that has a negative impact on minors, the requirement to proactively safeguard society from applications, user-generated videos and commercial audiovisual messages containing prohibited information, including disinformation, war propaganda, incitement to war, calling for coercion to violate the sovereignty of the Republic of Lithuania (changing its constitutional order, encroaching on its independence or violating the integrity of the territory; encouraging or inciting terrorist crimes; spreading or inciting hatred, mockery, contempt, discrimination, violence, physical confrontation with a group of people or a person belonging to it because of age, gender, sexual orientation, ethnicity, race, nationality, citizenship, language, origin, social status, disability, on the basis of faith, belief, opinion or religion; dissemination, promotion or advertisement of pornography, as well as sexual services and sexual perversions. Details of these restrictions are provided further below.

Also, VSPs are required to clearly inform users about commercial audiovisual messages within user-generated content when such content is declared in accordance with Article 2(3) of the Law on the Provision of Information to the Public or if/when the VSP is aware of the messages, and must comply with any VSP ethics codes regarding inappropriate commercial audiovisual messages inserted into or included in children's programs or about food and beverages containing nutrients and substances with nutritional or physiological effects, in particular fat, trans fatty acid isomers, salt or sodium and sugar, the consumption of which is recommended in moderation. Also, there is a list of voluntary measures that may be implemented by the VSPs.

Finally, advertising of prohibited or illegal activities and goods or services is prohibited, according to Article 9 of the Law on Advertising, if disseminated in any form and by any means of advertising delivery, in cases where the aim is to advertise: activities that are prohibited or illegal by law; goods or services whose production and/or sale (provision) are prohibited by law; goods that are excluded from civil circulation.

#### 4.18.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

With regard to alcoholic beverages, the Alcohol Control Law, in Article 2(1o), defines an alcohol advertisement as:

> *Information disseminated in any form and by any means related to the commercial, economic and financial activities of companies, which encourages the purchase and/or consumption of alcohol products*

Article 29(1) prohibits alcohol advertising.

Relevant restrictions for tobacco and tobacco-related products are found in the Law on the control of tobacco, tobacco products and related products. In Article 17,[1] it prohibits

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tobacco product advertising, including surreptitious advertising thereof. Tobacco product and (or) related product advertising is defined in Article 2(46) as:

> *Information about tobacco products and/or related products disseminated in any form and by any means, directly or indirectly encouraging the purchase and/or consumption of tobacco products and/or related products).*

Exceptions to the tobacco product advertising restrictions include the provision of certain information to consumers at the point of sale, and specialised publications for tobacco industry experts.

Article 17[1] further prohibits advertising of electronic cigarettes, electronic cigarette refills and the smoking of herbal products (including prices on websites), as well as surreptitious advertising of electronic cigarettes, electronic cigarette refills and the smoking of herbal products. The direct or indirect advertising of electronic cigarettes, electronic cigarette filters and the smoking of herbal products is prohibited in commercial communications in the provision of information society services, the press or other printed publications with the exception of electronic cigarettes and related trade publications and publications not primarily intended for the European Union market and which are printed and published in foreign countries. Commercial audiovisual communications related to electronic cigarettes, electronic cigarette fillers and/or the smoking of herbal products, which are subject to the Law on the Provision of Information to the Public, are prohibited.

#### 4.18.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Chapter IV of the rules for advertising medicinal products approved by the order of the Minister of Health Protection permits advertising for medical professionals only and the advertising should not be accessible to the general public. Specialised websites, where prescription medication advertising is permitted, have to be inaccessible to the general public. Such websites must meet certain requirements stipulated in the regulations and be included in a list of websites referred to in the aforementioned regulations.

#### 4.18.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious audiovisual commercial communications are prohibited, according to Article 5(1) of the Law on Advertising and Article 39(1) of the Law on the Provision of Information to the Public.

#### 4.18.2.2.4. Subliminal techniques in commercial communications

Article 8(1) of the Law on Advertising prohibits hidden advertising, in addition to the prohibition of advertising that uses special subliminal means and technologies (Article 4(2)8).

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#### 4.18.2.2.5. Prejudice with regard to human dignity

The Law on Advertising, Article 4(2)2, prohibits advertising if it violates the honour and dignity of a person:

> *Advertising is prohibited if:*
> ...
> *2 ) human honour and dignity are violated*

#### 4.18.2.2.6. Inclusion or promotion of any form of discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Article 4(2)3 of the Law on Advertising prohibits advertising if: "It incites national, racial, religious, gender or social hatred and discrimination, as well as defames or misinforms".

#### 4.18.2.2.7. Encouragement of behaviour prejudicial to health or safety

Advertising is prohibited if it promotes coercion, aggression, causes panic, or encourages behaviour that poses a threat to health, safety and the environment, according to Article 4(2)4-5 of the Law on Advertising.

#### 4.18.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 4(2)5 of the Law on Advertising prohibits advertising if it encourages behaviour that poses a threat to the environment.

#### 4.18.2.2.9. Causing physical, mental or moral detriment to minors

The Law on Advertising, Article 7(2), prohibits advertising with a harmful moral and physical effect on children, including: abuse of children's trust in parents, guardians (caregivers), teachers or other adults; the forming of the opinion in children that the use of certain goods or services will give them a physical, psychological or social advantage over their peers or other persons; unjustifiably showing children in situations that threaten their health and life.

Further, the Law on the Protection of Minors against the Detrimental Effect of Public Information provides prohibitions and restrictions on the use of advertising that has a negative impact on children as set out in the Law on Advertising and in the Law on the Protection of Minors against the Detrimental Effect of Public Information. Advertising in commercial audiovisual messages must not: directly encourage minors to buy, rent, or choose a product or service; take advantage of minors' inexperience and gullibility; directly encourage minors to persuade their parents or other persons to buy advertised goods or services; form the opinion in minors that the use of certain services or goods will give them

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a physical, psychological or social advantage over their peers; abuse the trust of minors in parents, teachers or other persons; show minors in dangerous situations where there is no public interest (Article 8(3) of the Law on the Protection of Minors against the Detrimental Effect of Public Information).

#### 4.18.2.2.10. Other

N/A.

## 4.18.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.18.3.1. Sponsorship

VSPs must comply with the requirements of Article 39 of the Law on the Provision of Information to the Public regarding commercial audiovisual messages that VSPs order themselves or disseminate on their own initiative, as well as take appropriate measures established by the law related to compliance with the requirements of that article, regarding those commercial audiovisual messages that are used by video-sharing platforms where the material is not traded, sold or managed by the platform service providers; clearly inform users of programs and user-created videos about commercial audiovisual messages broadcast in these programs and videos, when they have been declared in accordance with paragraph 2, point 3 of article 40,[4] or the service provider of the video-sharing platform is aware of these messages; comply with the code of conduct (ethics) they themselves have adopted or adopted by other service providers of the video-sharing platform regarding inappropriate commercial audiovisual messages that are inserted into programs for children or are included in such programs, about foods and beverages containing nutrients and substances with physiological effects, especially fats, trans isomers of fatty acids, salt or sodium and sugar, the consumption of which is recommended in moderation.

When the video-sharing platform service provider provides audiovisual media services and/or television programs and/or individual programs distribution services on the Internet, they are subject to the requirements of the Law on the Provision of Information to the Public and the Law on the Protection of Minors against the Detrimental Effect of Public Information, established for audiovisual media services and (or) service providers of television programmes and/or individual programmes distribution on the Internet (Article $40^4$(7)).

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Articles 40 and 40[1] of the Law on the Provision of Information to the Public are the general provisions setting the rules applicable to sponsorship when put in place by audiovisual media services, radio programs and/or individual programs.

#### 4.18.3.2. Product placement

When the video-sharing platform service provider provides audiovisual media services and/or television programmes and/or individual programme distribution services on the Internet, they are subject to the requirements of the Law on the Provision of Information to the Public and the Law on the Protection of Minors against the Detrimental Effect of Public Information, as stipulated above.

### 4.18.4. Obligations regarding (v)blogs and (v)blogging

According to the guidelines on the qualification and requirements of audiovisual media service providers providing services using video-sharing platforms of the Radio and Television Commission of Lithuania (RTCL),[372] general advertisement rules apply to advertisements in v(blogs). Article 2 of the guidelines explains that channels such as YouTube channels or channels on other video-sharing platforms where audiovisual communication is published or any other audiovisual services in respect to which the service provider has editorial responsibility may be deemed to be audiovisual media services even if they are being offered on video-sharing platforms to which ordinarily the editorial responsibility does not apply. The criteria for determining whether individuals publishing audiovisual content on the VSPs are deemed audiovisual media service providers are set out in Chapter II of the guidelines. The main features that indicate that the service is an audiovisual media services are: 1) the programming is broadcast/ published for the purposes of informing, entertainment or education; b) editorial responsibility falls on the service provider; c) the service provider carries out economic and commercial activities. According to Rule 6 of the guidelines, it is important to evaluate whether the video content of the VSP could constitute a program (show), that is to say, video content in essence should be similar to that broadcast on television.

Rule 11 of the guidelines provides a consolidated list of features that could qualify a vlogger as an "on-demand audiovisual media service provider", when, for instance: the service provider carries out economic and commercial activities (i.e., is registered with the Tax Authority); its main activities are the provision of programming for the purposes of informing, entertainment or education; the service provider has editorial responsibility over the programmes; its target audience is a part of society at large; and the services have an impact on the target audience with significant followings/number of views, etc.

[372] *Lietuvos radijo ir televizijos komisija*, http://www.rtk.lt/.

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## 4.18.5. Other relevant information

N/A.

## 4.18.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.18.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

There are no specific rules applicable to VSPs with regard to religion, faith and other belief systems. The general rules apply.

### 4.18.6.2. Gambling, betting, betting tipsters, etc.

There are no specific rules applicable to VSPs with regard to gambling, betting, etc. VSPs fall under the scope of the general Law on Gambling. Article 10 Parts 9, 91 and 92, includes a prohibition on advertising of gambling on the territory of the Republic of Lithuania, with the exception of the names, trademarks and types of gambling organised by companies involved in the organisation of gambling. It is further prohibited to publish any information related to gambling on websites intended for persons under the age of 18. A website is considered to be a website for persons under 18 years of age in those cases in which at least 80% of the content is dedicated to the description of events and phenomena intended for children and teenagers, their professional assessment, information about them, and the dissemination of the artistic and technical creativity of children and teenagers. It is forbidden to specify any additional written, visual or audio information in the advertisement. There must be a warning notice that participation in gambling may lead to gambling addiction or pathological gambling. The content of the warning note and the rules governing its presentation in advertising are determined by the Supervisory Authority.

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#### 4.18.6.3. Environmental or "green" claims for products

There are no specific rules applicable to VSPs with regard to environmental claims. The general rules apply.

#### 4.18.6.4. Other

N/A.

## 4.18.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.18.7.1. Self- and co-regulatory bodies

#### 4.18.7.1.1. Context of establishment and legal background

The Law on the Provision of Information to the Public, Article 43(4), provides for the importance of self-regulatory mechanisms, including codes of ethics:

> *In order to promote self-regulation in the provision of audiovisual media services, codes of conduct (ethics) at national and/or European Union level drawn up and published on their website by audiovisual media service providers, video-sharing platform providers or their representative organisations may be applied in Lithuania, where necessary in cooperation with industrial, commercial or other sectors or professional and consumer associations or organisations. Where audiovisual media service providers, video-sharing platform providers or their representative organisations falling under the jurisdiction of the Republic of Lithuania draw up European Union codes of conduct (ethics), they shall submit drafts of those codes and any amendments thereto to the European Commission.*

The Law on the Provision of Information to the Public, in Article 9(2), provides for the need for codes of conduct in regard to audiovisual commercials. Article 39(15) further states:

> *Public audiovisual information service providers or their associations must prepare codes of conduct in relation to inappropriate commercial audiovisual announcements that are slotted into children's programming time or are included in those programmes, about food products and drinks that contain food substances and substances that are noted for their nutritional or physiological effect, especially fats, fatty acid trans isomers, salt or sodium and sugar, the use of which is recommended in moderation.*

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Also, Article 43 of the Advertising Law from 2019 establishes the requirements for the use of, and responsibilities related to, advertising activities, and defines relevant self/regulatory measures, including codes of conduct.

#### 4.18.7.1.2. Stakeholders involved

Regulation of the activities of public information producers and disseminators is performed by the Inspector of Journalist Ethics[373] and the RTCL. As regards commercial communication, the State Consumer Rights Protection Authority[374] is responsible for enforcement of consumer policy and protection. The main self-regulatory institution is the Ethics Commission on Public Information.[375] In a more specific case of advertising, the Lithuanian Marketing Association (LiMA)[376] is the self-regulatory institution, which has adopted its own code of conduct (the "Code of Ethics and Good Practice for Members of the Lithuanian Marketing Association").

The Ethics Commission on Public Information[377] is primarily responsible for promoting ethical and responsible public communication.

#### 4.18.7.1.3. Scope and objectives

The Law on the Provision of Information to the Public in Article 43(1) ensures that ethical norms are binding on public information producers, providers and journalists:

> *The ethical standards to be complied with by producers and disseminators of public information and journalists shall be defined in the Code, the codes of conduct (ethics) referred to in paragraphs 4 and 5 of this Article, the Resolution on the Ethics of Journalism adopted by the Parliamentary Assembly of the Council of Europe, and the international treaties regulating the production and dissemination of public information to which the Republic of Lithuania is signatory.*

The Law on Advertising is also aimed at protecting consumer rights and fair competition, and promoting self-regulation with regard to advertising.

[373] *Žurnalistų etikos inspektoriaus tarnyba*, https://www.zeit.lt/en.
[374] *Valstybinė vartotojų teisių apsaugos tarnyba*, https://www.vvtat.lt/apie-tarnyba/444.
[375] *Visuomenės informavimo etikos komisija*, https://www.etikoskomisija.lt/teisine-informacija/etikos-kodeksai/item/215-visuomenes-informavimo-etikos-kodeksas.
[376] *Lietuvos marketingo asociacija*, https://lima.lt/lt/titulinis.html.
[377] *Visuomenės informavimo etikos komisija*, https://www.etikoskomisija.lt/.

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#### 4.18.7.1.4. Code(s) of conduct

The main self-regulatory institution is the Ethics Commission on Public Information, with its Code of Ethics in providing information to the public of Lithuania, which was adopted in 2016.

Also, LiMA adopted its the Code of Ethics for Advertising in 2019, which provides a set of standards for professional commercial content and is primarily addressed to the marketing and communication professionals who are members of LiMA.

#### 4.18.7.1.5. Role of (self-)regulatory bodies

Both self-regulatory and regulatory bodies are responsible for monitoring the public information environment and protecting the public in case of violations of legislation and self-regulation.

RTCL is the main regulatory body responsible for implementation of the Law on the Provision of Information to the Public, which regulates and supervises activities of broadcasters of radio and television programmes and providers of on-demand audiovisual media services. RTCL supervises the airing of audiovisual commercial communications and advertising when these communications and advertising are transmitted by the operators overseen by RTCL, that is to say, on television, radio, and in television and radio programmes transmitted via the Internet, and only for the purpose of ensuring compliance with the provisions of the Law on Provision of Information to the Public. RTCL has adopted several decisions that relate to self-regulation, including the decision regarding approval of the description of the procedure for determining the effectiveness of the codes of conduct (ethics) applied by audiovisual media service providers and video-sharing platform service providers or their parts and guidelines on the qualification and requirements of audiovisual media service providers providing services using a video-sharing platform.

The Ethics Commission on Public Information was established as a collegial two-partite self-regulatory body with, as representatives, journalists and media owners (the Lithuanian Journalists' Union, the Lithuanian Society of Journalists, the Online Media Association, the Lithuanian Radio and Television Association, the Regional Television Association, the Lithuanian Cable Television Association, and the National Association of Regional Publishers). Each organisation has the right to appoint one representative to the Ethics Commission for a three-year term. Mandated by the Law on the Provision of Information to the Public, the Commission retains responsibility for handling complains about violations of professional ethics among journalists, media outlets and other information providers, deals with disputes between media professionals, promotes media literacy among the general public and collaborates with different stakeholders in promoting media ethics. The complaints are examined in relationship to the Code of Ethics on Public Information. If a journalist or media outlet is defined as unethical due to violation of professional ethics five times during the same year, the Commission has the right to declare them unethical and exclude them from financial support schemes under which the Media Support Foundation provides grants to different cultural, educational and other projects,

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for one year. The Commission is responsible for updating the Code of Ethics on Public Information; with the most recent update in 2016.

In the case of advertising, the Lithuanian Advertising Association is the self-regulatory institution, in line with Article 39[9] of the Law on the Provision of Information to the Public, which stipulates that the audiovisual media service providers or their associations must adopt codes of conduct (ethics) regarding inappropriate commercial audiovisual messages that are inserted into programs for children or are included in such programs, about foods and beverages that contain nutrients and have nutritional or physiological effects containing substances, especially fat, trans isomers of fatty acids, salt or sodium and sugar, the consumption of which is recommended in moderation. These codes of conduct (ethics) must aim to effectively reduce children's exposure to commercial audiovisual messages about specified foods and beverages, by determining that commercial audiovisual messages do not emphasise the positive nutritional properties of said foods and beverages. Codes of conduct (ethics) are adopted and the obligation to comply with them is established in accordance with the procedure established in paragraphs 4 and 6 of Article 43 of this law. Provisions on inappropriate commercial audiovisual communications may be included in the Code.

When audiovisual media service providers or their associations do not adopt the codes provided for in the Law on the Provision of Information to the Public (which also need to be previously coordinated with the institution authorised by the Government), or when RTCL determines that the chosen codes or their parts are not sufficiently effective, the RTCL can establish mandatory requirements for such commercial requirements for broadcasting audiovisual messages.

#### 4.18.7.1.6. Period of activity (if limited)

N/A.

#### 4.18.7.1.7. Role of the regulatory authority in a co-regulatory system:

Regulation of the activities of public information producers and disseminators is performed by the RTCL and the Inspector of Journalist Ethics. With regard to commercial communication, the State Consumer Rights Protection Authority is responsible for the enforcement of consumer policy and protection.

##### *4.18.7.1.7.1. Regulatory body*

N/A.

##### *4.18.7.1.7.2. Co-regulatory scheme*

N/A.

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*4.18.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.18.7.2. Monitoring/evaluation, compliance and sanctioning powers

Self-regulatory and regulatory bodies are expected to perform monitoring and evaluation activities and specify cases of sanctions imposed due to violation of the law, as stipulated in Articles 43, 48, and 50 of the Law on the Provision of Information to the Public, which defines the monitoring and evaluation activities for both regulatory and self-regulatory institutions. As a result of monitoring activities, regulatory institutions have the power to issue sanctions after the violation has been identified and affirmed.

The use of misleading and non-permitted comparative advertising and methods of enforcement is defined in the Law on Advertising. Monitoring of the Law on Advertising is performed by the State Consumer Rights Protection Authority. Therefore, if misleading advertising or advertising of a different nature that infringes upon the requirements of the Law on Advertising is observed and even in cases where this advertising is aired on television and radio programmes transmitted via the Internet, complaints must be filed with the State Consumer Rights Protection Authority. In specific cases, the Law on the Protection of Minors against the Detrimental Effect of Public Information, the Law on Control of Tobacco, Tobacco Products and Related Products, the Law on Alcohol Control, the Law on Pharmacy, etc. may apply.

Enforcement of the requirements of this Law and other legislation concerning advertisements is controlled by the State Consumer Rights Protection Authority of the Ministry of Justice, the Competition Council of the Republic of Lithuania and RTCL, which cooperate with other institutions that regulate the activities of public information producers and (or) broadcasters and advertising self-regulation bodies.

## 4.18.8. Cross-sector and cross-border collaboration

The Law on the Provision of Information to the Public defines cross-sector and cross-border collaboration in Articles 19, 45, 47, 48, and 50. Accordingly, self-regulatory and regulatory bodies monitoring public information and advertising are encouraged by the law to cooperate with the police and other national and international institutions representing the media industry, professional organisations and consumer rights.

## 4.18.9. Update on plans and practices related to new obligations of VSPs

The Law on the Provision of Information to the Public was updated in September 2022. At the time of preparing this factsheet, there was no publicly available code of conduct of a

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video-sharing platform service provider and no further steps/initiatives have been taken so far to address the obligations reinforcing the self-regulation measures. RTCL issued the guidelines based on the most recent revisions of the Law in relationship to the transposition of the new AVMSD in March 2022.

## 4.18.10. Studies, reports and research

### 4.18.10.1.Studies

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- *Klaipėda University Žymantienė, Gintarė* (Challenges of Empowering of Advertising Ethics in Lithuania: Analysis of the Case of Ethical Violations of Advertising Submitted to the Office of the Equal Opportunities Ombudsman in 2016-2021. Master's thesis, Klaipėda University, p. 68 p.), 2022[379]
- Meškauskaitė, Liudvika. *Žiniasklaidos teisė. Visuomenės informavimo teisė: teoriniai ir praktiniai aspektai* (Centre of Registers, Mass Media Law. The law of public information: theoretical and practical aspects), p. 475 p.), 2018[380]
- Mykolas Romeris University Skirgailė Žaltauskaitė-Žalimienė. *"Teisės į asmens duomenų apsaugą ir saviraiškos bei informacijos laisvės suderinamumo problematika."* (The issues related to compatibility of the right to personal data protection and the freedom of information) Jurisprudencija 27.2 (2020): 269. 2020, DOI: 10.13165/jur-20-27-2-02)[381]
- Vytautas Magnus University Pilelienė, Lina; Grigaliūnaitė, Viktorija; Bakanauskas, Arvydas Petras. *Statinė reklama: teorija ir praktika* (Static advertising: theory and practice), Scientific monography, Kaunas: Vytautas Magnus University, p. 293 p.), 2021[382]
- Vytautas Magnus University Ročytė, Gabija. *Ar azartinių lošimų reklama neprieštarauja LR Reklamos įstatyme įtvirtintiems principams?* (Is gambling advertising compatible with the principles of the Law on Advertising of the Republic of Lithuania?, MA thesis in Law, Vytautas Magnus University, p. 41), 2020[383]
- Vytautas Magnus University Selvianytė, Evelina, *Ar komercinės reklamos ribojimai nepažeidžia asmens saviraiškos laisvės?* (Do the restrictions on commercial

[378] https://www.lituanistika.lt/content/75607.
[379] https://vb.ku.lt/object/elaba:117300944/117300944.pdf.
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- Drazdauskas, Stasys, *The Technology, Media and Telecommunications Review*: Lithuania, In: The Technology, Media and Telecommunications Review., 2022[386]
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- Sorainen Mališauskaitė-Vaupšienė, Monika; Mašidlauskienė, Vaiva and Litvinas, Auridas, New regulations for companies selling food, drinks or agricultural products, 2021[391]

## 4.18.11. Data compilation

This factsheet is based on data compiled by Kristina Juraitė, Professor and Head of the Department of Public Communications at Vytautas Magnus University (VMU) and Julija Kalpokienė, attorney and PhD candidate and assistant lecturer at VMU.

[384] https://hdl.handle.net/20.500.12259/36603.
[385] https://kluwerlawonline.com/EncyclopediaChapter/IEL+Media+Law/MEDA20220001.
[386] https://thelawreviews.co.uk/title/the-technology-media-and-telecommunications-review/lithuania.
[387] https://thelawreviews.co.uk/title/the-media-and-entertainment-law-review/lithuania.
[388] https://lzc.lt/en/news/2019/media-law-guide-for-journalists-in-lithuania/.
[389] https://www.sorainen.com/publications/lithuania-changes-affecting-providers-of-digital-content-and-digital-services/.
[390] https://www.sorainen.com/UserFiles/File/Publications/article.Regulation-of-telecommunication-activities-in-Lithuania.2003-09-19.IBA.eng.ritas.pdf.
[391] https://www.sorainen.com/publications/new-regulations-for-companies-selling-food-drinks-or-agricultural-products/.

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# 4.19. LU – Luxembourg – National legal summary[392]

## 4.19.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Loi modifiée du 27 juillet 1991 sur les médias électroniques, 2021*[393] (Amended law of 27 July 1991 on electronic media, 2021 consolidated text)[394]

Secondary legislation:

- *Règlement grand-ducal modifié du 5 avril 2001 fixant les règles applicables en matière de communications commerciales dans les services de médias audiovisuels*[395] (Amended Grand-Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications in audiovisual media services, 2021 consolidated text)[396]

## 4.19.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

[392] The factsheet on Luxembourg incorporates feedback received from the Department of Media, Telecommunications and Digital Policy (Ministry of State) and the Luxembourg Independent Media Authority (ALIA) during the checking round with the national regulatory authorities.
[393] https://legilux.public.lu/eli/etat/leg/recueil/presse_medias/20210815
[394] www.alia.lu/assets/upload/files/ALIA-site-Loi-sur-les-medias-electroniques-EN.pdf
[395] https://legilux.public.lu/eli/etat/leg/recueil/presse_medias/20210815
[396] www.alia.lu/assets/upload/files/RDG-communications-commerciales-EN_traduction-assermentee-01-04-2021.pdf

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### 4.19.2.1. Definitions

**Table 45. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No (indirect reference in another definition). |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | No. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No (indirect reference in another definition). |
| **Sponsored content** | No (indirect reference in another definition). |
| **Product placement** | Yes. |

*Source: Luxembourgian response to European Audiovisual Observatory standardised survey*

#### 4.19.2.1.1. Audiovisual commercial communications

The law on electronic media (in article 2, 2)) defines "audiovisual commercial communications" as follows:

> *"audiovisual commercial communication" means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in an audiovisual programme or user-generated video in return for payment or other consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.*

#### 4.19.2.1.2. Television advertising

The law on electronic media (article 2, 12)) defines television advertising as follows:

> *"television advertising" means any form of announcement broadcast whether in return for payment or for other consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.*

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#### 4.19.2.1.3. Advertiser

There is no explicit definition of advertiser in the law on electronic media. However, there is an indirect reference in article 2, 12), of that same law in the definition of television advertising (see 4.19.2.1.2).

#### 4.19.2.1.4. Surreptitious commercial communication

The law on electronic media (in article 2, 3)) defines surreptitious commercial communication as follows:

> *"surreptitious audiovisual commercial communication" means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall be considered as intentional, particularly if it is done in return for payment or other consideration.*

#### 4.19.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication. There is however a reference to the concept of "the verbal or visual presentation of goods, services, (…) misleading the audience" in the definition of surreptitious commercial communication.

#### 4.19.2.1.6. Virtual advertising

There is neither a definition of virtual advertising, nor are there specific rules governing virtual advertising.

#### 4.19.2.1.7. Sponsorship

The law on electronic media (article 2, 9)) defines sponsoring as follows:

> *'sponsorship' means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products.*

The law on electronic media allows product placement in all audiovisual media services produced after 19 December 2009 (except in news and current affairs programmes, consumer programmes, religious and children's programmes), and in article 27*bis*, paragraph 6, states that a Grand Ducal Regulation will determine the restrictive rules with

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regard to sponsoring. The amended Grand Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications does lay down the rules regarding sponsoring, however they only apply to audiovisual media services or audiovisual programmes and thus not to VSPs.

#### 4.19.2.1.8. Sponsor

There is no explicit definition of sponsor, there are however indirect references to the sponsor in the definition of sponsoring in the law on electronic media and article 5 of the amended Grand Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications.

#### 4.19.2.1.9. Sponsored content

There is no explicit definition of sponsored content, the amended Grand Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications does however set rules on sponsoring and sponsored programmes, which must, for instance, be clearly identified as such.

#### 4.19.2.1.10. Product placement

The law on electronic media, in Article 2, (10), defines product placement as follows:

> *"product placement" means any form of audiovisual commercial communication consisting of the inclusion of, or reference to a product, a service or the trade mark thereof so that it is featured within a programme or user-generated video, in return for payment or other consideration.*

Article 27*bis*, paragraph 7, of the law lays down a few rules on product placement, not applicable to VSPs. Product placement is authorised in any audiovisual media service produced after 19 December 2009, except in information and news programmes, consumer programmes, religious programmes and children's programmes. Article 5*bis* of the Grand Ducal Regulation of 5 April 2001 contains further requirements that programmes including product placement have to comply with. In any case, programmes must not include the placement of tobacco products or cigarettes, as well as of electronic cigarettes and refills or product placement from companies mainly active in the manufacturing or sale of such products and of specific medications or medical treatments only available on prescription.

#### 4.19.2.1.11. Other definitions

N/A.

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### 4.19.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platform providers to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers, concerning commercial communications.

As a general note, it should be emphasised that the law on electronic media (Article 28 *septies* – rules applicable only to video sharing platform services) provides for obligations to be met by VSP providers, in line with the text of the revised AVMSD. In this context, appropriate measures are to be taken by providers of video-sharing platforms, for instance, to protect the general public and minors from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group, and content the dissemination of which constitutes a criminal offence.

Article 27*bis* of the Law on electronic media lays down general rules regarding audiovisual commercial communications: it relates to the topics discussed further below (alcohol and tobacco, medicinal products and medical treatment, surreptitious and subliminal ads, dignity, discrimination, health and safety, environment, protection of minors) and to product placement. Finally, it refers to the Grand Ducal Regulation dealing with sponsoring and product placement.

The more explicit restrictions relating to certain audiovisual commercial communications can be found below.

#### 4.19.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

The law on electronic media, article 27*bis,* paragraph 3 restricts the audiovisual commercial communications for alcoholic beverages as follows:

> *Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages*.

Article 27*bis*, paragraph 2, prohibits audiovisual commercial communication for cigarettes/other tobacco products/ electronic cigarettes and refills:

> *Any form of audio-visual commercial communication for cigarettes or other tobacco products as well as for electronic cigarettes and shall be prohibited.*

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#### 4.19.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

The law on electronic media provides in article 27bis, paragraph 4: "Audiovisual commercial communication for medicinal products and medical treatments available only on prescription shall be prohibited".

#### 4.19.2.2.3. Surreptitious audiovisual commercial communications

The law on electronic media provides in article 27*bis*, paragraph 1, letter a): "Surreptitious audiovisual commercial communications shall be prohibited".

#### 4.19.2.2.4. Subliminal techniques in commercial communications

Article 27*bis*, paragraph 1, letter b), of the law on electronic media provides that audiovisual commercial communications "shall not use subliminal techniques".

#### 4.19.2.2.5. Prejudice with regard to human dignity

The law on electronic media provides in article 27*bis*, paragraph 1, letter c, that audiovisual commercial communications "shall not prejudice respect for human dignity".

#### 4.19.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

According to Article 27*bis*, paragraph 1, letter d), audiovisual commercial communications:

> *Shall not include or promote any discrimination based on on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.*

Article 28 *septies*, paragraph 1, letter b), refers to incitement to violence and hatred based on any of the motives presented in article 21 of the Charter of Fundamental Rights of the European Union: sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation and nationality:

> *(...) video sharing platform providers (...) take appropriate measures to protect the general public from programmes, videos created by users and audiovisual commercial communications including incitement to violence or hatred targeting a group of individuals based on the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union.*

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#### 4.19.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 27*bis*, article 1, letter e) of the law on electronic media states that audiovisual commercial communications "shall not encourage behaviour prejudicial to health or safety".

#### 4.19.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 27bis, paragraph 1, letter f) of the law on electronic media provides that audiovisual commercial communications "shall not encourage behaviour grossly prejudicial to the protection of the environment".

#### 4.19.2.2.9. Causing physical, mental or moral detriment to minors

The new article 28 *septies* of the law on electronic media on VSPs calls for measures to be taken by video-sharing platform providers to protect minors from commercial communications likely to harm their development in accordance with article 27*ter* which deals with the protection of minors in general from harmful content in the AVMSD, and Article 27*bis* relating to audiovisual commercial communications.

> *Article 28septies, paragraph 1, letter a):*
> *(...) video-sharing platform providers (...) take appropriate measures to protect (...) minors from (...) audiovisual commercial communications likely to harm their physical, mental or moral development in accordance with article 27ter, paragraphs 1 and 2.*
>
> *Article 27ter:*
> *(1) Programmes offered by an audiovisual media service provider likely to harm the physical, mental or moral development of minors may only be made available to the public under conditions normally preventing minors from hearing or seeing them.*
> *(2) A Grand Ducal Regulation will determine the measures to be taken by audiovisual media service providers to prevent minors from seeing or hearing such programmes. These measures include the choice of the airtime of the programme, the use of a tool to check the age or other technical tools.*
>
> *Article 27bis (5):*
> *Audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.*

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Article 28*septies*, paragraph 2, sub-paragraph 2, refers to the fact that VSP providers must comply with part of article 27*bis*, including paragraph 5. This paragraph deals with the prohibition on exploiting the inexperience of minors through advertising.

Article 28*septies* of the law on electronic media deals exclusively with video-sharing platforms (VSPs). The article forbids the use of data of minors collected during an age verification check [letter f)] or via a parental control system [letter h)] for direct marketing, commercial profiling and behaviourally targeted advertising.

> *Article 28septies, paragraph 4:*
> *Personal data of minors collected or generated in another way by video-sharing platform providers in accordance with paragraph 3, letters f) and h), may not be processed for marketing purposes as solicitation, profiling and advertisements based on behavioural targeting.*

#### 4.19.2.2.10. Other

Article 28 *septies*, paragraph 1, letter c) of the Law on electronic media requires VSP providers to make sure the general public is protected from commercial communications containing a public provocation to commit a terrorist offence, a child pornography offence or an offence related to racism or xenophobia.

> *Article 28septies, paragraph 1, letter c):*
> *(...) video-sharing platform providers (...) take appropriate measures to protect:*
> *c) the general public from (...) audiovisual commercial communications including content the broadcasting of which is a criminal offence, i.e., public provocation to commit acts of terrorism as provided in article 135-11, paragraphs 1 and 2 of the Criminal Code, violations related to child pornography as listed in article 379, point 2° of the Criminal Code and violations relating to racism and xenophobia as listed in articles 457-1 and 457-3 of the Criminal Code.*

Article 2 of the Grand Ducal Regulation lays down a few rules on television ads and teleshopping:

> *(1) The insertion of television advertisements or tele-shopping in programmes may not harm the integrity of the programmes considering their natural interruptions, their duration and type, or the rights of the beneficiaries.*
> *(2) Films produced for television (with the exclusion of series, feuilletons and documentaries), cinematographic works and television news may be interrupted by television advertisements and/or tele-shopping once per airtime of thirty minutes. Children's programmes can be interrupted by television advertisements once per airtime of thirty minutes, provided that the scheduled duration of the programme exceeds thirty minutes. Television advertisement or tele-shopping spots may not be inserted during the broadcasting of religious services.*
> *Tele-shopping sequences are forbidden in children's programmes.*

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Article 27quinquies (2) f) pertains to overlay banners for commercial purposes. An explicit agreement of the AVMS provider is not needed in order to use commercial communication banners:

> *(...) are authorised, without the prior agreement of the audiovisual media service providers: (...) marketing banners provided by the media service provider.*

## 4.19.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD relating to sponsoring and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.19.3.1. Sponsorship

There are no specific rules for VSPs with regard to sponsoring in article 28*septies* in the law.

The Law on electronic media in Article 27*bis*, paragraph 6, refers to the Grand Ducal Regulation laying down the rules on sponsorship, which are, however, not applicable to VSP providers. Article 5 of the Grand Ducal Regulation provides restrictions.

### 4.19.3.2. Product placement

There are no specific rules in article 28*septies* for VSP providers relating to product placement.

Article 27*bis*, paragraph 7, of the law lays down a few rules on product placement, allowing it except in news, consumer, religious and children's programmes. Article 5*bis* of the Grand Ducal Regulation deals with further restrictions on product placement. These rules are however not applicable to VSPs.

## 4.19.4. Obligations regarding (v)blogs and (v)blogging

(V)blogs and (v)bloggers are not explicitly mentioned in the legal texts, nor encompassed, as of yet, within self-regulatory mechanisms.

## 4.19.5. Other relevant information

N/A.

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## 4.19.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.19.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.19.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions of the law on electronic media deal with this issue.

### 4.19.6.3. Environmental or "green" claims for products

Article 27*bis*, paragraph 1, letter f, of the law on electronic media provides that audiovisual commercial communications "don't encourage behaviours that are seriously damageable to the environment".

### 4.19.6.4. Other

N/A.

## 4.19.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

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### 4.19.7.1. Self- and co-regulatory bodies

#### 4.19.7.1.1. Context of establishment and legal background

Article 35, paragraph 2, letter i) of the Law on Electronic Media lays down that one of the missions of the national regulatory authority, the Luxembourg Independent Authority for Audiovisual Media (*Autorité luxembourgeoise indépendante de l'audiovisuel* – ALIA,[397] referred to in relevant legislation as the Authority) is to encourage co-regulation and self-regulation, without further details as to the areas in which these codes should be developed. At this point there exists no such code.

> *Article 35 (2) i):*
> *The mission of the Authority is: (...)*
> *i) to encourage the use of coregulation and the fostering of self-regulation through codes of conduct drawn up by audiovisual media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations.*
> *These codes shall be such that they are broadly accepted by the main stakeholders; clearly and unambiguously set out their objectives; provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and provide for effective enforcement including effective and proportionate sanctions.*

For now, there are no VSPs falling under the jurisdiction of Luxembourg.

#### 4.19.7.1.2. Stakeholders involved

Not identified yet.

#### 4.19.7.1.3. Scope and objectives

Not identified yet.

#### 4.19.7.1.4. Code(s) of conduct

At present, there are no such codes. However, ALIA should encourage the adoption of codes of conduct (Article 35 (2) i) of the Law on electronic media).

[397] http://www.alia.lu/.

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#### 4.19.7.1.5. Role of the (self-)regulatory bodies

Not identified yet.

#### 4.19.7.1.6. Period of activity (if limited)

Not identified yet.

#### 4.19.7.1.7. Role of the regulatory authority in a co-regulatory system

Not identified yet.

##### *4.19.7.1.7.1. Regulatory body*

ALIA is the national independent regulatory authority in charge of monitoring the application of the regulatory framework related to electronic media. Its supervising missions cover linear television programmes, on-demand services, video-sharing platforms, and national, regional and local radio stations.

##### *4.19.7.1.7.2. Co-regulatory scheme*

Not identified yet.

##### *4.19.7.1.7.3. Relationship and roles of stakeholders*

Not identified yet.

### 4.19.7.2. Monitoring/evaluation, compliance and sanctioning powers

One of the missions of ALIA is to evaluate the measures taken by a VSP provider.

> *Article 35, paragraph 2, letter k):*
> *The mission of the Authority is: (...)*
> *k) to establish mechanisms to assess the appropriateness of the measures taken by video-sharing platform providers in accordance with Article 28 septies, paragraph 3.*

Measures provided for in Article 28 *septies*, paragraph 3, letters a) to j) of the law on electronic media, include, *inter alia*, having a functionality for users who upload videos to indicate whether these videos contain ads, a functionality to flag objectionable content, age verification and a parental control system.

## 4.19.8. Cross-sector and cross-border collaboration

N/A.

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### 4.19.9. Update on plans and practices related to new obligations of VSPs

N/A.

### 4.19.10. Studies, reports and research

N/A.

### 4.19.11. Data compilation

This factsheet is based on data compiled by Romain Kohn, a media expert.

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# 4.20. LV – Latvia – National legal summary[398]

## 4.20.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Elektronisko plašsaziņas līdzekļu likums*[399] (Electronic Mass Media Law – EMML).[400]
- *Pornogrāfijas ierobežošanas likums*[401] (Law on Pornography Restrictions).[402]
- *Negodīgas komercprakses aizlieguma likums*[403] (Unfair Commercial Practices Prohibition Law).[404]
- *Azartspēļu un izložu likums*[405] (Law on Gambling and Lotteries).[406]
- Informācijas sabiedrības pakalpojumu likums[407] (Law on Information Society Services).[408]
- *Alkoholisko dzērienu aprites likums*[409] (Law on the Handling of Alcoholic Beverages).[410]
- *Reklāmas likums*[411] (Advertising Law).[412]
- Patērētāju tiesību aizsardzības likums[413] (Consumer Rights Protection Law).[414]

Secondary legislation:

- *Ministru kabineta noteikumi Nr. 685 "Prasības uztura bagātinātājiem"*[415] (Cabinet of Ministers Regulations No. 685 Requirements for Food Supplements). [416]

[398] The factsheet on Latvia incorporates the feedback received from Māra Madara Lūse, Head of the International Cooperation and Analytics Division at the National Electronic Mass Media Council, during the checking round with the national regulatory authorities.
[399] https://likumi.lv/ta/id/214039-elektronisko-plassazinas-lidzeklu-likums.
[400] Uncomplete English version: https://likumi.lv/ta/en/en/id/214039-electronic-mass-media-law.
[401] https://likumi.lv/ta/id/157638-pornografijas-ierobezosanas-likums.
[402] Uncomplete English version: https://likumi.lv/ta/en/en/id/157638-law-on-pornography-restrictions.
[403] https://likumi.lv/ta/id/167759-negodigas-komercprakses-aizlieguma-likums.
[404] Uncomplete English version: https://likumi.lv/ta/en/en/id/167759-unfair-commercial-practices-prohibition-law.
[405] https://likumi.lv/ta/id/122941-azartspelu-un-izlozu-likums.
[406] Uncomplete English version: https://likumi.lv/ta/en/en/id/122941-on-gambling-and-lotteries.
[407] https://likumi.lv/ta/id/96619-informacijas-sabiedribas-pakalpojumu-likums.
[408] Uncomplete English version: https://likumi.lv/ta/en/en/id/96619-law-on-information-society-services.
[409] https://likumi.lv/ta/en/en/id/88009-handling-of-alcoholic-beverages-law.
[410] English version: https://likumi.lv/ta/en/en/id/88009-handling-of-alcoholic-beverages-law.
[411] Latvian version: https://likumi.lv/ta/id/163-reklamas-likums.
[412] English version: https://likumi.lv/ta/en/en/id/163-advertising-law.
[413] https://likumi.lv/ta/id/23309-pateretaju-tiesibu-aizsardzibas-likums.
[414] Uncomplete English version: https://likumi.lv/ta/en/en/id/23309-consumer-rights-protection-law.
[415] https://likumi.lv/ta/id/278387-prasibas-uztura-bagatinatajiem.
[416] https://likumi.lv/ta/en/en/id/278387-requirements-for-food-supplements.

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- *Ministru kabineta noteikumi Nr.378 "Zāļu reklamēšanas kārtība un kārtība, kādā zāļu ražotājs ir tiesīgs nodot ārstiem bezmaksas zāļu paraugus"*[417] (Cabinet of Ministers Regulations No. 378 Procedures for Advertising Medicinal Products and Procedures by which a Medicinal Product Manufacturer is Entitled to Give Free Samples of Medicinal Products to Physicians – Medicinal Products Procedures).[418]

Self- and co-regulatory instruments

- *Satura veidotājiem (influenceriem)*[419] (the Consumer Rights Protection Centre's Guidance for Content Creators (influencers)).
- *Pamatprincipi preču un pakalpojumu reklamēšanai sociālos tīklos (influenceru mārketings)*[420] (the Consumer Rights Protection Centre's Guidance – Basic principles for advertising goods and services on social networks (influencer marketing)).
- *Sociālie tīkli un "influenceru" mārketings (papildināts)*[421] (the Consumer Rights Protection Centre's Guidance – Social Networking and Marketing for Influencers).
- *Vadlīnijas paziņojumu par vidi izmantošanai komercpraksē*[422] (the Consumer Rights Protection Centre's guidelines for the use of environmental claims in commercial practice).
- *Vadlīnijas Elektronisko plašsaziņas līdzekļu likuma piemērošanā par audiovizuālo komerciālu paziņojumu izvietošanu elektronisko plašsaziņas līdzekļu audiovizuālos raidījumos, programmās un katalogos*[423] (Guidelines on the Application of the Electronic Mass Media Law on the placement of audiovisual commercial communication in audiovisual broadcasts, programmes and catalogues of electronic mass media).

## 4.20.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications,

[417] https://likumi.lv/ta/id/230392-zalu-reklamesanas-kartiba-un-kartiba-kada-zalu-razotajs-ir-tiesigs-nodot-arstiem-bezmaksas-zalu-paraugus.
[418] https://likumi.lv/ta/en/en/id/230392-procedures-for-advertising-medicinal-products-and-procedures-by-which-a-medicinal-product-manufacturer-is-entitled-to-give-free-samples-of-medicinal-products-to-physicians.
[419] https://www.ptac.gov.lv/lv/satura-veidotajiem-influenceriem.
[420] https://www.ptac.gov.lv/lv/media/2921/download.
[421] https://www.ptac.gov.lv/lv/jaunums/socialie-tikli-un-infulenceru-marketings.
[422] https://www.ptac.gov.lv/lv/media/124/download.
[423] https://www.neplp.lv/lv/media/1049/download.

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advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.20.2.1. Definitions

**Table 46. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | Yes. |
| **Sponsorship** | Yes. |
| **Sponsor** | No, but references to it in the definition of sponsorship. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other:** | Split-screen advertising; Extended advertising spot; Advertising spot; Interactive advertising. |

*Source: Latvian response to European Audiovisual Observatory standardised survey*

#### 4.20.2.1.1. Audiovisual commercial communications

Section 1(4) of the EMML defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim, as follows:

> *Audio and audiovisual commercial communications – an advertisement on television or radio, sponsorship, shopping via television or radio, product placement and other audio, visual or audiovisual communication included in or broadcast prior to or after a broadcast or user-generated video, in exchange for payment or other consideration, or for self-promotional purposes, and which directly or indirectly promotes the goods, services or image of persons pursuing an economic activity.*

Additionally, a definition of commercial communication is provided for in section 1 (1) clause 3 of the Law on Information Society Services as:

> *any form of communication in electronic form designed to promote, indirectly or directly, the goods, services or image of a company, organisation or person pursuing a commercial,*

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*industrial or craft activity or exercising a regulated profession. Information allowing direct access to general information about the service provider and the activities thereof (domain name or electronic-mail address) shall not be regarded as a commercial communication.*

#### 4.20.2.1.2. Television advertising

Article 1 (26) in the Electronic Mass Media Law:

*advertising - any announcement, which is distributed for payment or other consideration, as well as the broadcast by any person connected with a trade, entrepreneurship, position or profession, which is produced for the purpose of advertising, in order to promote the offer of goods, including immovable property or services, rights and obligations, for payment or other remuneration, as well as political advertising;*

#### 4.20.2.1.3. Advertiser

Section 10 (1) of the Advertising Law defines an advertiser as follows:

*An advertiser is a person who, for the purposes of gaining commercial or other benefit, produces and disseminates advertising himself/herself, or on whose instructions and in whose interests another person produces or disseminates advertising.*

In addition, section 1 (26) of the EMML defines advertising by including references to the advertiser who is described as:

*any person connected with a trade, entrepreneurship, position or profession which is produced for the purpose of advertising in order to promote the offer of goods, including immovable property or services, rights and obligations, for payment or other remuneration, as well as political advertising.*

#### 4.20.2.1.4. Surreptitious commercial communication

Section 1 (31) of the EMML defines surreptitious commercial communication, as follows:

*Surreptitious audio and audiovisual commercial communication of an electronic mass medium – the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services when such representation is intended by the electronic mass medium to serve as an audio or audiovisual commercial communication and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for a similar consideration.*

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#### 4.20.2.1.5. Misleading commercial communication

Section 8 (2) of the Advertising Law defines misleading advertising as follows:

> *Misleading advertising is such advertising as in any manner, including its manner of presentation, is directly or indirectly misleading or may be misleading and due to its misleading character, may affect the economic behaviour of a person, or is harmful or may be harmful to a competitor.*

#### 4.20.2.1.6. Virtual advertising

Section 1 (35) of the EMML defines virtual advertising as follows: "virtual advertising – advertising which is placed electronically on the screen image during a broadcast".

#### 4.20.2.1.7. Sponsorship

Section 1 (32) of the EMML defines sponsorship as follows:

> *Sponsorship – any contribution towards the financing of electronic media, broadcasts, services of video-sharing platforms or user-generated videos by a person not involved in the provision of services by audio and audiovisual electronic media or video-sharing platforms or the production of audio or audiovisual works, programmes or broadcasts, made with a view to promoting that person's name, trademark, image, activities or products.*

#### 4.20.2.1.8. Sponsor

There is no definition of sponsor. However, the definition of sponsorship provided for by section 1 (32) does include a reference to the sponsor describing it as: "a person not engaged in providing audio and audiovisual electronic mass media or video-sharing platform services, […] with a view to promoting his/her name, trademark, image, activities or product".

#### 4.20.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.20.2.1.10. Product placement

Section 1 (16) of the EMML defines product placement as follows:

> *Product placement is any commercial audio or audiovisual communication which includes products, services or their trademarks, or references to the products, services or trademarks in question and which is featured in a broadcast or a user-generated video in exchange for payment or other consideration.*

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#### 4.20.2.1.11. Other definitions

The EMML provides the following advertising definitions:

- split-screen advertising: advertising which appears at the edge of the frame on a screen simultaneously with a broadcast as a scrolling text, logo, an advertising spot or another form of advertising (EMML, section 1(6));
- extended advertising spot: an advertisement which exceeds 90 seconds in length (EMML, section 1(10));
- advertising spot: an advertisement which does not exceed 90 seconds in length (EMML, section 1(27));
- interactive advertising: a form of advertising during which a viewer has the option to access more detailed content of the advertisement (EMML, section 1(11)).

### 4.20.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, it should be mentioned that section $23^6$ (2) of the EMML requires VSP services, as far as possible, to comply with the legal provisions related to audiovisual commercial communications, the restrictions on which are detailed further below:

> *Video-sharing platform service providers shall, to the extent possible and within their control, comply with the provisions of Articles 35(2)(1), (4), (6), (7) and (8), 35(7) and (9), 36(2), 37(2) and 38 of this Law with regard to commercial audio and audiovisual communications.*

While the relevant legislation does not contain a definition of commercial communication specific to VSPs, section $23^6$ (2) of the EMML extends the scope of application of the requirements to VSPs, therefore the definitions included in the EMML and other laws are applicable.

#### 4.20.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco related products, including electronic cigarettes and refill containers

Section 35 (2) (8) of the EMML prohibits commercial communications for tobacco products: "[Audio and audiovisual commercial communications must not: (...)] 8) advertise tobacco, tobacco products, herbal products for smoking, electronic smoking devices, filling containers and smoking".

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Section 36 (2) of the EMML allows advertisements for alcoholic products, as long as the following requirements are met:

*1) they may not be aimed at minors, and minors must not participate in their consumption;*
*2) the consumption of alcoholic beverages must not be linked to enhanced physical performance or to driving;*
*3) they must not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;*
*4) they shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;*
*5) they must not place emphasis on a high alcoholic content in alcoholic beverages;*
*6) they must not create the impression that the consumption of alcoholic beverages contributes towards social or sexual success.*

Specific content-restricting provisions have been set out by the Law on the Handling of Alcoholic Beverages, and in particular by section 11 by which advertisers are not allowed to:

*1) represent persons consuming alcoholic beverages;*
*2) use symbols of the State of Latvia;*
*3) express an opinion regarding alcoholic beverages as a means of medical treatment;*
*4) associate alcoholic beverage consumption with sports activities or driving a means of transport;*
*5) express views that alcoholic beverages have stimulant or calmative effects or that they help to solve personal problems;*
*6) present abstinence or moderation in the consumption of alcohol in a negative light;*
*7) create an impression that consumption of alcoholic beverages ensures success in social or sexual fields.*

In addition to these restrictions, section 10 (1) and (3) of the Alcoholic Beverages Law requires that at least 10 per cent[424] of the amount of the particular advertisement for alcoholic beverages should contain mandatory information about the negative effects of the use of alcohol.

#### 4.20.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Section 37 (2) of the EMML prohibits audiovisual commercial communication for "medicinal products and medical treatment available only on prescription by a physician or the direction of a physician".

[424] However, this percentage can be modified, considering the particularities of the particular medium, as long as the mandatory information is easily understandable and visible, according to the unofficial explanation of the Consumer Rights Protection Centre.

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Therefore, only commercial communications for over-the-counter medicines are permitted, as specified by clause 10 of the Medicinal Products Procedures:

> *10. It shall be permitted to advertise medicinal products which, in accordance with the laws and regulations regarding classification of medicinal products, have been specified as non-prescription medicinal products.*

#### 4.20.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious commercial communication is prohibited according to section 35 (9) of the EMML.

#### 4.20.2.2.4. Subliminal techniques in commercial communications

Section 35 (7) of the EMML prohibits the use of technical means or other techniques in commercial communication which "could affect the subconscious of spectators and listeners".

#### 4.20.2.2.5. Prejudice with regard to human dignity

Section 35 (2) 6 of the EMML prohibits audiovisual commercial communication from "injuring human dignity".

#### 4.20.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

Section 35 (2) 7 prohibits commercial communications from inciting or inviting discrimination against a person or group of persons on the following grounds: "gender, age, religious, political affiliation or another faith, sexual orientation, disability, race or ethnic origin, nationality, due to other circumstances".

#### 4.20.2.2.7. Encouragement of behaviour prejudicial to health or safety

Audiovisual commercial communications may not promote or encourage behaviour which threatens human health or safety according to section 35 (2) 4 of the EMML.

#### 4.20.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Audiovisual commercial communications may not encourage behaviour harmful to the protection of the environment according to section 35 (2) 1 of the EMML.

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#### 4.20.2.2.9. Causing physical, mental or moral detriment to minors

Requirements and restrictions that must be observed by commercial communications aimed at children are set out in Article 38 (1) of the EMML which prescribes:

> *Audio and audiovisual commercial communications may not:*
> *- cause physical or moral harm to minors,*
> *- directly encourage them to persuade their parents or others to purchase the goods or services being advertised,*
> *- exploit the special trust minors place in parents, teachers or other persons,*
> *- unreasonably show minors in dangerous situations,*
> *- directly encourage minors to buy or hire (lease) goods.*

Similar restrictions are set out under section 5 (2) of the Advertising Law which prohibits:

> *- [including] encouragement of aggressiveness, violence or sexual activities, to discredit the authority of parents, family, guardians and teachers,*
> *- [drawing] attention to the fact that the acquisition of specific goods or services creates physical, social or psychological advantages over peers or that the lack of the relevant good creates the opposite result,*
> *- unmistakably [indicating] that the acquisition of the good or service to be advertised is possible for any family, irrespective of its budget,*
> *- [portraying] children in dangerous situations.*

Section 13, clause 5 of the Unfair Commercial Practices Prohibition Law forbids encouragements to minors to purchase a product or service or to persuade parents and other adults to purchase the product or service.

#### 4.20.2.2.10. Other

Other types of restrictions may apply to commercial communications on VSPs in several areas:

- Pornography**:** the Law on Pornography Restrictions (sections 7 and 8 (1) and (2) allows the advertising of material of a pornographic nature in an electronic environment, but several restrictions apply such as the obligation to notify the recipient of the pornographic nature of the material received and obtain the recipient's consent before transmitting the content.
- Credit services: as per section 8.3(1) of the Consumer Rights Protection Law, credit services may not be advertised, except in premises where the service provider is performing an economic activity or on its website which, after authentication, is used by the creditor for the receipt of services or via commercial communication with the consent of the consumer.
- Food supplements: the Requirements for Food Supplements in clauses 24-27 provide several requirements pertaining to the labelling, presentation and

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advertising of the food supplement which, for example, must not include any indication that the food supplement prevents or cures diseases.

- Energy drinks: advertisers are prohibited from addressing energy drink advertising to children, as well as exploiting children in the advertising of energy drinks as per section 5 (3) of the Advertising Law.

## 4.20.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.20.3.1. Sponsorship

N/A.

### 4.20.3.2. Product placement

N/A.

## 4.20.4. Obligations regarding (v)blogs and (v)blogging

Latvian law does not provide for specific advertising rules for (v)blogs and other user-generated content, as (v)blogs are not considered as an audiovisual media service under the EMML, since they lack the editorial responsibility of the electronic mass medium.

Section 23[6] (1) of the EMML does, however, provide for the general requirements to be met by VSPs for the protection of the public, substantially transposing the provisions of Article 28b of the AVMSD. In addition, the Consumer Rights Protection Centre has published several non-binding guidelines for influencers, which could also be applicable to (v)bloggs and (v)bloggers.[425] The main principles of the guidance are as follows:

- Unmarked commercial communication is always misleading commercial communication, and thus, prohibited.
- Influencers publishing commercial content should always indicate that it is commercial content by using hashtags #advertising, #sponsorhip, #paidcontent, etc. or by using other means to clearly communicate that the content is commercial.

[425] Guidance for content creators (influencers); Basic principles for advertising goods and services on social networks (influencer marketing); Social Networking and Marketing for Influencers.

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- Influencers should, in addition to the general advertising regulations set by the Advertising Law, respect the industry specific advertising regulations in the case of advertising alcohol, food supplements, energy drinks, etc. The industry specific requirements are included in the relevant industry regulations, such as, for instance, the Law on the Handling of Alcoholic Beverages, the Law on the Handling of Energy Drinks, the Law on the Supervision of the Handling of Food, Cabinet of Ministers Regulations No. 685 "Requirements for Food Supplements".
- The promotion of products that are prohibited in Latvia is prohibited.
- Influencers must provide truthful information.

The provisions of the guidance pertaining to video content notes that the advertising in the video content must be accompanied by a relevant indication of its commercial nature as well. The relevant indication must be clearly readable and easily visible at the beginning of viewing the relevant video content.

At the time of preparing this factsheet, two decisions on administrative offences have been issued by the Consumer Rights Protection Centre regarding unmarked commercial communications on Instagram which were upheld by the administrative courts in the first instance.[426]

## 4.20.5. Other relevant information

N/A.

## 4.20.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.20.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

The advertising of religious belief is not restricted. General rules apply, including the prohibition against discrimination (as mentioned in section 4.20.2.2.6. of this factsheet).

[426] Court decision No. A42-00438-22/18 and Court decision No. A42-01906-21/36. Links to these decisions are provided in section 4.20.12. of this factsheet.

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#### 4.20.6.2. Gambling, betting, betting tipsters, etc.

Outside of gambling premises, the advertising of gambling is prohibited, including in online media as per section 41 (5) and (6) of the Law on Gambling and Lotteries. The prohibition also includes offering a free betting game for a purchased product or service.

#### 4.20.6.3. Environmental or "green" claims for products

There are general provisions related to environmental claims applicable to every advertisement or commercial communication, including on VSPs. More specifically, "greenwashing" (false or misleading environmental claims) is considered to be an unfair commercial practice and is prohibited pursuant to section 4 (1) of the Unfair Commercial Practices Prohibition Law.

Additionally, the Consumer Rights Protection Centre has issued non-binding guidelines for the use of environmental claims in commercial practice which summarises several of the European Commission's guidelines on environmental claims, and according to which such environmental claims have to be specific, accurate and unambiguous; any environmental statements must be evidence-based. The false use of ecolabels is also prohibited. The main principles of the green (environmental) claims used in labelling or commercial communications include the following requirements:

- they must be accurate, verifiable, justified, true (i.e. cannot be misleading);
- they must be specific and unambiguous – especially when making comparisons;
- the use of symbols/images must be clear and appropriate;
- the information justifying the use of the green claim must be up-to-date;
- they must be clearly visible, legible and durable;
- they must be supported by relevant evidence and methodology and the information about the evidence, criteria or methodology used must be available to the supervisory authorities upon request;
- they must reflect the essential life cycle aspects of the product/service (i.e. provide the full and honest information about the product's impact on the environment).

Besides these general principles, the guidelines do not contain provisions specifically related to video content or VSPs.

#### 4.20.6.4. Other

N/A.

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## 4.20.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.20.7.1. Self- and co-regulatory bodies

#### 4.20.7.1.1. Context of establishment and legal background

According to section $23^6$ (3) of the EMML, providers of a VSP service must draw up a publicly available code of conduct in which they indicate the basic principles of the activity, the accepted conditions of ethical activity, and the regulations on inappropriate audio and audiovisual commercial communications. This code of conduct must be published on their website.

Furthermore, as per section $23^6$ (3) of the EMML, VSP service providers must develop codes of conduct, including for those whose target audience is minors and which may negatively affect the psychological or physical development of minors. These codes of conduct should also include provisions for any audio and audiovisual commercial communications included in, before or after programmes intended for children, about food and drink containing nutrients and substances with a specific nutritional value or physiological effect, in particular those substances such as fat, trans-fatty acids, salt or sodium and sugars, the excessive consumption of which is not recommended. VSP service providers must publish the code of conduct on their website. However, we are not aware of any VSP established in Latvia.

#### 4.20.7.1.2. Stakeholders involved

There are no existing self-regulatory bodies and instruments that could be mentioned in this regard. The operation of VSPs in Latvia is supervised by the National Council for Electronic Mass Media (NEPLP)[427] as the authorised state institution. Currently, the VSP sector in Latvia is not developed.

#### 4.20.7.1.3. Scope and objectives

N/A.

[427] *Nacionālā elektronisko plašsaziņas līdzekļu padome*, http://www.neplpadome.lv/.

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#### 4.20.7.1.4. Code(s) of conduct

At the time of preparing this factsheet, there is no publicly available code of conduct for a VSP service provider.

#### 4.20.7.1.5. Role of (self-)regulatory bodies

N/A.

#### 4.20.7.1.6. Period of activity (if limited)

N/A.

#### 4.20.7.1.7. Role of the regulatory authority in a co-regulatory system

N/A.

##### *4.20.7.1.7.1. Regulatory body*

N/A.

##### *4.20.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.20.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.20.7.2. Monitoring/evaluation, compliance and sanctioning powers

Chapter IV1 of the EMML sets out the specific rules for VSPs. The NEPLP assesses the compliance of the service with the nature of a VSP under the EMML.

The NEPLP is required by law to establish and publish a list of VSPs registered in Latvia or operating in Latvia's jurisdiction. However, currently such a list has not been published, as there seem to be no VSPs established or deemed to be established in Latvia. The NEPLP has an obligation to inform the European Commission of the list of VSP service providers, including any updates.

## 4.20.8. Cross-sector and cross-border collaboration

N/A.

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## 4.20.9. Update on plans and practices related to new obligations of VSPs

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to the new VSP obligations.

## 4.20.10. Studies, reports and research

There are no specific studies on the new regulation of VSPs regarding commercial communications. However, there are a few legal papers analysing the regulation of copyright in the digital market in Latvia, including some aspects of VSPs:

- Meļņika M., Tauriņš A. Autortiesību direktīvas 13. pants: starp tiesisku atlīdzību un interneta filtriem. Jurista Vārds, 29.01.2019., Nr. 4 (1062), 10.-17.lpp[428]
- Valpētere J. Interneta starpnieku atbildība par trešo personu publicēto saturu. Jurista Vārds, 18.09.2018., Nr. 38 (1044), 25.-27.lpp[429]
- Roshofa E. Digitālo platformu tirgus varas novērtēšana. Jurista Vārds, 29.03.2022., Nr. 13 (1227), 27.-33.lpp[430]

## 4.20.11. Data compilation

This factsheet is based on data compiled by Ieva Andersone, Partner and Head of the Competition and Regulatory team and Lūcija Strauta, Assistant Lawyer at Sorainen.

[428] The article focuses on the amendments to the Copyright Directive regarding the redaction of Article 13. https://juristavards.lv/doc/274087-autortiesibu-direktivas-13pants-starp-tiesisku-atlidzibu-un-interneta-filtriem/.
[429] The article focuses on the intermediary service provider's responsibilities regarding copyright regulations. https://juristavards.lv/doc/273372-interneta-starpnieku-atbildiba-par-treso-personu-publiceto-saturu.
[430] The article focuses on competition law and especially on the assessment of VSPs' market power. https://juristavards.lv/doc/281000-digitalo-platformu-tirgus-varas-novertesana.

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# 4.21. MT – Malta – National legal summary[431]

## 4.21.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *L-Att Dwar ix-Xandir*[432] (Broadcasting Act)[433]
- Act No. LVI of 2020 Broadcasting (Amendment) Act[434]
- Subsidiary legislation 350.25 (amended in 2020): Requirements as to advertisements, methods of advertising and directions applicable to gambling advertisements[435]

## 4.21.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.21.2.1. Definitions

**Table 47. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |

[431] The factsheet on Malta incorporates feedback received from Dr. Joanna Spiteri, Chief Executive of the Maltese Broadcasting Authority, during the checking round with the national regulatory authorities.
[432] https://legislation.mt/eli/cap/350/mlt
[433] https://legislation.mt/eli/cap/350/eng
[434] https://www.parlament.mt/media/109737/act-lvi-broadcasting-amendment-act.pdf.
[435] https://ba.org.mt/file.aspx?f=532.

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| | |
|---|---|
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | No. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

*Source: Maltese response to European Audiovisual Observatory standardised survey*

#### 4.21.2.1.1. Audiovisual commercial communications

The Broadcasting Act, in Article 16G – Provisions Applicable to Radio and to All Audiovisual Media Services Providers, provides a definition as follows:

> *Audiovisual commercial communications means images with or without sound which are designed to promote directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity: such images accompany, or are included in a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.*

#### 4.21.2.1.2. Television advertising

There is no definition of television advertising but Article 16G of the Broadcasting Act defines pop-up advertising as:

> *All forms of audio-visual commercial communication that appear superimposed on the audiovisual media service during the television broadcast of the same service.*

The Broadcasting Act 350, Article 16G, defines advertising as:

> *Advertising means any form of announcement broadcast whether in return for payment or for similar consideration, or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.*

#### 4.21.2.1.3. Advertiser

There is no definition of advertiser.

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#### 4.21.2.1.4. Surreptitious commercial communication

The Broadcasting Act, Article 16G, provides the definition of surreptitious commercial communication as follows:

> *Surreptitious audiovisual commercial communication means the representation in words or pictures of goods, services, the name, the trademark, or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or similar consideration.*

#### 4.21.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication.

#### 4.21.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.21.2.1.7. Sponsorship

The Broadcasting Act, Article 16G, defines sponsorship as follows:

> *Sponsorship means any contribution, except television advertising, teleshopping and product placement made by public or private undertakings or natural persons not engaged in providing audio-visual media services or video-sharing platforms services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos and programmes with a view to promoting their name, trademark, image, activities or products.*

#### 4.21.2.1.8. Sponsor

There is no direct definition of sponsor, but Article 16L (1) (c) of the Broadcasting Act stipulates:

> *Viewers shall be clearly informed of the existence of a sponsored agreement. Sponsored programmes shall be clearly identified as such by the name, logo and, or any other symbol of the sponsor such as a reference to any of its products or services or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and, or the end of the programmes.*

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#### 4.21.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.21.2.1.10. Product placement

Article 16G of the Broadcasting Act provides a definition as follows:

> *Product placement means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trademark thereof so that it is featured within a programme or a user-generated video, in return for payment or similar consideration.*

Article 16M(4) outlines the rules governing product placement. Of particular interest are the following provisions:

> *In any event, programmes shall not contain product placement of:*
> *(c) tattoo drawing as defined in the Control of Tattooing Act, which is broadcast between 6.00 a.m. and 9.00p.m.;*
> *(d) alcoholic drinks of more than 1.2%alcohol which are broadcast between 6.00 a.m. and 9.00 p.m.;*
> *(e) gambling products which are broadcast between 6.00a.m. and 7.00 p.m., infant formula and weapons and munitions*

#### 4.21.2.1.11. Other definitions

N/A.

### 4.21.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

Article 16 S (2) and (3) of the Broadcasting Act stipulates that video-sharing platform providers under the jurisdiction of Malta must comply with the requirements set out in Article 16K with respect to audiovisual commercial communications that are marketed, sold or arranged for video-sharing platform providers.

> *(2) Video-sharing platform providers under the jurisdiction of Malta shall comply with the requirements set out in article 16K with respect to audiovisual commercial communications that are marketed, sold or arranged from the video-sharing platform providers.*
> *(3) Video-sharing platform providers under the jurisdiction of Malta shall take the appropriate measures to comply with the requirements set out in article 16K with respect to*

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*audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.*

Article 16K provides a list of requirements the commercial communications must comply with and is further detailed below.

#### 4.21.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

While audiovisual commercial communications for cigarettes and other tobacco products are prohibited (16K(2)), alcohol advertisements are permitted but must not be aimed at minors (16K(3)).

*All forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers, shall be prohibited.*
*Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.*

#### 4.21.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 16K(4) prohibits audiovisual commercial communications for medicinal products available only on prescription.

*Audiovisual commercial communications for medicinal products and medical treatment available only on prescription shall be prohibited.*

#### 4.21.2.2.3. Surreptitious audiovisual commercial communications

According to Article 16K(1)(a), surreptitious audiovisual commercial communications are prohibited.

#### 4.21.2.2.4. Subliminal techniques in commercial communications

According to Article 16K(1)(b), audiovisual commercial communications must not use subliminal techniques.

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#### 4.21.2.2.5. Prejudice with regard to human dignity

According to Article 16K(1)(c)(i), audiovisual commercial communications must not prejudice respect for human dignity.

#### 4.21.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

According to Article 16K(1)(c)(ii), audiovisual commercial communications must not include or promote any discrimination.

#### 4.21.2.2.7. Encouragement of behaviour prejudicial to health or safety

According to Article 16K(1)(c)(iii), audiovisual commercial communications must not encourage behaviour prejudicial to health or safety.

#### 4.21.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

According to Article 16K(1)(c)(iv), audiovisual commercial communications must not encourage behaviour grossly prejudicial to the protection of the environment.

#### 4.21.2.2.9. Causing physical, mental or moral detriment to minors

According to Articles 16K(5), (6) and (7), audiovisual commercial communications must not cause detriment to minors, nor encourage them to consume products that are high in fat, sugar, and salt, nor encourage them to buy products that are not intended for them:

> *(5) Audiovisual commercial communications shall not cause physical, mental or moral detriment to minors; therefore, they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.*
> *(6) Broadcasting of all forms of audiovisual commercial communications on food and beverage brands and products containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, the type of products known as 'high in fat sugar and salt (HFSS)', is prohibited immediately before or during or immediately after children's programmes. For the purpose of classifying these products, audiovisual media service providers should follow regulations on the marketing of products that may have adverse effects on healthy lifestyles, that may be adopted in accordance with article 6 of the Healthy Lifestyle Promotion and Care of Non-Communicable Diseases Act.*

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> *(7) The broadcasting of all forms of audiovisual commercial communications regarding products which are not suitable for children or which children in general cannot reasonably be expected to buy or attempt to buy, is prohibited immediately before, during and immediately after children's programmes.*

In addition, Article 16S(1)(a) requires VSPs to take the necessary measures to protect minors.

#### 4.21.2.2.10. Other

There are requirements pertaining to teleshopping in the third schedule of the Broadcasting Act: Paragraph 4 states that advertising and teleshopping must be readily recognisable and distinguishable from editorial content.

Paragraph 5 states:

> *Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and, or acoustic and/or spatial means.*

## 4.21.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aim at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.21.3.1. Sponsorship

There are no direct rules pertaining to product placement for video-sharing platforms in Malta. However, the definition of audiovisual commercial communication outlined in Article 16 G of the Broadcasting Act states that:

> *Audiovisual commercial communication means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity; such images accompany, or are included in a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement*

Requirements pertaining to sponsorship and product placement are to be found in Articles 16L (sponsorship) and 16M (product placement) of the Broadcasting Act. Nevertheless, as stated under 4.21.2.2., video-sharing platform providers under the jurisdiction of Malta must

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comply with the requirements set out in Article 16K with respect to audiovisual commercial communications. At present, there is no direct reference in domestic law to product placement and VSPs.

#### 4.21.3.2. Product placement

See under 4.21.2.1.10.

## 4.21.4. Obligations regarding (v)blogs and (v)blogging

There are no legal references to (v)blogs and (v)blogging. Future interpretation of the legal concepts by the Broadcasting Authority could later include vlogs.

## 4.21.5. Other relevant information

N/A.

## 4.21.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

#### 4.21.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

There are no rules applicable to VSPs for advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems.

#### 4.21.6.2. Gambling, betting, betting tipsters, etc.

Article 16S (2) of the Broadcasting Act makes reference to Article 16K which includes *inter alia* reference to Article 16K (5): Audiovisual commercial communication must not cause physical, mental or moral detriment to minors; therefore, it must not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly

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encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably shows minors in dangerous situations.

The subsidiary legislation 350.25 Requirements as to Advertisements, Methods of Advertising and Directions applicable to Gambling Advertisements, dealing with gambling advertising, in Article 16M (4)(e) prohibits the product placement of gambling products between 06:00 and 19:00 hrs.

#### 4.21.6.3. Environmental or "green" claims for products

There are no rules applicable to VSPs about making environmental or "green" claims in relation to the manner in which products are produced, packaged, distributed, used, consumed and/or disposed of.

#### 4.21.6.4. Other

N/A.

## 4.21.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.21.7.1. Self- and co-regulatory bodies

#### 4.21.7.1.1. Context of establishment and legal background

There is a reference in Article 16S(5) that encourages co-regulation by referencing the Malta Broadcasting Authority:[436]

> *The Authority shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in article 16Q aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall*

[436] http://www.ba-malta.org/.

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*diet are not recommended. Those codes shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.*

#### 4.21.7.1.2. Stakeholders involved

Article 16Q of the Broadcasting Act identifies the stakeholders:

*The media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations are encouraged to embrace the use of co-regulation and the fostering of self-regulation through codes of conduct adopted on a national level in the fields coordinated by the Council Directive up to its limit (…)*

#### 4.21.7.1.3. Scope and objectives

At the present time, the self- and co-regulation aim at reducing the exposure of children to audiovisual commercial communications with regard to products that are "high in fat, sugar and salt".

#### 4.21.7.1.4. Code(s) of conduct

Article 16Q of the Broadcasting Act lays out, in general terms, the main requirements:

*(…) These codes shall:*
*(a) be such that they are broadly accepted by the main stakeholders;*
*(b) clearly and unambiguously set out their objectives;*
*(c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and*
*(d) provide for effective enforcement including effective and proportionate sanctions.*

Currently, there are no such codes already published.

#### 4.21.7.1.5. Role of the (self-)regulatory bodies

N/A.

#### 4.21.7.1.6. Period of activity (if limited)

N/A.

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#### 4.21.7.1.7. Role of the regulatory authority in a co-regulatory system:

The Malta Broadcasting Authority is to encourage self and co-regulatory mechanisms. So far, no tangible measures have been introduced.

##### *4.21.7.1.7.1. Regulatory body*

N/A.

##### *4.21.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.21.7.1.7.3. Relationship and roles of stakeholders*

N/A

### 4.21.7.2. Monitoring/evaluation, compliance and sanctioning powers

Article 16S of the Broadcasting Act stipulates that the Broadcasting Authority must assess the appropriateness of the measures taken by VSPs and has the right to issue all directives which it considers necessary or expedient for the proper execution of the obligations set for VSPs.

## 4.21.8. Cross-sector and cross-border collaboration

N/A.

## 4.21.9. Update on plans and practices relative to new obligations of VSPs

N/A.

## 4.21.10. Studies, reports and research

N/A.

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## 4.21.11. Data compilation

This factsheet is based on data compiled by Pierre Cassar, Director of Marketing and Communications at the University of Malta, and a lecturer at the Faculty of Media and Knowledge Sciences.

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# 4.22. NL – Netherlands – National legal summary[437]

## 4.22.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Mediawet 2008, Geldend van 02/03/22*[438] (Media Act 2008, as of 2 March 2022[439] - Media Act).
- *Tabaks- en rookwarenwet*[440] (Tobacco Act).

Secondary legislation:

- *Beleidsregel reclame commerciële media-instellingen 2022*[441] (Dutch media authority policy rules on advertising from commercial media organisations 2022).
- Beleidsregel van het Commissariaat voor de Media over sponsoring commerciële media-instellingen 2022[442] (Dutch media authority Policy rules on the sponsoring of commercial media organisations 2022) .
- *Beleidsregel productplaatsing commerciële media-instellingen 2022*[443] (Dutch media authority policy rules on product placement from commercial media organisations 2022).
- *Beleidsregel kwalificatie commerciele mediadiensten op aanvraag 2022*[444] (policy rules on the classification of on-demand commercial media services 2022).

Self and co-regulatory instruments:

- *Nederlandse Reclame Code, Algemene Reclamecode, de bijzondere reclamecodes en de Werkwijze Reclame Code Commissie en College van Beroep*[445] (Dutch Advertising Code, consisting of the General Code, the Special Advertising Codes and the Working Procedure[446]).
- *Betrokken Nederlandse Reclame Code* (the relevant Special Advertising Codes).

[437] The factsheet on the Netherlands incorporates feedback received from Marcel Betzel, Senior International Policy Advisor at *Commissariaat voor de media,* during the checking round with the national regulatory authorities.
[438] https://wetten.overheid.nl/BWBR0025028/2022-03-02/0.
[439] https://avmsd.obs.coe.int/ (NOTE: Some articles have not been included in the translation.)
[440] https://wetten.overheid.nl/BWBR0004302/2021-07-01/0.
[441] https://zoek.officielebekendmakingen.nl/stcrt-2022-12443.html.
[442] https://zoek.officielebekendmakingen.nl/stcrt-2022-12446.html.
[443] https://zoek.officielebekendmakingen.nl/stcrt-2022-12448.html.
[444] https://www.cvdm.nl/uploader.
[445] https://www.reclamecode.nl/nrc/.
[446] https://www.reclamecode.nl/nrc_taxonomy/general/?lang=en.

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- *Reclamecode voor alcoholhoudende dranken RVA*[447] (Advertising Code for Alcoholic Beverages 2014[448]).
- *Reclamecode voor Alcoholvrij en Alcoholarm Bier RvAAB*[449] (Advertising Code for Alcohol-Free and Low-Alcohol Beer[450]).
- *Reclamecode Social Media & Influencer Marketing RSM*[451] (Advertising Code for Social Media & Influencer Marketing[452]).
- *Reclamecode Online Kansspelen (ROK) 2021*[453] (Advertising Code for Online Games of Chance[454]).
- *Milieu Reclame Code*[455] (The Code for Environmental Advertising[456]).
- *De gedragscode voor farmaceutische reclama* (The Code of Conduct for Pharmaceutical Advertising[457]).
- *Kinderen Jeugdreclamecode KJC*[458] (Code for Advertising Directed at Children and Young People[459].

### 4.22.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

[447] https://www.reclamecode.nl/nrc/reclamecode-voor-alcoholhoudende-dranken-rva/.
[448] https://www.reclamecode.nl/nrc/advertising-code-for-alcoholic-beverages-2014/?lang=en.
[449] https://www.reclamecode.nl/nrc/reclamecode-voor-alcoholvrij-en-alcoholarm-bier-rvaab/.
[450] https://www.reclamecode.nl/nrc/advertising-code-for-alcohol-free-and-low-alcohol-beer-rvaab/?lang=en.
[451] https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/.
[452] Old version of the text:
https://www.reclamecode.nl/nrc/advertising-code-for-social-media-influencer-marketing-rsm-2019/?lang=en.
[453] https://www.reclamecode.nl/nrc/reclamecode-online-kansspelen-rok-2021/.
[454] https://www.reclamecode.nl/nrc/advertising-code-for-online-games-of-chance/?lang=en.
[455] https://www.reclamecode.nl/nrc/milieu-reclame-code-mrc/.
[456] https://www.reclamecode.nl/nrc/code-for-environmental-advertising-mrc/?lang=en.
[457]https://www.cgr.nl/CGR.nl/media/CGR.nl/Gedragscode/20190107-Dutch_CoC_Pharmaceutical_Advertising-ENG-per-20190701.pdf.
[458] https://www.reclamecode.nl/nrc/kinder-en-jeugdreclamecode-kjc/.
[459] https://www.reclamecode.nl/nrc/code-for-advertising-directed-at-children-and-young-people/?lang=en.

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### 4.22.2.1. Definitions

**Table 48. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | No, but there is a definition of advertising spot. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

*Source: Dutch response to European Audiovisual Observatory standardised survey*

#### 4.22.2.1.1. Audiovisual commercial communications

A definition of audiovisual commercial communications specifically adapted to VSPs is laid down in Article 3a.1 of the Media Act by transposing the revised AVMSD verbatim as follows:

> *Images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity and form a part of audiovisual media content or a user-generated video in return for payment or similar consideration or for self-promotional purposes.*

#### 4.22.2.1.2. Television advertising

There is no definition of television advertising. However, Article 1.1 of the Media Act contains a general definition of an advertising spot, which includes:

> *A message in any form whatsoever, other than a teleshopping spot, which is clearly intended to persuade the public to buy a particular product or use a particular service, or to promote the sale of products or the purchase of services by creating favourable public opinion towards a particular business, industry or organisation.*

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#### 4.22.2.1.3. Advertiser

Article 1 of the self-regulatory portion of the Dutch Advertising Code (General Code), applicable to advertising on VSPs, defines advertising as:

> *Any form of public and/or systematic direct or indirect commendation of goods, services and/or ideas by an advertiser or, either wholly or partly, on behalf of him, with or without the help of a third party. The solicitation of services is also defined as advertising. The advertiser is an organisation or a person, not being a consumer.*

#### 4.22.2.1.4. Surreptitious commercial communication

Article 1.1 of the Media Act provides that surreptitious advertising is:

> *The referring to or displaying of names, (figurative) marks, products, services or activities of persons, businesses or institutions, other than under this Act, if it may reasonably be assumed that this is done solely or partly for the purpose of advertising, it being understood that that is in any case the intention if the reference or display is made in return for payment or similar consideration.*

Article 1.1 applies to VSPs provided that they qualify as a commercial media service on demand[460].

#### 4.22.2.1.5. Misleading commercial communication

Articles 8.2, 8.3 and 8.5 of the self-regulatory portion of the Dutch Advertising Code (General Code) detail several elements, such as the nature and features of the product, the price, the characteristics of the advertiser, etc., with regard to an understanding of what constitutes misleading commercial communication:

> *8.2 All advertising including incorrect information, or information that is unclear or ambiguous for the average consumer in respect of one or more elements as listed in points a) to g) hereunder, and which would consequently entice or may entice the average consumer to make a decision on a transaction which he would otherwise not have made, is considered to be misleading.*

#### 4.22.2.1.6. Virtual advertising

There is no definition of virtual advertising.

However, Article 5, paragraph 5 of the Code for Advertising Directed at Children and Young People (a part of the Advertising Code) provides the definition of a virtual/online world:

> *Game and in-game*

[460] Details on the rules are available under 4.22.2.2.

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*Game and in-game advertising: advertising made in or by means of a game (digital game and/or contest) in which either an advertising communication appears in the game or the game itself is the advertising communication.*

Article 5 pertains specifically to gaming, not to VSPs.

#### 4.22.2.1.7. Sponsorship

The definition of sponsorship adapted to VSPs is included in Article 3a.1 Chapter 3a – video platform services of the Media Act:

*Sponsorship: the provision of financial or other contributions by an undertaking or a natural person not normally involved in the provision of media services or video-sharing platform services, or in the production of audiovisual works, for the production or purchase of media provision or user-generated videos, in order to promote or enable their distribution to all or part of the general public.*

#### 4.22.2.1.8. Sponsor

There is no definition of sponsor.

However, the explanatory note on Article 7, paragraph 3, of the policy on sponsoring commercial media organisations from 2022 of the Dutch Media Authority (CvdM),[461] applicable to commercial media services on demand, which provide further explanations to the applicable rules, interprets "sponsoring" by indicating the criteria for a 'sponsor'.

Accordingly, a government institution, e.g. municipalities, does not operate an enterprise and, therefore, does not qualify as a sponsor. In addition, the CvdM maintains the premise that organisations in the following categories are not enterprises in the sense of the definition of sponsoring: administrative bodies (according to civil law):

*charitable foundations/funds (with CBF label, CBF certificate or CBF non-objection statement);*
*charitable foundations/funds (without CBF label, CBF certificate or CBF non-objection statement), if the statutes show that it is a foundation that is independent of commercial third parties, with independent decision-making processes, defined in regulations, particularly with respect to the attribution of contributions;*
*the permanent national charitable lottery, including the "sporttotalisator", which has licenses based on the Gambling and Lottery Act;*
*further non-commercial foundations where the contribution to the programme is funded by government subsidies or other governmental budgets, for a socially relevant, non-commercial objective.*

[461] Commissariaat voor de Media, http://www.cvdm.nl/

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#### 4.22.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.22.2.1.10. Product placement

A definition of product placement adapted to VSPs is included in Article 3a.1 Chapter 3a – video platform services of the Media Act 2008 by transposing the revised AVMSD verbatim:

> *Product placement: the inclusion of, or reference to, a product, service or trademark within a programme, part of the media provision corresponding to a programme, or a user-generated video in return for payment or for similar consideration.*

#### 4.22.2.1.11. Other definitions

Article 2 the Dutch media authority policy rules on advertising from commercial media organisations 2022 defines "split screen advertising" as: "The simultaneous and parallel placement in one image of editorial content and of advertising or teleshopping announcements."

While Article 4, paragraph 1 of the policy rules points out that a clear distinction between editorial and commercial content is crucial, Article 4, paragraph 2 of the said rules states that split-screen advertising and teleshopping, within a frame on a teletext page, are to be clearly distinguished from the other program offerings, specifying the allowed take-up of the screen/teletext, that they must be identifiable and that the editorial part of the program offering must remain fully visible.

Article 4, paragraph 3, further stipulates that split-screen advertising and teleshopping announcements are only permitted during live coverage of an event or of the report/reproduction of a sporting event. Paragraph 4 of the same article underlines that: "The share of advertising and teleshopping announcements in the form of a split screen is included in the calculation of the maximum amount of advertising determined by or pursuant to the law."

There are no specific definitions of the techniques of online commercial communications, such as: direct marketing, commercial profiling, behaviourally targeted advertising, banners and display advertising, search engine optimisation, and overlay ads, but the definition of advertising (see 4.22.2.1.2.) covers all these terms.

### 4.22.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

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While VSPs are obliged to adopt and apply codes of conduct (Article 3a.3, paragraph 1, 2 and 3 of the Media Act[462]), Article 3a.4 of the Media Act provides the obligation of VSP providers to respect the obligations stemming from the self-regulatory Advertising Code, which is technically neutral and platform-neutral, pertaining not only to media content offline and online but also to outdoor advertising:

> *Article 3a.4*
> *1. Video-sharing platform providers marketing, selling or organising audiovisual commercial communications shall be affiliated to the Dutch advertising code or a similar scheme established by the Advertising Code Foundation and shall be subject to monitoring by the Foundation.*
> *2. Affiliation shall be demonstrated by submitting a written statement from the Foundation to the Authority.*

Article 3a.5 sets out the obligations of VSPs with regard to audiovisual commercial communications, details of which are provided below. Also, Article 33 of the Advertising Code for Alcoholic Beverages of 2014 refers to "Communications on an Internet Platform Controlled by the Advertiser" and introduces the obligation of "advertising placed on an Internet platform controlled to some extent by the advertiser" to respect the self-regulatory Advertising Code irrespective of the party placing it. It stipulates the obligations to ensure that persons placing advertisements on platforms are at least 18 years of age.

CvdM has updated its policy rules with regard to commercial media services on demand. On the basis of these policy rules, content creators that are active through VSPs are able to establish whether the service they provide will qualify as a commercial media service on demand that falls under the supervision of the CvdM. Under the new policy rules, a service qualifies as a commercial media service on demand when:

> *1) it is distributed through a VSP and in the past 12 months 24 or more videos have been published*
> *2) the company is registered at the Chamber of Commerce and an economic advantage is gained with the publication of the videos and*
> *3) the videos generate more than 500 000 followers.*

#### 4.22.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 24, "Active Internet Marketing", of the Advertising Code for Alcoholic Beverages of 2014 contains the obligation, with regard to "advertising originating with the advertiser that is wholly or partially compiled of still or moving images and that is intended for distribution via the Internet", to display the educational slogan referred to in Article 33 (2) of the Code that every advertisement for alcoholic beverages must display an educational

[462] For more details, see section 4.22.7.1.4.

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slogan: "No alcohol under 18" (*Geen 18, geen alcohol*). This slogan may be used in combination with ("Enjoy, but drink with moderation" (*Geniet, maar drink met mate*)).

Advertising or sponsoring for tobacco products, electronic cigarettes or any smoking implements, whether or not they contain tobacco, is prohibited on the basis of Articles 5 (1) and (2) of the Tobacco and Smoking Products Act:

*1. Any form of advertising or sponsorship shall be prohibited.*
*2. That prohibition shall also include advertising and teleshopping spots, sponsorship and product placement for tobacco products or related products within the scope of the 2008 Media Act, including the use of names, (figurative) marks or other distinctive signs which, because they appear very similar, might reasonably lead the public to believe that sponsorship has been provided by a manufacturer or seller of tobacco products or related products.*

#### 4.22.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Articles 2.94 2a, 3.7 2a and 3.19b 3a of the Media Act prohibit audiovisual commercial communications for medical treatment. Article 85 of the Medicines Act prohibits audiovisual commercial communications for medicinal products available only on prescription.

Article 3 of the Dutch media authority policy on advertising from commercial media organisations 2022 states that:

*1. The media offering must not contain advertising and teleshopping announcements for medical treatments (Article 3.7, second paragraph, under a, and 3.29d of the Act).*
*2.Medical treatments are here understood to mean: treatments that are only available with a doctor's prescription.*

Article 3.1 h of the Code of Conduct for Pharmaceutical Advertising lays down rules for pharmaceutical advertising which find their legal basis in the Medicines Act:

*Any form of public and/or systematic, direct or indirect commendation of medicinal products and any services or images connected therewith, including offering or solicitation of goods or services in the interactions between authorisation holders and healthcare professionals.*

#### 4.22.2.2.3. Surreptitious audiovisual commercial communications

Article 3a.5 of the Media Act stipulates restrictions regarding surreptitious audiovisual commercial communications on VSPs:

*1. Audiovisual commercial communications on a video-sharing platform service shall be recognisable as such.*
*2. Audiovisual commercial communications shall not use any subliminal techniques.*
*3. No surreptitious audiovisual commercial communications shall be provided.*

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*4. Where audiovisual media provision or user-generated videos contain audiovisual commercial communications and the video-sharing platform provider is aware of this fact, the provider shall inform the user of the video-sharing platform service thereof in a manner that is clear to the user.*

#### 4.22.2.2.4. Subliminal techniques in commercial communications

See under 4.22.2.2.3.

#### 4.22.2.2.5. Prejudice with regard to human dignity

The Advertising Code, in Article 2 provides that:

*Advertising must be in accordance with the law, the truth, good taste and decency.*
*Explanation of Article 2*
*The provisions subject to this article include those in the Audiovisual Media Services Directive, which provide that advertising must not offend human dignity ...*

#### 4.22.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

The Advertising Code, in Article 2 provides that:

*Advertising must be in accordance with the law, the truth, good taste and decency.*
*Explanation of Article 2*
*The provisions subject to this article include those in the Audiovisual Media Services Directive, which provide that advertising ... may not contain or promote any type of discrimination on the basis of gender, race or ethnic descent, nationality, religion or philosophy, handicap, age or sexual orientation.*

#### 4.22.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 4 of the Dutch Advertising Code states that: "An advertisement shall not be gratuitously offensive or constitute a threat to mental and/or physical public health."

#### 4.22.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 11 of the Code for Environmental Advertising states that: "Advertising messages shall not set as an example environmentally unfriendly behaviour that is avoidable, nor shall such behaviour be encouraged."

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#### 4.22.2.2.9. Causing physical, mental or moral detriment to minors

Article 3a.3, paragraphs 1 and 2, of the Media Act 2008 imposes a general obligation on VSPs to adopt a code of conduct on the measures laid down in article 28b, paragraphs 1 and 2, second and fourth subparagraphs, of the AVMS Directive and to apply this code of conduct and these measures to the VSP. In addition, the protection of minors in relation to commercial communications on VSPs is subject to an extensive self-regulatory system: the Code for Advertising Directed at Children and Young People and the Advertising Code for Social Media & Influencer Marketing.

The Code for Advertising Directed at Children and Young People stipulates that when making advertising directed at children and minors/youths, the recognisability of the advertising communication is important. In addition to the Dutch Advertising Code (General Code), the Code for Advertising Directed at Children and Young People expands on the manner of the recognisability of the advertising communication directed at children and minors. This Code applies to all sorts of media (platforms).

The Advertising Code for Social Media & Influencer Marketing applies to all social media platforms and is also part of the Dutch Advertising Code.

#### 4.22.2.2.10. Other

N/A.

## 4.22.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aim at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.22.3.1. Sponsorship

Sponsoring is defined in relation to VSPs, but no specific measures apply. A service, disseminated through a VSP, that qualifies as a commercial media service on demand falls under the supervision of the CvdM and must comply with the current sponsor rules laid down in the Media Act and policy rules of the CvdM.

Articles 3.15. to 3.17. of the Media Act, which apply to VSPs in so far as they qualify as commercial media services, establish the rules vis-a-vis sponsorship, including a prohibition on influencing of programme content, the obligatory provision of information on programme sponsorship and its identification, watershed restrictions as to the sponsorships of those engaged in the production or sale of alcoholic beverages by means of neutral indication or display of their name or (figurative) mark between the hours of 6.00 and 21.00, which also applies in other cases, with a prohibition on direct encouragement, by means of special promotional references, of the audience to buy or hire products or

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services from the sponsors. It finally provides the possibility for the CvdM to: "lay down detailed rules on the indication or display in the title, which rules shall require the approval of Our Minister".

#### 4.22.3.2. Product placement

Product placement is defined in relation to VSPs, but no specific measures apply. A service, disseminated through a VSP, that qualifies as a commercial media service on demand falls under the supervision of the CvdM and must comply with the product placement rules laid down in the Media Act, including an obligation to identify and inform the public of the existence of product placement, a prohibition on the influencing of programme content or direct encouragement, by means of special promotional references, of the audience to buy or hire products or services, including a prohibition on undue prominence of products/services, in addition to a prohibition on product placement for medical treatments and alcoholic beverages, between the hours of 6.00 and 21.00. Also, the CvdM can establish more detailed rules on the application of product placement in programme content, subject to the approval of a relevant ministry (Article 3.19b). The Media Act also stipulates:

> *Article 3.19a, paragraph 1:*
> *1. Product placement shall be allowed in programmes other than news and current affairs programmes, consumer affairs programmes, programmes of a religious or spiritual nature and programmes intended for children under 12 years of age.*
>
> *Article 3.19b, paragraph 4:*
> *Programme content including product placement shall clearly indicate, for public information purposes, that the programme content features product placement. The indication shall be made in an appropriate manner at the beginning and end of the programme and also at the beginning or end of the advertising spot or spots included in the programme."*
>
> *Article 3.19c:*
> *Article 3.19b(4) shall not apply to programmes with product placement that have not been produced or commissioned by or on behalf of the commercial media institution or by or on behalf of its affiliates.*

## 4.22.4. Obligations regarding (v)blogs and (v)blogging

The key element in the self-regulatory Advertising Code for Social Media & Influencer Marketing is "relevant relationship". Once a relevant relationship can be established, this Code is applicable. Article 2d defines a relevant relationship as:

> *The relationship between the Advertiser and the Distributor directed at (causing the) distribution of advertising through social media, in return for payment or any benefit, that might affect the credibility of advertising through social media.*

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If a relevant relationship ensues from an agreement, the advertiser must require the distributor to comply with this Code, for example by including a provision in the contract, employment agreement or the terms and conditions of the promotion. If there is no agreement, the advertiser must explicitly draw the attention of distributors to this Code when inviting them to provide their opinion on his products (explanatory note on Article 6 of the Code).

The advertiser and distributor each bear their own responsibility for compliance with Articles 3 (disclosure and recognisability of a relevant relationship), 4 (ban on manipulation) and 5 (ban on encouraging children aged 12 or under to advertise for products or services on social media) of this Code.

On 18 May 2022 the revised policy rules of the CvdM on advertising, sponsorship and product placement came into force. CvdM's policy rules on the classification of on-demand commercial media services 2022 define when a vlog qualifies as a commercial media service on demand that falls under the supervision of the CvdM (see under 4.22.2.2.)

The Advertising Code Foundation SRC[463] has brought the Code for Social Media & Influencer Marketing in line with the aforementioned revised policy rules on the classification of on-demand commercial media services of the CvdM, with 1 July as its entry into force, as well. It will contain, for information purposes, the criteria set out in the revised policy rules of the CvdM with regard to commercial media services on demand on the basis of which can be assessed if and when a service qualifies as a commercial media service on demand. Also, its terminology has been adjusted to align with the revised policy rules of the CvdM (e.g., with the options of including an accompanying text that can be used when advertising on a VSP, such as 'advertisement', 'advertorial', 'paid promotion' and 'paid partnership'.)

Furthermore, the platform Tik Tok has been added as an example of a social media platform.

## 4.22.5. Other relevant information

N/A.

## 4.22.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less

[463] See more details under section 4.22.7. of this factsheet.

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explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

#### 4.22.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.22.6.2. Gambling, betting, betting tipsters, etc.

The Advertising Code for Online Games of Chance, adopted by the Advertising Code Foundation SRC, applies to advertising by the operators of online games of chance and to advertising for specific other games of chance, if such advertising is also targeted at the Netherlands. The Code stipulates that advertisements must not use phrases such as: "take your chance, you only live once" or "hurry up and start gambling now!", that they must not be dishonest and must not promote behaviour which might result in financial loss, criminal behaviour, etc.

#### 4.22.6.3. Environmental or "green" claims with regard to products

The Code for Environmental Advertising applies to all environmental claims and stipulates, *inter alia*, that advertising does not set as an example environmentally unfriendly behaviour, does not mislead consumers vis-à-vis the environmental aspects of products, does not use environmental designations and symbols: "unless the origin of the designation or symbol is clear and no confusion can arise on the meaning of the designation or symbol".

#### 4.22.6.4. Other

N/A.

### 4.22.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

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### 4.22.7.1. Self- and co-regulatory bodies

#### 4.22.7.1.1. Context of establishment and legal background

The Advertising Code Foundation[464] deals with the self-regulation system of advertising in the Netherlands. Further, the advertising rules can be found in the Advertising Code, applicable to all types of advertising offline, online and outdoor advertising (see under 4.22.2.2.).

#### 4.22.7.1.2. Stakeholders involved

The Advertising Code Foundation is a member of the European Advertising Standards Alliance (EASA[465]), a network of 41 organisations representing 27 advertising standards from Europe and 14 organisations representing the advertising ecosystem, and its role is to set out high operational standards for advertising self-regulatory systems.

The Advertising Code Foundation and EASA are part of the International Council on Ad Self-Regulation (ICAS[466]) – an international platform to promote effective advertising self-regulation worldwide.

The advertising industry (advertisers, advertising agencies and the media) formulates the rules with which advertising must comply. Both the advertising industry and consumers are represented in the SRC and in the Advertising Code Committee and the Board of Appeal.

VSPs do not affiliate formally with the SRC, but the main VSPs have stated that they will respect the decisions of the Advertising Code Committee.[467]

#### 4.22.7.1.3. Scope and objectives

The Advertising Code Foundation, based on self-regulation, upholds the Advertising Codes that contain rules for the content of advertisements, explaining the basis and origin of self-regulation and stipulating the complaint procedure for possible violations of the Code (see under 4.22.7.1.7.)

[464] Stichting Reclame Code, https://www.reclamecode.nl
[465] https://www.easa-alliance.org/.
[466] https://icas.global/.
[467] Facebook and the Dutch Advertising Committee made such a statement on 29 April, 2021, available at: https://www.reclamecode.nl/news/facebook-sluit-zich-aan-bij-de-stichting-reclame-code/.

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#### 4.22.7.1.4. Code(s) of conduct

Article 3a.3, paragraphs 1 and 2, of the Media Act imposes a general obligation on VSPs to adopt a code of conduct on the measures laid down in the revised AVMSD and to apply this code of conduct and these measures to the VSP.

Article 3a.4 and 3a5. of the Media Act provides the obligation of VSP providers to respect the obligations stemming from the self-regulatory Advertising Code (see under 4.22.2.2.)

Also, the applicable self-regulatory instruments include the Advertising Code Foundation and the Dutch Advertising Code. These rules incorporate the national and European legal framework, e.g., the rules set out in the revised AVMSD with regard to the contents of advertising.

#### 4.22.7.1.5. Role of the (self-)regulatory bodies

The Advertising Code Foundation, besides upholding the applicable self-regulatory instruments, has also established the Advertising Code Committee, an independent body that decides after a transparent and swift procedure whether an advertisement conflicts with the Advertising Code.

#### 4.22.7.1.6. Period of activity (if limited)

There is no limit, as the Advertising Code Foundation was founded by the advertising industry and has been active since 1963.

#### 4.22.7.1.7. Role of the regulatory authority in a co-regulatory system:

##### *4.22.7.1.7.1. Regulatory body*

Following Article 7.11 of the Media Act, the Dutch Media Authority CvdM supervises compliance with the obligation on the part of VSPs vis-à-vis commercial communications (set out in Article 3a.5 of the Media Act), on the basis of Article 2.92, paragraph 2 (for public media service providers) and Article 3.6, paragraph 2 (for commercial media service providers).

##### *4.22.7.1.7.2. Co-regulatory scheme*

On 23 November 2017, the Dutch Media authority CvdM concluded a cooperation agreement with the Advertising Code Foundation. Apart from this protocol, which governs information exchange and coordination issues, no further co-regulatory schemes are provided.

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*4.22.7.1.7.3. Relationship and roles of stakeholders*

The stakeholders that fall under the scope of the Media Act have to provide a written statement from the Dutch Advertising Foundation about their affiliation to the CvdM (see under 4.22.7.1.7.1.).

### 4.22.7.2. Monitoring/evaluation, compliance and sanctioning powers

In addition to the CvdM's role in supervising the affiliation of media service providers with the Dutch Advertising Foundation, the advertising industry is committed to compliance with the decisions of the Advertising Code Committee (see under 4.22.7.1.5.). The procedure for submitting a complaint, objection or appeal is set out in detail in the working procedure[468]. Anyone who feels that an advertisement violates the Dutch Advertising Code may submit a complaint to the Advertising Code Committee. This independent body decides after a transparent and swift procedure whether an advertisement conflicts with the Dutch Advertising Code.

## 4.22.8. Cross-sector and cross-border collaboration

N/A.

## 4.22.9. Update on plans and practices related to new obligations of VSPs

To date, there are no VSPs that fall directly under the scope of Dutch jurisdiction and the supervision of the CvdM.

## 4.22.10. Studies, reports and research

N/A.

## 4.22.11. Data compilation

This factsheet is based on data compiled by Louise Doorman, an independent legal advisor.

[468] https://www.reclamecode.nl/nrc/6-the-charges-for-submitting-a-complaint-objection-or-appeal/?lang=en.

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# 4.23. NO – Norway – National legal summary[469]

## 4.23.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *LOV-1992-12-04-17 Lov om kringkasting og audiovisuelle bestillingstjenester (Kringkastingsloven*[470]) [Law on broadcasting and audiovisual on-demand services (the Broadcasting act[471])]
- *LOV-2009-01-09-2 Lov om kontroll med markedsføring og avtalevilkår mv. (markedsføringsloven*[472]) [Act relating to the control of marketing and contract terms and conditions, etc. (Marketing Control Act)]
- *LOV-2003-05-23-35 Lov om visse sider av elektronisk handel og andre informasjonssamfunnstjenester (ehandelloven*[473]*)* [Act relating to certain aspects of electronic commerce and other information society services (Electronic Commerce Act[474])]
- *LOV-1973-03-09-14 Lov om vern mot tobakksskader (tobakksskadeloven*[475]*)* [Act relating to Prevention of the Harmful Effects of Tobacco (Tobacco Act)]
- *LOV-1989-06-02-27 Lov om omsetning av alkoholholdig drikk m.v. (alkoholloven*[476]*)* [Act on the sale of alcoholic beverages (Alcohol Act)]
- *LOV-1992-12-04-132 Lov om legemidler m.v. (legemiddelloven*[477]*)* [Act relating to medicines etc. (Medical Act)]
- *LOV-2015-02-06-7 Lov om beskyttelse av mindreårige mot skadelige bildeprogram mv. (Bildeprogramloven*[478]*)* [Act relating to the protection of minors against harmful audiovisual programmes]
- *LOV-2022-03-18-12 Lov om pengespill (pengespilloven)*[479] (Gambling Act)

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[469] The factsheet on Norway incorporates feedback received from Linda Andersen, Senior Adviser on Governance, Supervision and International Relations and Hanne Sekkelsten, Director of the Legal and Regulatory Department at the Norwegian Media Authority (Medietilsynet), during the checking round with the national regulatory authorities.

[470] https://lovdata.no/dokument/SFE/forskrift/1997-02-28-153.

[471] https://lovdata.no/dokument/NLE/lov/1992-12-04-127.

[472] https://lovdata.no/dokument/NLE/lov/2009-01-09-2.

[473] https://lovdata.no/dokument/NL/lov/2003-05-23-35.

[474] Unofficial English translation:
https://app.uio.no/ub/ujur/oversatte-lover/english.shtml

[475] https://lovdata.no/dokument/NL/lov/1973-03-09-14.

[476] https://lovdata.no/dokument/NL/lov/1989-06-02-27/.

[477] https://lovdata.no/dokument/NL/lov/1992-12-04-132.

[478] https://lovdata.no/dokument/NLE/lov/2015-02-06-7.

[479] https://lovdata.no/dokument/NL/lov/2022-03-18-12 This Act is new and enters into force on 1 January 2023. It replaces the Lottery Act LOV-1995-02-24-11, the Gambling Act LOV-1992-08-28-103 and the Totalisator Act LOV-1927-07-01-3.

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- *LOV-2017-06-16-51 Lov om likestilling og forbud mot diskriminering*[480] (Act relating to equality and a prohibition against discrimination)

Secondary legislation:

- *Forskrift om kringkasting og audiovisuelle bestillingstjenester*[481] (Regulation relating to broadcasting and audiovisual on-demand services)
- *Vedtekter for Norsk rikskringkasting AS*[482] (Norwegian Broadcasting corporation by-laws)
- Agreement on the delivery of commercial public service between the Ministry of Culture and TV 2 AS[483]
- FOR-2015-06-26-800 Forskrift om beskyttelse av mindreårige mot skadelige bildeprogram[484] (Regulations on the protection of minors against harmful audiovisual programmes)
- FOR-2022-06-17-144 Forskrift om merking av retusjert reklame[485] (Regulations on labeling of retouched advertising)
- FOR-2009-12-18-1839 Forskrift om legemidler[486] (Regulations relating to medicines)

Self and co-regulatory mechanism:

- *Veileder for sponsing i kringkasting og bestillingstjenester*[487] *(*Guidelines for sponsorship in broadcasting and audiovisual on-demand services)
- *Medietilsynet Veileder for produktplassering i kringkasting og audiovisuelle bestillingstjeneste*[488] (Norwegian Media Authority (NMA) guidelines for product placement in broadcasting and audiovisual ordering services)
- *Medietilsynet Veileder til youtubere og videobloggere om merking av reklame*[489] (Norwegian Media Authority (NMA) guidelines on advertising for Youtubers and videobloggers)
- Code for marketing of food and drink aimed at children (industry code)[490]

[480] https://lovdata.no/dokument/NLE/lov/2017-06-16-51.
[481] https://lovdata.no/dokument/SFE/forskrift/1997-02-28-153.
[482] https://info.nrk.no/vedtekter/#utfyllende.
[483] https://www.medietilsynet.no/globalassets/dokumenter/allmennkringkasting/avtale-av-26.-september-2018-mellom-staten-ved-kulturdepartementet-og-tv-2-as-.pdf.
[484] https://lovdata.no/dokument/SFE/forskrift/2015-06-26-800.
[485] https://lovdata.no/dokument/SF/forskrift/2022-06-17-1114?q=forskrift%20om%20merking%20av%20retusjert.
[486] https://lovdata.no/dokument/SF/forskrift/2009-12-18-1839?q=legemiddelforskriften.
[487] https://www.medietilsynet.no/globalassets/dokumenter/veiledere/190411-veileder_sponsing.pdf.
[488] https://www.medietilsynet.no/globalassets/veiledninger/201102-veileder_produktplassering_oppdatert-med-radio.pdf.
[489] https://www.medietilsynet.no/globalassets/dokumenter/veiledere/190318-yt-veileder-kommersielt-innhold.pdf.
[490] https://nye.mfu.as/?page_id=616.

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- Guidance on the code for marketing of food and drink aimed at children (industry guidance)[491] supervised by the self-regulatory body MFU[492] (*Matvarebransjens Faglige utvalg*/The Food and Drink Industry Professional Practices Committee)
- Guidance for influencers on marketing[493] supervised by the self- regulatory body FIM (*Fagutvalget for influencermarkedsføring*/committee for influencer marketing)
- Guidance on the labelling of retouched advertising[494] from the Consumer Authority

## 4.23.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.23.2.1. Definitions

**Table 49. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | No. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | No, but "misleading commercial practice" exists. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | Covered under sponsorship. |

[491] https://nye.mfu.as/guidance-on-the-code-for-marketing-of-food-and-drink-aimed-at-children/
[492] https://nye.mfu.as/about-mfu/.
[493] https://fim.as/62304-Retningslinjer-for-Influencere.
[494] https://www.forbrukertilsynet.no/forbrukertilsynets-veiledning-om-merking-av-retusjert-reklame.

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| | |
|---|---|
| **Sponsored content** | Covered under sponsored programme. |
| **Product placement** | Yes. |
| **Other** | Information society service |

*Source: Norwegian response to European Audiovisual Observatory standardised survey*

#### 4.23.2.1.1. Audiovisual commercial communications

There is no separate definition of audiovisual commercial communications, however there are definitions on advertisements, sponsorship and product placement in the Broadcasting Act.

The by-laws of the Norwegian Broadcasting Corporation (NRK) set the frameworks and guidelines for its commercial operations. Section 10 of the by-laws state that NRK is allowed to operate a commercial business, but only under a clear separation from public service operations and mainly organised in subsidiary companies.

#### 4.23.2.1.2. Television advertising

Advertising is defined in the Broadcasting Act Section 1-1 g), as follows:

> *Any form of marketing of a product, service, cause or idea in return for payment or similar consideration. Advertising also means any form of announcement on television or audiovisual on-demand services whose purpose is to promote the provider's own activity.*

Section 3-2, special rules on television advertising of the Broadcasting Act provides restrictions regarding the scheduling of TV advertisements:

> *Television advertisements must principally be broadcast in blocks between programmes and must be kept separate from the ordinary programme schedule by a special acoustic and visual signal. This provision does not prevent television advertisements from being separated from the ordinary programme schedule by use of a split screen.*

The Regulation relating to broadcasting and audiovisual on-demand services provides some additional details in Section 1-2, which deals with “Advertising broadcasts directed at States party to the Council of Europe's Convention on Transfrontier Television.

#### 4.23.2.1.3. Advertiser

There is no definition of advertiser, but the Marketing Control Act, in Section 5 “Definitions”, contains the definitions of a trader and a commercial practice, as follows:

> *…(b) «trader»: a natural or legal person who is acting for commercial purposes, and anyone acting in the name of or on behalf of that person,*
> …

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*(d) «commercial practice»: any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers …*

#### 4.23.2.1.4. Surreptitious commercial communication

Section 3-3 of the Broadcasting Act provides the following definition of surreptitious marketing:

*Surreptitious marketing means a verbal or visual presentation in programmes of a manufacturer's or service provider's goods, services, name, trademark or activity if the presentation is made intentionally for advertising purposes and the audience may be misled with regard to the nature of the presentation. Such presentation is considered intentional, in particular if it takes place in return for payment or similar remuneration.*

#### 4.23.2.1.5. Misleading commercial communication

While there is no definition of "misleading commercial communication", the Marketing Control Act, Section 7, provides the relevant definition for misleading commercial practice that is considered as such "if it is likely to cause consumers to make an economic decision that they would not otherwise have made". The emphasis is on information which is false or likely to deceive consumers in relation to the existence or nature and characteristics of the product, as well as:

*… d) the price of the product or how the price is calculated, or the existence of a price advantage,*
*e) the need for a service, parts, replacement or repairs,*
*f) the nature, attributes and rights of the trader or the trader's agent,*
*g) the rights of the consumers, including the right to replacement or reimbursement, or the risks the consumers may face,*
*h) the trader's duty to observe industry codes of conduct.*

#### 4.23.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.23.2.1.7. Sponsorship

Section 3-4 second paragraph of the Broadcasting Act defines sponsorship:

*Sponsorship means any contribution to the production or transmission of a programme from a natural or legal person who is not the provider of the programme and is not involved in the production, with the aim of promoting the sponsor's name, trademark, reputation, activity, product or service.*

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#### 4.23.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.23.2.1.9. Sponsored content

There is no definition of sponsored content, but Section 3-4 of the Broadcasting Act provides rules for sponsored programmes, as well as provisions on how to identify a sponsor, including:

> *A sponsored programme must be clearly identified as such. Where a programme is sponsored, information to this effect must be given in the introduction to the programme and when it ends. Information about the sponsor may also be given during a sponsored programme, including in single sponsored features. Information about the sponsor may be given in the form of the sponsor's name, trademark, logo, product or service.*
> *(...)*
> *The content and form of presentation in a sponsored programme must be such as to maintain the full editorial integrity of the media service provider.*

#### 4.23.2.1.10. Product placement

The Broadcasting Act, Section 3-6 “Product placement”, provides the following definition:

> *Product placement means that a product, service or trademark is included in or referred to in a programme in return for payment or similar remuneration for direct or indirect promotion of goods, services or the reputation of a natural or legal person. Free delivery of goods or services with no significant value is not considered product placement.*

#### 4.23.2.1.11. Other definitions

The Electronic Commerce Act, in Section 1, provides for the scope of the legislation to apply to electronic commerce and other information society services and regulation and control of such services by the public authorities. In section 3 of this legislation, information society service is defined (excluding voice telephony, telefax and telex services) as:

> *a) any service which is normally performed for remuneration and which is provided electronically at a distance and at the individual request of a recipient of a service and*
> *b) any service that consists of providing access to or transmitting information via an electronic communication network or of hosting information provided by the recipient of a service.*

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#### 4.23.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

While the revised AVMSD is applicable in Norway through the EEA agreement, relevant changes pertaining to the revised 2018 Directive have yet to be codified in Norwegian law. Revisions of the relevant laws pertaining to audiovisual services were underway at the time of preparation of this factsheet with the Norwegian Ministry of Culture, with an ongoing public consultation with regard to revision of the Broadcasting Act[495]. The rules stemming from the Marketing Control Act apply to all marketing directed at consumers in Norway, including VSPs. Also, more detailed provisions on advertising, sponsorship and product placement for audiovisual media services (linear broadcasting and on-demand audiovisual media services) are stipulated in the Broadcasting Act and other acts (e.g., Tobacco, Medical and Gambling Acts), details of which are provided below.

##### 4.23.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Both alcohol- and tobacco-related audiovisual commercial communications are generally prohibited. The rules cover all audiovisual commercial communications without differentiating between the sources of the advertisements (i.e., media outlet).

The Tobacco Act provides details on a number of prohibited and restricted practices relating to tobacco (including electronic cigarettes) in Section 22:

> *… all forms of advertising tobacco goods are prohibited and tobacco goods must not feature in advertisements for other goods and services.*

This prohibition applies similarly to tobacco surrogates, tobacco imitations and tobacco equipment, including electronic cigarettes, which are defined as a tobacco surrogate according to the Tobacco Act Section 2, and are covered by the prohibition, as well as refill containers.

The Alcohol Act, in Section 9-2, also prohibits advertising of alcoholic beverages, as it states that all forms of advertisements for alcoholic beverages are prohibited:

> *The advertising of alcoholic beverages shall be prohibited.*

[495] On 16 September 2022, the Ministry of Culture and Equality published a consultation to collect views on changes the implementation of the revised AVMSD will entail: https://www.regjeringen.no/no/dokumenter/horing-gjennomforing-av-endringsdirektivet-til-amt-direktivet-mv/id2927696/?expand=horingsnotater.

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*The prohibition also applies to the advertising of other products carrying the same brand or distinctive mark as alcoholic beverages. Moreover, such products may not be included in advertisements for other goods or services.*

#### 4.23.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Section 2 of the Medical Act defines medicinal products and provides details on drugs and preparations that require specific permission for advertising, but not specifically related to audiovisual commercial communications:

*Substances, drugs and preparations intended for or used in the prevention, treatment or alleviation of human or animal illness, or pain, or for internal or external use in the diagnosis of illness.*

According to Section 13-4 of the Regulations relating to medicines, it is prohibited to advertise to the general public medicines available only on prescription.

#### 4.23.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious advertising and other forms of surreptitious marketing are prohibited in the Broadcasting Act Section 3-3, which stipulates:

*No forms of surreptitious advertising or other forms of surreptitious marketing are allowed on television or audiovisual on-demand services.*

#### 4.23.2.2.4. Subliminal techniques in commercial communications

Regulation relating to broadcasting and audiovisual on-demand services in Section 3-4 forbids the use of subliminal techniques: "No advertisements using subliminal techniques may be broadcast".

#### 4.23.2.2.5. Prejudice with regard to human dignit

According to the Criminal Code Section 185, discriminatory or hateful statements are forbidden. The second paragraph states:

"*Discriminatory or hateful statement" means threatening or insulting a person or promoting hate of, persecution of or contempt for another person based on his or her*
*a. skin colour or national or ethnic origin,*
*b. religion or life stance,*
*c. homosexual orientation, or*
*d. reduced functional capacity.*

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#### 4.23.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

The Act relating to equality and a prohibition against discrimination, Section 6 first paragraph, states:

> *Discrimination on the basis of gender, pregnancy, leave in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or combinations of these factors is prohibited. "Ethnicity" includes national origin, descent, skin colour and language.*

#### 4.23.2.2.7. Encouragement of behaviour prejudicial to health or safety

The Penal Code Section 183 states:

> *Any person who publicly incites another person to commit a criminal act shall be subject to a penalty of a fine or imprisonment for a term not exceeding three years.*

#### 4.23.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

The Penal Code Section 183 states:

> *Any person who publicly incites another person to commit a criminal act shall be subject to a penalty of a fine or imprisonment for a term not exceeding three years.*

The Penal Code Section 239 – 242 contains several prohibitions on environmental crimes.

#### 4.23.2.2.9. Causing physical, mental or moral detriment to minors

The Act relating to the protection of minors against harmful audiovisual programmes, applicable to television broadcasts and on-demand audiovisual media services, screening at a public gathering in Norway, including at a cinema or other screening facility and the making available of a videogram in Norway when the audiovisual programme is made available by an enterprise that is registered in Norway or has its business address in Norway or by a person who is a Norwegian citizen or resident in Norway, or the decision to make available is made in Norway, in Section 1. provides detailed regulations "to protect minors against the harmful effects of exposure to moving images".

According to Section 9 of the Act, audiovisual programmes with seriously harmful content for minors may not be broadcast on television. Minors must not normally have access to content that may be harmful, and the provider must ensure this by either selecting the time of the broadcast or via any technical measure.

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For on-demand audiovisual media services the service provider must implement measures to ensure that minors will not normally have access to audiovisual programmes or related material with seriously harmful content, cf. Section 10 of the Act.

The Marketing Control Act provides regulations in Chapter 4, Section 19:

> *When a commercial practice is directed at children, or may be seen or heard by children, particular care shall be exercised with regard to the impressionability, lack of experience and natural credulity of children.*
> *In the assessment of whether a commercial practice contravenes provisions in or introduced pursuant to this Act, account shall be taken of age, development and other factors that make children particularly vulnerable.*

Section 20 of the said Act further stipulates that, when assessing whether a commercial practice is unfair, emphasis must be given to whether the commercial practice is directed especially at children and that, even if the commercial practice is not directed especially at children, emphasis must be given to whether the practice, by virtue of its nature or the product, is likely to influence children, and to whether the trader can be expected to foresee the particular vulnerability of children to the practice. Prohibitions vis-à-vis direct exhortations to children to purchase advertised products or to persuade their parents or other adults to buy the advertised products for them apply. Assessment is also prescribed in the consideration of whether the marketing encourages breaches of the law, dangerous behaviour or breaches of ordinary safety norms, etc. in Section 21 of the Marketing Control Act.

According to the Broadcasting Act Section 3-1, advertisements cannot be broadcast in connection with children's programmes, nor can advertisements on television or in audiovisual on-demand services specifically target children.

#### 4.23.2.2.10. Other

N/A.

## 4.23.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aim at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.23.3.1. Sponsorship

The Broadcasting Act Section 3-4 stipulates rules on sponsorship, including the requirement that sponsored programmes be clearly identified, with information on sponsorship having to be given in the introduction and at the end of the programme.

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Information about the sponsor may also be given during a sponsored programme, including in single sponsored features. Information about the sponsor may be given in the form of the sponsor's name, trademark, logo, product or service.

Furthermore, the content and form of presentation in a sponsored programme must be such as to maintain the full editorial integrity of the media service provider. Sponsored programmes must not encourage the purchase or rental of any of the sponsor's products or services or those of a third party and must not contain specific promotional references to such products or services.

It is prohibited to sponsor news and current affairs programmes.

Broadcasting or audiovisual on-demand programmes cannot be sponsored by natural or legal persons whose principal activity is to manufacture, sell or hire out products or services for which advertising is prohibited by Norwegian legislation or rules issued pursuant thereto. Political party organisations must not sponsor broadcasts.

The Regulation relating to broadcasting and audiovisual on-demand services, in Section 3-10, stipulates that sponsor identification must not contain slogans, statements, images, sound or other forms of additional information that can be linked to a sponsor's name, trademark, logo, product or service. The sponsor identification can nevertheless contain a non-moving image or moving images of the sponsor's product or service in addition to the name of the sponsor's product or service, provided the purpose of the identification is to inform the viewer of the sponsorship. It is also stipulated that the identification of an individual sponsor may last for a maximum of 10 seconds for each full hour of the programme (or 40 seconds for programmes lasting more than an hour), as well as that a presentation of sponsored prizes in a programme must last no longer than necessary to inform the viewers about the prize. Section 3-15 includes rules for sponsorship and advertising directed at minors in audiovisual on-demand services.

This Regulation also stipulates that the Norwegian Media Authority NMA[496] may issue regulations setting a monetary threshold to identify when a programme is sponsored.

Section 3-11 further provides prohibitions on the sponsoring of broadcasting programmes:

> *Programmes for children and young people may not be sponsored by natural or legal persons whose purpose is to pursue economic business activity.*
> *Political party organisations may not sponsor broadcasting programmes.*

Section 3-13 contains rules concerning the Norwegian Broadcasting Corporation, including, *inter alia*, the prohibition on advertising in teletext services containing programme guides. Sponsorship identification requirements stipulated above are supplemented by a requirement to the effect that a sponsor may only be identified verbally and/or by a non-moving image. Also, NRK may accept contributions from sponsors only for:

[496] Medietilsynet, http://www.medietilsynet.no/.

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*a. Production and transmission of live or recorded broadcasts of sporting events. The Norwegian Broadcasting Corporation may not accept contributions in respect of other sports programmes which are not purely broadcasts of sporting events.*
*b. Production from events where the production in whole or in part takes place under the Norwegian Broadcasting Corporation's auspices and the programme is to be broadcast to more than one country or is of social interest or cultural significance; principally productions from important national events.*
*c. Production of educational programmes. Section 3-11, first paragraph, applies correspondingly to educational programmes directed at children and/or young people. In the assessment of whether an educational programme is directed at children and/or young people, Section 3-6 is applicable insofar as it is appropriate.*

The Norwegian Media Authority (NMA) has issued a set of non-legal guidelines, aimed at practitioners, providing references to relevant legal texts on sponsorship as well as cases from Norwegian courts dealing with sponsorship.

#### 4.23.3.2. Product placement

The NMA's guidelines provide references to relevant legal texts on product placement.

The Broadcasting Act, Sections 3-6 and 3-7, provide regulations on product placement in broadcasts and audiovisual on-demand services. In general, product placement in broadcasts and audiovisual on-demand services is prohibited, with the exception of "films, fictional series, sports programmes and light entertainment programmes". These exceptions do not apply to programmes produced or ordered by the Norwegian Broadcasting Corporation (NRK) or associated enterprises. No product placements are allowed in programmes particularly directed at children.

Section 3-7 provides requirements for programmes that do contain product placement. These must meet the requirements regarding the prohibition on influencing the responsibility and the editorial independence of the media service provider, and direct encouragement of the purchase or rental of goods or services, including by making special sales-promoting references to such goods or services. In addition:

*...c. Product placement must not give the relevant product or service undue prominence.*
*d. Viewers must be prevented from being misled, programmes containing product placement must be identified in a clear and neutral manner at the beginning and end of the programme, as well as when the programme resumes after an advertising break.*
*e. Programmes produced or ordered by media service providers subject to Norwegian jurisdiction or associated enterprises cannot contain product placement of products or services of particular interest to children, or of weapons, model weapons or toy versions of weapons.*
*f. Programmes produced or ordered by television enterprises subject to Norwegian jurisdiction or associated enterprises cannot contain product placement financed by political party organisations.*

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These requirements do not apply to programmes that have not been produced or ordered by the media service provider or associated enterprises.

## 4.23.4. Obligations regarding (v)blogs and (v)blogging

The Broadcasting Act does not encompass (v)blogs in its current status. Some vloggers may, however, be considered on-demand audiovisual media services.

The Norwegian Media Authority (NMA) has issued a set of non-legal guidelines on advertising for Youtubers and videobloggers, providing principles separating advertising from other forms of product discourse and explanations of the rules, which state, *inter alia*:

> *If you make videos that you post on YouTube or other video-sharing platforms, you have a duty to mark these. This applies if you earn money from, or receive other benefits from presenting products or services in the videos. Viewers must be aware of which videos contain advertising so as to be aware that someone wants to influence them to buy something. The Broadcasting Act has rules on the labelling of advertising, sponsorship and product placement, and these rules apply for those of you who post videos on your own channel. These guidelines advise you on how to tag your videos in order to fulfil the requirements that follow from the law.*

Vloggers who are not considered on-demand audiovisual media services must comply with the general regulation on marketing in the Marketing Control Act. The Consumer Authority has also issued guidelines regarding labelling of commercial content.

## 4.23.5. Other relevant information

N/A.

## 4.23.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

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#### 4.23.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

The revised AVMSD is not yet implemented in Norway, and there are no rules on this for VSP providers in the Norwegian law today.

Section 3-1 of the Broadcasting Act prohibits broadcasting of advertisement for, *inter alia*, belief systems: "Broadcasters cannot transmit advertisements for belief systems or political messages on television. This also applies to teletext services."

This prohibition only applies to linear television.

#### 4.23.6.2. Gambling, betting, betting tipsters, etc.

Marketing for gambling services is prohibited in Norway except for the few companies which hold a special permit. The prohibition also applies to audiovisual media service providers and VSP providers, according to the Lottery Act Section 11, the Gambling Act Section 2 and regulations under the Totalisator Act. The Norwegian Parliament has passed a new Gaming Scheme Act, which takes force from 1 January 2023, which will also relate to online media. The prohibition on marketing of gambling is upheld in Section 6. The new law provides the legal framework on how to: a. prevent problematic gambling and other negative effects of gambling, b. make sure gambling is conducted in responsible and safe ways, c. enable the transfer of revenues from gambling to non-commercial operations.

The Broadcasting Act Section 4-7 provides a mandate to the NMA to issue an order to Norwegian providers of TV networks in Norway, after receiving an advisory statement from the Norwegian Gambling Authority, with regard to preventing or hampering access to illegal marketing of gambling:

> ...
> *Before an order is issued pursuant to the first paragraph, the Norwegian Media Authority must assess whether the considerations that speak in favour of the order are weightier than the disadvantages the order will entail. An order must not be issued when the Norwegian Media Authority finds that it would be a disproportionate measure ...*

#### 4.23.6.3. Environmental or "green" claims for products

No specific provisions deal with this issue.

#### 4.23.6.4. Other

N/A.

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## 4.23.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.23.7.1. Self- and co-regulatory bodies

The revision of the current Broadcasting Act with regard to regulation of video-sharing platforms has yet to be considered. Meanwhile, it is worth noting that the NMA issued the aforementioned guidelines on sponsorship and product placement specifically to YouTubers and videobloggers. Also, a 2016 initiative from publishers, bloggers and advertiser networks led to the formation of a set of guidelines for so-called influencers, under the name "Common-sense guidelines".[497]

#### 4.23.7.1.1. Context of establishment and legal background

In addition to consideration of the revision of the Broadcasting Act related to VSPs, it should be noted that the Professional Committee for Influence Marketing[498] was established in 2020 by the Norwegian Advertisers' Association[499] and the Norwegian Media Businesses' Association[500], with the aim to contribute to responsible influencer marketing.

#### 4.23.7.1.2. Stakeholders involved

The Norwegian Advertisers' Association is an interest organisation for advertisers and marketers. The association's purpose is to safeguard the members' interests vis-à-vis suppliers of goods and services in the advertising sector, the media and authorities.

The Norwegian Media Businesses' Association is the media trade and tariff organisation in Norway. The organisation counts approx. 324 member businesses, consisting of newspapers, TV companies, media groups, magazines, multimedia companies, press agencies, radio stations, printing offices, distribution companies, advertising groups and advertising companies.

[497] These are guidelines, they do not have any self-regulatory body supervising them. The webpage is no longer working (http://www.sunnfornuftplakaten.no/), but a Facebook page is available: https://nb-no.facebook.com/SunnFornuftPlakaten/).
[498] Fagutvalget for Influencermarkedsføring, https://fim.as/.
[499] Annonsørforeningen, https://anfo.no/.
[500] Mediebedriftenes landsforening, https://www.mediebedriftene.no

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The Food and Drink Industry Professional Practices Committee (MFU)[501] is a self-regulatory body which consists of representatives of food manufacturers and food suppliers.

#### 4.23.7.1.3. Scope and objectives

The purpose of The Professional Committee for Influencer Marketing is to contribute to good and responsible marketing practices by those who work with influencer marketing. The aim is to reduce undue attention to body, beauty and outward appearance (sometimes referred to as "beauty sickness"). The association was established by the Norwegian Advertisers' Association and the Norwegian Media Businesses' Association as a self-regulatory scheme for the industry's players.

The purpose of the MFU is to raise awareness in the business community regarding the challenges related to marketing food and drink to children and young people, ensuring compliance with the Code and Guidance which lay down what is acceptable marketing, monitoring the industry ban on marketing certain types of food and drink to children under 13 years, and ensuring that everyone is able to complain to the MFU about marketing activity which infringes on the Code and Guidance. The MFU also issues pre-judgements on future campaigns, and responses by the MFU are published.

#### 4.23.7.1.4. Code(s) of conduct

While there are no known codes of conduct, the Professional Committee for Influencer Marketing, Norwegian Advertisers' Association and Norwegian Association of Media Companies run a variety of related programmes and initiatives.

The MFU manages the Code for marketing of food and drink aimed at children.[502] There is a prohibition on marketing to children certain products listed in a product list.

#### 4.23.7.1.5. Role of the (self-)regulatory bodies

The Professional Committee for Influence Marketing and the MFU receive complaints and make decisions, which are published in the press and on social media.

#### 4.23.7.1.6. Period of activity (if limited)

N/A.

[501] http://mfu.as.
[502] https://nye.mfu.as/?page_id=616.

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#### 4.23.7.1.7. Role of the regulatory authority in a co-regulatory system

##### *4.23.7.1.7.1. Regulatory body*

While the NMA has a rather broad mandate (supervising authority for broadcasting and licensing authority for local and other types of broadcasting; appellate body for matters relating to television licenses; administrator of a number of different subsidy schemes), it does not have a specific role related to co-regulation.

##### *4.23.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.23.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.23.7.2. Monitoring/evaluation, compliance and sanctioning powers

N/A.

## 4.23.8. Cross-sector and cross-border collaboration

N/A.

## 4.23.9. Update on plans and practices relative to new obligations of VSPs

A consultation paper on the implementation of the 2018 AVMSD was published in September 2022 (see Section 4.23.2.2.).

## 4.23.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- "Hvordan ivareta norsk og europeisk innhold i fremtiden? En analyse av Norges handlingsrom innenfor gjeldende og fremtidig amt-direktiv" ("How to sustain Norwegian and European content in the future? An analysis of Norway's room to

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maneuver within the existing and future AVMS Directive"), Norwegian Film Institute, 2017[503]

## 4.23.11. Data compilation

This factsheet is based on data compiled by Terje Colbjørnsen, Associate professor at the Oslo Metropolitan University, COLBYCO.

[503] https://www.nfi.no/statistikk/statistikk-analyse-og-rapporter/_/attachment/download/018daf64-aeaa-4f27-871b-6452e846574c:218d0fcbd5a587d986d076e3ac8aee5b8ad70654/Analyse%20av%20AMT-direktivet%20NFI%202017.pdf.

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# 4.24. PL – Poland – National legal summary[504]

## 4.24.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Ustawa z dnia 11 sierpnia 2021 r. o zmianie ustawy o radiofonii i telewizji oraz ustawy o kinematografii*[505] (Act amending the Broadcasting Act and the Cinematography Act).
- *Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji*[506] (Broadcasting Act).
- *Ustawa z dnia 19 listopada 2009 r. o grach hazardowych*[507] (Gambling Act).

Self and co-regulatory instruments:

- *Kodeks etyki reklamy*[508] (Code of Ethics in Advertising).

## 4.24.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

[504] The factsheet on Poland incorporates feedback from Albert Woźniak, an expert from the Department of Strategy of the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji – KRRiT) during the checking round with national regulatory authorities.
[505] https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20210001676.
[506] https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001414/U/D20171414Lj.pdf.
[507] https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20092011540/U/D20091540Lj.pdf.
[508] https://radareklamy.pl/kodeks-etyki/.

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### 4.24.2.1. Definitions

**Table 50. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Covered under definition of ACC. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | Covered under definition of sponsorship. |
| **Sponsored content** | Covered under definition of sponsorship. |
| **Product placement** | Yes. |

*Source: Polish response to European Audiovisual Observatory standardised survey*

#### 4.24.2.1.1. Audiovisual commercial communications

Article 4 paragraph 16 of the Broadcasting Act defines audiovisual commercial communications by transposing the revised AVMSD verbatim as follows:

> *…any communication, including images with or without sound, or sounds only, which is designed to promote, directly or indirectly, the goods, services or reputation of commercial or professional entity, accompanying or included in a programme or user-generated video, in return for payment or similar consideration, or for self-promotional purposes, in particular advertising, sponsorship, teleshopping and product placement;*

#### 4.24.2.1.2. Television advertising

The Broadcasting Act, Article 4 17 defines advertisement as:

> *advertising shall mean a commercial communication, originating from a public or private entity, in connection with its economic or professional activity, aimed at promoting the sale or use of goods or services in return for payment; self-promotion shall also be a form of advertising,*

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#### 4.24.2.1.3. Advertiser

There is no definition of advertiser, as it is understood to be covered under audiovisual commercial communications (see 4.24.2.1.1.)

#### 4.24.2.1.4. Surreptitious commercial communication

The definition in Article 4 point 20 of the Broadcasting Act covers surreptitious and misleading commercial communication:

> *…the representation of goods, services, the name, business name, trademark or the activities of an entrepreneur who is a producer of goods or a provider of services in programmes when the intention of the media service provider, in particular in return for payment or another benefit, is to achieve an advertising effect and the public might be misled as to the nature of the communication;*

#### 4.24.2.1.5. Misleading commercial communication

See under 4.24.2.1.4.

#### 4.24.2.1.6. Virtual advertising

There is no definition of virtual advertising, as it is understood to be covered under audiovisual commercial communications (see 4.24.2.1.1.)

#### 4.24.2.1.7. Sponsorship

Article 4 point 18 of the Broadcasting Act defines sponsorship, by transposing the revised AVMSD verbatim as:

> *sponsorship means any contribution to the financing of a media service, video-sharing platform, programme or user-generated video by an entity not engaged in providing media services, video-sharing platforms, user-generated videos or in producing programmes with a view to promoting its name, company, reputation, activity, goods, service, trademark or other specific individual designation;*

#### 4.24.2.1.8. Sponsor

There is no definition of sponsor, as it is understood to be covered under sponsorship (see 4.24.2.1.7.)

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#### 4.24.2.1.9. Sponsored content

There is no definition of sponsored content, as it is understood to be covered under sponsorship (see 4.24.2.1.7.)

#### 4.24.2.1.10. Product placement

Article 4 point 21 of the Broadcasting Act provides for the definition of product placement by transposing the revised AVMSD verbatim to include:

> *product placement means a commercial communication consisting of the inclusion of, or reference to, goods, a service or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration, and by providing goods or a service free of charge.*

#### 4.24.2.1.11. Other definitions

The references to the online techniques of commercial communications of direct marketing, commercial profiling and behaviourally targeted advertising can be found in the media law legislation. In particular, Article 47e paragraph 5 of the Broadcasting Act contains reference to direct marketing, commercial profiling or behaviourally targeted advertising in the context of the protection of personal data of minors collected or otherwise generated by video-sharing platform providers thanks to the use of parental control or age verification systems.

There is no direct reference to display advertising or overlay ads, but indirectly the legal status of such ads is dealt with by provisions on the protection of the integrity of media services (Article 44b of the Broadcasting Act), vis-à-vis the obligation to obtain the consent of media service providers to disseminate such ads together with the providers' programme by the distributors of such programmes.

### 4.24.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect requirements notions regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including the VSP providers related to commercial communications.

It should first be emphasised that Article 47l. of the Broadcasting Act provides for a general application of the legislation:

> *Video-sharing platform providers shall only be required to or prohibited from uploading specific programmes, user-generated videos or other communications to a video-sharing platform on the basis of this Act.*

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Article 47q paragraph 1, provides that the provisions of Article 16(1), Article 16b(1) to (3), Article 16c(1), Article 17 and Article 17a, which are further elaborated below, apply to commercial broadcasts promoted or sold by VSPs:

> *Articles 16(1), 16b(1) to (3), 16c(1), 17 and 17a shall apply mutatis mutandis to commercial communications uploaded to video-sharing platforms by their providers and commercial communications promoted or sold by those providers.*

#### 4.24.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 16b paragraph 1 subparagraphs 1 and 2 of the Broadcasting Act refer to the prohibition of tobacco, electronic cigarettes and alcoholic beverages, applicable to VSPs as well:

> *It shall be prohibited to transmit commercial communication for following goods and services:*
> *1) tobacco products, tobacco props, products imitating tobacco products or props and symbols associated with the use of tobacco, electronic cigarettes and refill containers, to the extent regulated by the Act of 9 November 1995 on the protection of health against the consequences of tobacco use and tobacco products (Journal of Laws of 1995 No. U. of 2021, item. 276);*
> *2) alcoholic beverages, to the extent regulated in the Act of 26 October, 1982 on Upbringing in Sobriety and Counteracting Alcoholism (Official Journal of 2019, item 2277).*

#### 4.24.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 16b paragraph 1 subparagraphs 3 – 4 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs, with the application of these provisions to VSPs contained in Article 47q paragraph 1 of the Broadcasting Act:

> *1. It shall be prohibited to broadcast commercial communications for following goods and services:*
> *[...]*
> *3) health benefits as defined in regulations on medical treatments provided only on prescription;*
> *4) medicinal products, to the extent regulated in the Act of 6 September, 2001 - "Pharmaceutical Law" ((Journal of Laws 2019, item 499, as amended)*

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#### 4.24.2.2.3. Surreptitious audiovisual commercial communications

Article 16c. subparagraph 1 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

*The following shall be prohibited:*
*[…]*
*1) surreptitious commercial communications.*

#### 4.24.2.2.4. Subliminal techniques in commercial communications

Article 16b paragraph 2 subparagraph 5 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

*2. It shall be prohibited to broadcast commercial communications that:*
…
*5) are of subliminal nature.*

#### 4.24.2.2.5. Prejudice with regard to human dignity

Article 16 paragraph 3 subparagraph 1 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

*3. Commercial communications shall not:*
*1) prejudice respect for human dignity.*

#### *4.24.2.2.6.* Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

Article 16b paragraph 3 subparagraph 2 of the Broadcasting Act prohibits such commercial communications for all media services, applicable to VSPs as well:

*3. Commercial communications shall not: …*
*2) include any discrimination on grounds of race, sex, nationality, ethnic origin, religion or belief, disability, age or sexual orientation*

#### 4.24.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 16b paragraph 3 subparagraph 5 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

*3. Commercial communications shall not: …*
*5) encourage behaviour prejudicial to health, safety or environmental protection.*

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#### 4.24.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 16b. paragraph 3 subparagraph 5 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

*3. Commercial communications shall not: …*
*5) encourage behaviour prejudicial to health, safety or environmental protection.*

#### 4.24.2.2.9. Causing physical, mental or moral detriment to minors

Article 16b paragraph 3 subparagraph 4 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

*3. Commercial communications shall not: …*
*4) cause physical, mental or moral detriment to minors.*

Article 16b paragraph 2 (subparagraphs 1 to 4) states the following:

*2. It shall be prohibited to broadcast commercial communications that:*
*1) directly exhort minors to purchase products or services,*
*2) encourage minors to exert pressure upon their parents or other persons to persuade them to purchase the products or services being advertised,*
*3) exploit the trust minors place in parents, teachers or other persons,*
*4) unreasonably show minors in dangerous situations.*

#### 4.24.2.2.10. Other

N/A.

## 4.24.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aim at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.24.3.1. Sponsorship

Article 17 (and reference to it vis-à-vis VSPs in Article 47q paragraph 1) of the Broadcasting Act provides for the same rules on sponsorship for all media service providers, including VSPs. Besides the prohibition of sponsorship of news (except sports and weather forecasts), commentaries on social and political topics, consumer and practical advice programmes,

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electoral programmes or programmes directly related to electoral campaigns, as well as a prohibition of content to be sponsored by political parties, trade unions, employers' organisations and individuals or legal entities whose principal operations consist in the production or sale of products or the provision of services for which advertising is prohibited, the rules stipulate:

*1. Recipients must be clearly informed about sponsoring. Sponsored programmes or other broadcasts must be identified as such by sponsor credits at the start and the end of the programme, and when a programme resumes after an advertising or teleshopping break. Sponsor credits may specify only the sponsor's name, business name, trademark or contain some other identification of the business operator or its business operations, a reference to its products, services or their trademark.*
*1a. The identification of the sponsor or any component part thereof may not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.*
*2. In addition, sponsor credits, or any component part thereof, may not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.*
*3. Sponsor credits may not contain the name, business name, trademark or other individual identification of the business operator or its business operations, the image of a product or service, the advertising of which is prohibited.*
*4. Sponsored programmes or other broadcasts may not encourage the purchase or other use of the products or services of the sponsor or a third party.*

#### 4.24.3.2. Product placement

Article 17a (and reference to it vis-à-vis VSPs in Article 47q paragraph 1) of the Broadcasting Act provides for the same rules for product placement for all media service providers, including VSPs. In addition to obligatory identification of product placement and the provision of neutral information on the producer or seller of the placed product in the programmes, product placement is allowed in all programs, except in news (excluding sports and weather forecasts), journalistic programs with socio-political content, consumer-related broadcasts, religious and children programmes. Besides, product placement must respect the service provider's autonomy and editorial responsibility as well as different criteria (e.g. not giving undue prominence, not encouraging the purchase or rental of goods or services).

It should be noted that the Chairman of the Broadcasting Council of KRRiT may request the submitting of documentation on product placement from the relevant broadcaster and KRRiT may further adopt secondary legislation pertaining to product placement (Article 17a paragraph 8).

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## 4.24.4. Obligations regarding (v)blogs and (v)blogging

The provisions concerning commercial communications should be applied to (v)blogs that fall under the definition of audiovisual media services. (V)blogs are treated as VoD providers under the condition that vloggers act within the scope of their business activity and present their content in the catalogue comparably to other VoD providers.

The responsibility for the enforcement of the rules on commercial communications on the platforms via which (v)blogs are made available is on VSPs themselves. Currently, the Office of Competition and Consumer Protection is conducting several proceedings against videobloggers that disseminate surreptitious and misleading advertising, but on the basis of provisions protecting consumers and not media law.

## 4.24.5. Other relevant information

N/A.

## 4.24.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.24.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

There are no specific rules pertaining to advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems.

### 4.24.6.2. Gambling, betting, betting tipsters, etc.

According to Article 16b paragraph 1 subparagraph 5 of the Broadcasting Act, products that should not be subject to advertising in commercial communications include those related to gambling and hazardous games. Commercial communications of this kind are prohibited in all types of media services and VSPs.

Article 29b, paragraphs 1-3, of the Gambling Act provides for certain exceptions:

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*1. Not prohibited are commercial communications of sports mutual bets which were authorised by the competent authority within the territory of Poland provided that:*
*1) communications are not addressed to minors, there are no minors in the commercial and it does not present sports bets with the participation of minors;*
*2) communication does not connect the success of the bet with physical and intellectual fitness or present the bet as a chance to obtain an easy win;*
*3) communication does not present gambling as an activity with a relaxing effect or that may easily solve social or financial problems;*
*4) communication does not present the reluctance to take part in gambling in a negative way;*
*5) communication does not encourage higher stakes payments as a factor that may increase the chances of winning;*
6) communication *does not evoke associations with:*
*a) sexual attractiveness;*
*b) relaxation or rest;*
*c) study or work;*
*d) professional, life or financial success*
*2. Commercials should not be presented:*
*1) on television or radio, or in cinemas and theatres, between 6:00 and 22:00 except during commercial breaks in the transmission of the sports events where entrepreneurs that organize gambling activity are a sponsor of the transmission or sponsor of the team or players that take part in that sports event.*
*[…]3. Commercial communications must include a message about:*
*1) the consequences of participating in illegal gambling;*
*2) risks related to gambling;*
*3) having authorization to arrange gambling services*

These rules apply to commercial communications disseminated via audiovisual media services and on VSP platforms.

### 4.24.6.3. Environmental or "green" claims related to products

There are no specific rules pertaining to environmental or "green" claims related to products in legislative acts in Poland. Entrepreneurs may voluntarily contain such information in their commercial communications.

The Code of Ethics in Advertising in paragraphs 33-39 states that commercial communications referring to environmental protection may not be misleading or suggest falsely that products or services are environmentally friendly:

*Article 33*
*Commercial communications may not undermine public confidence in properly implemented activities in the field of environmental protection.*
*Article 34*
*Commercial communications cannot take advantage of the audience lack of knowledge in the field of environmental protection.*

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The Advertising Council[509], which adopted this self-regulatory mechanism, has launched an initiative to prepare a self-regulatory code specifically addressing the issue of ethical communication and advertising in the field of environmental responsibility and sustainable development (the so-called Green Project)[510].

#### 4.24.6.4. Other

N/A.

## 4.24.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body/ies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.24.7.1. Self- and co-regulatory bodies

Self- or co-regulatory measures regarding specifically commercial communications on VSPs have not been introduced yet.

#### 4.24.7.1.1. Context of establishment and legal background

Article 3a paragraph 1 of the Broadcasting Act stipulates adoption of the codes of conduct vis-à-vis unfair market practices, as follows:

> *1. Media service providers, with a view to fulfilling the obligations set out in the Act, in particular in Article 14a, Article 16b (3a), Article 18a, Art. 47e and Article 47g, may create and adhere to codes of good practice within the meaning of the Act of 23 August 2007 on counteracting unfair market practices (Dz. U. of 2017, item 2070.*
> *1a. In order to meet the obligations laid down in this Act, in particular Articles 47p(1), 47q(1), 47t(1) to (3) and 47u(1), video-sharing platform providers may draw up and accede to codes of good practice within the meaning of Article 2(5) of the Unfair Commercial Practices Act of 23 August 2007.*

[509] Rada reklamy, https://radareklamy.pl.
[510] More information is available at: https://radareklamy.pl/green-project-new/.

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The aforementioned provisions also stipulate that KRRiT, in cooperation with the relevant minister "…initiates, supports and promotes the creation of codes of conduct referred to in paragraph 1 and 1a".

Also, the Code of Ethics in Advertising, adopted by the Advertising Council, which operates for the media industry, will now expand to VSPs as well, as VSPs were invited to take part in this self-regulatory mechanism.

#### 4.24.7.1.2. Stakeholders involved

The Advertising Council is a non-governmental, non-profit organisation. It was established in 2006 as the initiative of the stakeholders active in the advertising and marketing market. It comprises entities active in the advertising market (i.e., entrepreneurs in the sector where rules on commercial communications are specific, such as beer producers, producers of cosmetics, producers of foods high in fat and sugar etc., media associations, advertising agencies and entities producing commercials). It has created and manages a self-regulation system in the field of advertising. The organisation consists of industry associations as ordinary members and companies as supporting members.

Until now, VSP providers were not widely represented in the Advertising Council. Nevertheless, following implementation of the revised AVMSD, the Code of Ethics in Advertising now refers to commercial communications made available on VSP platforms. Therefore, more and more VSP providers will be invited to take part in the Council's activities.

In addition to this, the Polish broadcasting regulator KRRiT, in cooperation with the relevant minister, promotes the adoption of, and abidance by, codes of conduct by VSPs.

#### 4.24.7.1.3. Scope and objectives

The Advertising Council was established to create, promote and protect the principles that should be followed by entrepreneurs engaged in advertising activities in the territory of the Republic of Poland and Polish entrepreneurs advertising abroad. These principles are regulated in the Code of Ethics in Advertising.

#### 4.24.7.1.4. Code(s) of conduct

The self-regulatory Code of Ethics in Advertising, which is widely accepted by the Advertising Council, refers broadly to all commercial communications, inclusive of the communications disseminated on VSPs. It was adopted and promulgated by the Advertising Council, as a self-regulatory instrument.

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#### 4.24.7.1.5. Role of (self-)regulatory bodies

Even if the role of the self-regulatory bodies is, in general, recognised in the legislation amending the Broadcasting Act (Article 3a paragraph 1b), the Act does not directly refer to any particular self-regulatory bodies:

> *1b. The codes referred to in paragraph 1. and 1a:*
> *1) shall clearly and unambiguously set out objectives and provide for regular, transparent and independent methods of evaluating their achievement;*
> *2) shall lay down arrangements for the effective enforcement of their provisions, including effective and proportionate sanctions for non-compliance;*
> *3) shall be accepted by the majority of stakeholders implementing the requirements laid down in the codes, including major media service providers or video-sharing platform providers based in Poland.*

While the Code of Ethics in Advertising contains ethical provisions related to advertising practices, the Ethical Advertising Committee acts upon complaints to deliberate the potential non-abidance by the aforementioned code of conduct, and adopt resolutions in such cases.[511]

#### 4.24.7.1.6. Period of activity (if limited)

N/A.

#### 4.24.7.1.7. Role of the regulatory authority in a co-regulatory system:

See under 4.24.7.1.1.

##### *4.24.7.1.7.1. Regulatory body*

N/A.

##### *4.24.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.24.7.1.7.3. Relationship and roles of stakeholders*

N/A.

[511] For more details, please refer to: https://radareklamy.pl/en/complaints-handling-rules/.

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#### 4.24.7.2. Monitoring/evaluation, compliance and sanctioning powers

KRRiT is, according to Article 6 paragraph 2 of the Broadcasting Act, endowed with the following competencies vis-à-vis VSP services:

> *2) determining, within the limits of statutory powers, the operating conditions of media service providers and video-sharing platform providers; …*
> *4) supervising, within the limits laid down by this Act, the activities of media service providers and video-sharing platform providers; …*
> *5a) keeping updated the registers of VoD and VSP providers*

According to these provisions, KRRIT is entitled to: issue secondary acts (ordinances) in this respect; control the compliance of activity of VSP providers with provisions of law, in particular also concerning commercial communications disseminated on VSP platforms; impose sanctions on the providers in case of irregularities (administrative fines and in extreme circumstances – in case of notorious and grave irregularities – delete the provider from the register, resulting in a cessation of the legal conduct of business by a VSP provider). The sanctioning of VSPs can be appealed to administrative courts.

## 4.24.8. Cross-sector and cross-border collaboration

N/A.

## 4.24.9. Update on plans and practices related to new obligations of VSPs

KRRiT opened public consultations, in April 2022, regarding the regulation of classification of content available on VSPs that may be harmful for minors. On 13 April 2022, KRRiT adopted a secondary act[512] on this matter.

KRRiT has not prepared the proposal of secondary legislation concerning commercial communications on VSPs. In the scope of commercial communications on VSPs, self-regulation is planned as the first step.

## 4.24.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

[512] https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220001019/O/D20221019.pdf.

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- Strategic Report of IAB Poland, "Internet 2021/2022"[513] , 2021

## 4.24.11. Data compilation

This factsheet is based on data compiled by Karol Kościński, Attorney at Law, Karol Kościński Legal Office.

[513] https://raportstrategiczny.iab.org.pl.

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# 4.25. PT – Portugal – National legal summary[514]

## 4.25.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Lei n.º 74/2020, de 19 de novembro 2020 - Transpõe para a ordem jurídica interna a Diretiva (UE) 2018/1808 do Parlamento Europeu e do Conselho, de 14 de novembro de 2018, alterando a Lei n.º 27/2007, que aprova a Lei da Televisão e dos Serviços Audiovisuais a Pedido, e a Lei n.º 55/2012, relativa ao fomento, desenvolvimento e proteção da arte do cinema e das atividades cinematográficas e audiovisuais*[515] (Law no. 74/2020 - Transposes Directive (EU) 2018/1808 of the European Parliament and of the Council, of 14 November 2018, into the domestic legal order, amending Law no. 55/2012, on the promotion, development and protection of the art of cinema and cinematographic and audiovisual activities – Audiovisual Law no. 74/2020).
- *Lei n.º 27/2007 - Lei da Televisão*[516] (Television Law no. 27/2007), amended by L*ei n.º 8/2011,* which transposes Directive 2007/65/CE of the European Parliament and the Council.[517]
- *Código da Publicidade, Decreto-Lei n.º* 330/90[518] (Advertising Code, Law Decree no. 390/90 – Advertising Law).
- *Lei n.º 46/2012 - Transpõe a Diretiva n.º 2009/136/CE, na parte que altera a Diretiva n.º 2002/58/CE, do Parlamento Europeu e do Conselho, relativa ao tratamento de dados pessoais e à proteção da privacidade no setor das comunicações eletrónicas, procedendo à primeira alteração à Lei n.º 41/2004, e à segunda alteração ao Decreto-Lei n.º 7/2004*,[519] (Law no. 46/2012, of 29 August – transposes Directive 2009/136/EC, in the part that amends Directive 2002/58/EC, of the European Parliament and of the Council, on the processing of personal data and the protection of privacy in the electronic communications sector, making the first amendment to Law no. 41/2004, and the second amendment to Decree-Law no. 7/2004 – Personal data and privacy Act no. 46/2012).

[514] The factsheet on Portugal incorporates feedback received from Joana Duarte, an expert of the Supervision Department of the Portuguese Regulatory Authority for the Media (ERC), during the checking round with the national regulatory authorities.
[515] https://dre.pt/dre/detalhe/lei/74-2020-148963298.
[516] https://dre.pt/dre/legislacao-consolidada/lei/2007-34561375.
[517] https://dre.pt/dre/legislacao-consolidada/lei/2011-34462975 .
[518] https://dre.pt/dre/legislacao-consolidada/decreto-lei/1990-34537375.
[519] https://dre.pt/dre/detalhe/lei/46-2012-174793 .

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Secondary legislation:

- *Decreto-Lei n.º 57/2008 – Práticas Comerciais Desleais*[520] (Law Decree on Unfair Business Practices, Law Decree no. 57/2008).

Self and co-regulatory instruments:

- *Direção Geral do Consumidor DGC Guia para influenciadores e anunciantes*[521] (General Directorate for Consumers, DGC Guide for influencers and advertisers).

## 4.25.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised Audiovisual Media Services Directive (AVMSD). Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.25.2.1. Definitions

**Table 51. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | Yes. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | Yes. |
| **Sponsorship** | Yes. |

[520] https://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1067&tabela=leis.
[521] https://www.consumidor.gov.pt/pagina-de-entrada/guia-informativo-sobre-regras-e-boas-praticas-na-comunicacao-comercial-no-meio-digital.aspx.

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| | |
|---|---|
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |
| **Other** | Direct marketing |

*Source: Portuguese response to European Audiovisual Observatory standardised survey*

#### 4.25.2.1.1. Audiovisual commercial communications

Article 2, paragraph 1, subparagraph e) of Audiovisual Law no. 74/2020 provides for the definition of audiovisual commercial communications:

> *Audiovisual commercial communication' means the presentation of images, with or without sound, which are designed to directly or indirectly promote the goods, services or image of a natural or legal person pursuing an economic activity, including those that accompany, or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes; in particular, this may take the form of television advertising, sponsorship mentions, teleshopping, product placement; mentions of support for production, telepromotion or self-promotion.*

#### 4.25.2.1.2. Television advertising

Television Law no. 27/2007, in Article 2, paragraph 1, subparagraph r), defines television advertising:

> *'television advertising' means any audiovisual commercial communication broadcast in television programme services whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a private or public undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.*

#### 4.25.2.1.3. Advertiser

Article 5, paragraph 1, subparagraph a) of the Advertising Law defines an advertiser as a: "natural or legal person in the interest of whom the advertising is carried out".

#### 4.25.2.1.4. Surreptitious commercial communication

The Advertising Law, in Article 9, paragraph 3, states that surreptitious commercial communication is: "advertising that, through the use of any technique, can provoke sensory perceptions in the recipient of which he is not aware".

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#### 4.25.2.1.5. Misleading commercial communication

The Advertising Law, in Article 10, paragraph 1 and the Law Decree on Unfair Business Practices, in Article 7, paragraph 1, defines misleading commercial communication:

> *contains information that is false or which, even if factually correct, for any reason, in particular its general presentation, misleads or is likely to mislead the consumer and which, in both cases, leads or is likely to lead the consumer to take a transactional decision that the consumer would not have taken otherwise.*

#### 4.25.2.1.6. Virtual advertising

Article 2, paragraph 1, subparagraph f) of Television Law no. 27/2007 defines virtual advertising as: "audiovisual commercial communication resulting from the replacement, by electronic means, of other commercial communications".

#### 4.25.2.1.7. Sponsorship

Audiovisual Law no. 74/2020, in Article 2, paragraph 1, subparagraph o), defines sponsorship to include:

> *any contribution made by a public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trademark, image, activities or products.*

#### 4.25.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.25.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.25.2.1.10. Product placement

Article 2, paragraph 1, subparagraph d) of Audiovisual Law no. 74/2020 defines product placement to represent:

> *audiovisual commercial communication consisting of the inclusion or reference to a product, a service, or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration.*

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#### 4.25.2.1.11. Other definitions

There is a reference to “direct marketing” in the Advertising Code. The rules pertaining to this concept are applicable to VSPs since they must respect rules in force regarding commercial communications (see section 4.25.2.2.).

Advertising Code, Law Decree no. 330/90, Article 23, paragraph 1, subparagraphs a) to d):

> *Advertising delivered to the addressee's home, by correspondence or any other means, must clearly and precisely contain:*
> *a) The name, address and other elements necessary for the identification of the advertiser;*
> *b) Indication of the place where the addressee can obtain the information he needs;*
> *c) A rigorous and faithful description of the advertised good or service and its characteristics;*
> *d) The price of the good or service and the respective form of payment, as well as the conditions of acquisition, warranty and after-sales assistance.*

### 4.25.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

On a general note, it should be noted that Television Law no. 27/2007, which was amended by Audiovisual Law 74/2020, in Article 69-B, paragraph 1) provides the obligations on the part of VSPs to ensure that audiovisual commercial communications marketed, sold or organised by them are easily recognisable as such and that they respect the restrictions regarding concepts elaborated further below.

Further, Article 69-B, paragraph 2 obliges VSPs to take appropriate measures to ensure that audiovisual commercial communications available through their services that are not promoted, sold or organised by them, respect the aforementioned provisions, and must include in the respective conditions of use of services the obligation of users to:

> *a) Respect the rules in force regarding commercial communications, namely the provisions of the previous number;*
> *b) Declare the inclusion of audiovisual commercial communications in the videos generated by them.*

#### 4.25.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Television Law no. 27/2007, in Article 69-B, paragraph 1, provides an obligation on the part of VSPs:

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*Video sharing platform providers shall ensure that audiovisual commercial communications they market, sell or arrange are readily recognisable as such and that they do not:*
*f) concern cigarettes and other tobacco products, as well as electronic cigarettes or refill containers;*
*g) specifically target children and young people in cases where they concern alcoholic beverages;*
*h) encourage the immoderate consumption of alcoholic beverages.*

#### 4.25.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 69-B, paragraph 1 of the Television Law no. 27/2007:

*Video sharing platform providers shall ensure that audiovisual commercial communications they market, sell or arrange are readily recognisable as such and that they do not:*
*i) concern medicine products and medical treatments available only on prescription.*

#### 4.25.2.2.3. Surreptitious audiovisual commercial communications

Television Law no. 27/2007, in Article 69-B, paragraph 1, obliges VPSs to:

*Video sharing platform providers shall ensure that audiovisual commercial communications they market, sell or arrange are readily recognisable as such and that they do not:*
*b) constitute surreptitious or hidden advertising.*

#### 4.25.2.2.4. Subliminal techniques in commercial communications

Television Law no. 27/2007, Article 69-B, paragraph 1 obliges VSPs to:

*Video sharing platform providers shall ensure that audiovisual commercial communications they market, sell or arrange are readily recognisable as such and that they do not:*
*c) use subliminal techniques.*

#### 4.25.2.2.5. Prejudice with regard to human dignity

Besides the obligation of the programming of audiovisual media services to respect the dignity of the human person, the specific rights of children and young people, as well as fundamental rights, freedoms and guarantees under Television Law no. 27/2007, Article 27, paragraph 1, the Advertising Law, Article 7, paragraph 2, subparagraph c) provides for the prohibition of advertising prejudice with regard to human dignity: “Advertising that violates the dignity of the human person is prohibited.”

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#### 4.25.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

The Advertising Law, Article 7, paragraph 2, subparagraph d) states that:

> *Specifically, advertising shall be prohibited if it:*
> *d) contains any discrimination in relation to race, language, place of origin, religion or sex*.

Television Law no. 27/2007, Article 27, paragraph 2, subparagraph a) also provides for a general prohibition with regard to audiovisual media services, which cannot, through programming elements:

> *Audiovisual media services shall not, through programming elements*
> *a) Incite violence or hatred against groups of persons or members of such groups on grounds of sex, race, colour or ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, wealth, disability, age, sexual orientation or nationality."*

According to Article 2, paragraph 5 (Television Law), these provisions are applicable to VSPs: "Only when a dissociated part of the service provided corresponds to the definition of audiovisual media service… and only to that part of the service."

#### 4.25.2.2.7. Encouragement of behaviour prejudicial to health or safety

Television Law no. 27/2007, in Article 69-B, paragraph 1 (added by Audiovisual Law 74/2020) obliges VSPs to: "…ensure that audiovisual commercial communications … do not:

> *d) encourage behaviour that is harmful to health or safety."*

#### 4.25.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Television Law no. 27/2007, Article 69-B, paragraph 1, subparagraph e) (added by the Audiovisual Law) obliges VSPs to:

> *Video sharing platform providers shall ensure that audiovisual commercial communications they market, sell or arrange are readily recognisable as such and that they do not e) encourage behaviour grossly prejudicial to the protection of the environment.*

Article 7, paragraph 2, subparagraph d) of the Advertising Law provides for a general prohibition on advertising that encourages behaviour that is harmful to protection of the environment.

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#### 4.25.2.2.9. Causing physical, mental or moral detriment to minors

Television Law no. 27/2007, Article 69-B, paragraph 1, subparagraph j), added by Audiovisual Law 74/2020, obliges VSPs to:

> *Video sharing platform providers shall ensure that audiovisual commercial communications they market, sell or arrange are readily recognisable as such and that they do not*
> *j) risk causing physical, mental or moral detriment to children and young people, particularly by:*
> *i) directly exhorting them to buy or hire a product or service by exploiting their inexperience or credulity;*
> *ii) directly encouraging them to persuade their parents or others to purchase goods or services;*
> *iii) exploiting the special trust children and young people place in parents, teachers or other persons; and*
> *iv) showing children and young people in dangerous situations, without good reason.*

The Advertising Law, Article 14, paragraph 1, subparagraphs a) to d) provides for restrictions taking into account the psychological vulnerability of minors. In particular, VSPs must refrain from directly encouraging minors (exploiting their inexperience or credulity) to purchase a particular good or service and/or to persuade their parents or third parties to buy the products or services. Additionally, VSP services must not:

> *Advertising specifically targeting minors shall at all times take into account their psychological vulnerability and shall not:*
> *a) encourage minors directly, by way of their inexperience or credulity, to acquire a particular product or service;*
> *b) directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;*
> *c) contain elements likely to jeopardise their physical or moral wellbeing, health or safety, in particular pornographic content or content encouraging violence;*
> *d) exploit the particular trust that minors place in their parents, guardians or teachers.*

Finally, Television Law no. 27/2007, Article 93-B refers to restrictions regarding children's personal data:

> *Personal data of children and young people collected or generated by television programme service operators, on-demand audiovisual service operators or video-sharing platform providers pursuant to Article 27(3), (5) and (6) and Article 69c(e) and (f) shall not be processed for commercial purposes, such as direct marketing, profiling and behaviourally targeted advertising, in accordance with the General Data Protection Regulation in conjunction with the Law on Protection of Children and Young People in Danger, particularly with regard to obtaining consent from those exercising parental responsibility.*

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4.25.2.2.10. Other

N/A.

## 4.25.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aim at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.25.3.1. Sponsorship

Sponsorship rules (Article 41 of the Television Law) are applicable to VSPs, as established in Article 69-B of the Television Law. In particular, it provides that VPSs must ensure that audiovisual commercial communications that are marketed, sold or arranged by them are readily recognisable, that they are not in breach of all the provisions stipulated in this section above, and that they do not:

*i) directly exhorting them to buy or hire a product or service by exploiting their inexperience or credulity;*
*ii) directly encouraging them to persuade their parents or others to purchase goods or services;*
*iii) exploiting the special trust children and young people place in parents, teachers or other persons; and*
*iv) showing children and young people in dangerous situations, without good reason.*

VSP providers must take appropriate measures to ensure that audiovisual commercial communications transmitted in their services that are not marketed, sold or arranged by them comply with the obligations stipulated above, and must include in their services' terms and conditions the obligation for users to comply with current commercial communications rules, including the obligation to clearly inform the public where programmes and user-generated videos contain audiovisual commercial communications.

### 4.25.3.2. Product placement

Product placement rules (Article 41-A of the Television Law) are applicable to VSPs, as established in Article 69-B of the Television Law, and the same rules apply as for sponsorship, provided above.

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## 4.25.4. Obligations regarding (v)blogs and (v)blogging

(V)blogs are not considered audiovisual media services; hence the provisions of the related legislation do not apply. However, the Portuguese General Directorate for Consumer Guidance provides good practices in commercial communication in digital media.[522]

## 4.25.5. Other relevant information

N/A.

## 4.25.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.25.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

The Advertising Law, Article 7, paragraph 1, subparagraph h) includes a general provision stating that advertising that "has as its object trade union ideas, political or religious content" is forbidden.

### 4.25.6.2. Gambling, betting, betting tipsters, etc.

The Advertising Law, in article 21, paragraph 1, states that gambling and betting advertising:

> *…must be carried out in a socially responsible manner, respecting, in particular, the protection of minors, as well as other vulnerable and risk groups, giving priority to the recreational aspect of the activity of games and betting and not disregarding those who do not play, not appealing to aspects related to easy gain obtention, not suggesting success,*

[522] See https://www.consumidor.gov.pt/pagina-de-entrada/guia-infornativo-sobre-regras-e-boas-praticas-na-comunicacao-comercial-no-meio-digital.aspx).

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*social success or special skills as a result of the game, nor encouraging excessive gambling or betting practices.*

Additionally, gambling and betting advertising targeted at minors or using minors as intervenient is strictly forbidden (Article 21, paragraph 2), as is such advertising inside schools or other infrastructures intended for minors' attendance (Article 21, paragraph 3) and in places with less than 250 metres in a straight line from schools or other infrastructures intended for minors' attendance (Article 21, paragraph 4 – with the exception of state social games, as indicated in article 21, paragraph 7).

Explicit or implicit mention of games and bets cannot be made in places where there are events for minors or in which they participate as main intervenients, as well as in commercial communications and advertising of these events (Article 21, paragraph 5).

#### 4.25.6.3. Environmental or "green" claims for products

There are no specific rules pertaining to environmental or "green" claims for products in Portugal.

#### 4.25.6.4. Other

N/A.

### 4.25.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

#### 4.25.7.1. Self- and co-regulatory bodies

##### 4.25.7.1.1. Context of establishment and legal background

Self- and co-regulatory mechanisms are not in place at this moment. Such mechanisms are, however, envisaged by Article 6, paragraph 1, Audiovisual Law no 74/2020, requiring the Regulatory Authority for the Media (ERC)[523] to encourage: "the adoption of co-regulation,

[523] Entidade Reguladora para a Comunicação Social – ERC, http://www.erc.pt/.

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self-regulation and cooperation mechanisms between the various television operators, on-demand audiovisual services and VSP providers".

A similar provision is also found in the Television Law 27/2007, Article 69-E, in particular in reference to the protection of human rights and the protection of children and youth, consumer protection, etc.

It should be noted that for the moment there are no specific initiatives in this context regarding VSPs.

#### 4.25.7.1.2. Stakeholders involved

Article 6, paragraph 1, Audiovisual Law no 74/2020, states that various television operators, on-demand audiovisual services and VSP providers should cooperate.

#### 4.25.7.1.3. Scope and objectives

See under 4.25.7.1.1.

#### 4.25.7.1.4. Code(s) of conduct

For the moment, there are no details as to the issues that will be covered by self- and co-regulation.

#### 4.25.7.1.5. Role of the (self-)regulatory bodies

See under 4.25.7.1.1.

#### 4.25.7.1.6. Period of activity (if limited)

N/A.

#### 4.25.7.1.7. Role of the regulatory authority in a co-regulatory system:

##### *4.25.7.1.7.1. Regulatory body*

The ERC shall encourage co-regulation, self-regulation and cooperation mechanisms.

##### *4.25.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.25.7.1.7.3. Relationship and roles of stakeholders*

N/A.

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#### 4.25.7.2. Monitoring/evaluation, compliance and sanctioning powers

Article 69-D of Television Law no.27/2007 includes reference to the ERC: "The ERC assesses the adequacy and effectiveness of the solutions adopted by VSPs to implement the provisions of the previous article."

For the moment, there is no information available pertaining to monitoring.

## 4.25.8. Cross-sector and cross-border collaboration

N/A.

## 4.25.9. Update on plans and practices related to new obligations of VSPs

N/A.

## 4.25.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- Faculdade de Direito da Universidade do Porto (Law School of Porto University), *Problemas jurídicos das plataformas eletrónicas de partilha de vídeos: A criação de conteúdos no youtube e os seus limites* (Tese de mestrado) (Legal issues of electronic Video-sharing Platforms: The creation of content on YouTube and its limits (Master's Thesis), 2019)[524]
- Entidade Reguladora para a Comunicação Social (ERC) Alteração do âmbito de aplicação da Lei da Transparência dos Media (Change in the scope of the Law on Media Transparency, 2022[525])

[524] https://repositorio-aberto.up.pt/bitstream/10216/125887/2/381751.pdf.

[525] https://www.erc.pt/download/YToyOntzOjg6ImZpY2hlaXJvIjtzOjM5OiJtZWRpYS9kZWNpc29lcy9vYmplY3RvX29mZmxpbmUvODQ4MS5wZGYiO3M6NjoidGl0dWxvIjtzOjMxOiJkZWxpYmVyYWNhby1lcmMyMDIyOTktdHJwLW1lZGlhIjt9/deliberacao-erc202299-trp-media.

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## 4.25.11. Data compilation

This factsheet is based on data compiled by Elsa Costa e Silva, Assistant Professor and Mariana Lameiras, Researcher at the Communication and Society Research Centre (CSRC), University of Minho.

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# 4.26. RO – Romania – National legal summary[526]

## 4.26.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Legea audiovizualului nr. 504/2002[527], cu modificările și completările aduse prin Legea nr. 190/2022 pentru modificarea și completarea Legii audiovizualului nr. 504/2002, pentru modificarea și completarea Ordonanței Guvernului nr. 39/2005 privind cinematografia, precum și pentru modificarea Legii nr. 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune,Monitorul Oficial 651[528] (Law no. 502/2002, as subsequently amended and supplemented by Law no. 190/2022 for the amendment and completion of the Audiovisual Law no. 504/2002, for the amendment and completion of the Government Ordinance no. 39/2005 on cinematography, as well as for the amendment of Law no. 41/1994 on the organisation and functioning of the Romanian Broadcasting Company and the Romanian Television Company) – The Audiovisual Law.
- *Legea nr. 363/2007 privind combaterea practicilor incorecte ale comercianţilor în relaţia cu consumatorii*[529] (Law no. 363/2007 on fighting against unfair practices of traders in relation to consumers and on the harmonisation of regulations with the European legislation on consumer protection).
- Legea nr. 158 din 18 iulie 2008 republicată, privind publicitatea înșelătoare și publicitatea comparativă, Monitorul Oficial 45[530] (Law 158/2008, as republished, on misleading advertising and comparative advertising).

[526] The factsheet on Romania incorporates feedback received from Ruxandra Minea-Cristea, working at the European Relations Union Unit, at the National Audiovisual Council (CNA), during the checking round with the national regulatory authorities.
[527] The consolidated version, as updated at 30 June 2022 (which includes the provisions of the Law 190/2022), https://www.cna.ro/article12050,12050.html.
[528] https://legislatie.just.ro/Public/DetaliiDocument/256901; The Law came into force on 3rd July 2022, amending Law 504/2002.
[529] https://e-justice.europa.eu/fileDownload.do?id=4cd1400f-4310-4ad1-98ff-cc86f258fcc5.
[530] https://legislatie.just.ro/Public/DetaliiDocument/95934.
English:
https://www.global-regulation.com/translation/romania/3758119/law-no.-158-of-18-july-2008-%2528republished%2529-on-misleading-and-comparative-advertising.html.

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Secondary legislation:

- *Decizia 220/2011 privind Codul de reglementare a conținutului audiovizual*[531] (Decision no. 220/2011 regarding the Regulatory Code of Audiovisual Content).

Self and co-regulatory mechanisms:

- Consiliul Roman pentru Publicitate Codul de practică în comunicarea comercială[532] (Romanian Advertising Council (RAC) Code of Advertising Practice[533]).

## 4.26.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.26.2.1. Definitions

**Table 52. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes. |
| **Virtual advertising** | Yes. |
| **Sponsorship** | Yes. |

[531] https://www.cna.ro/DECIZIE-Nr-220-din-24-februarie.html.
[532] https://www.rac.ro/ro/cod/codul-de-practic%C4%82-%C3%8En-comunicarea-comercial%C4%82.
[533] https://www.rac.ro/en/cod/the-code-of-advertising-practice.

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| | |
|---|---|
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

*Source: Romanian response to European Audiovisual Observatory standardised survey*

#### 4.26.2.1.1. Audiovisual commercial communications

Following the adoption of Law no. 190/2022, the law amending the Audiovisual Law, in Article 1(1) point 15 defines audiovisual commercial communications, by transposing the revised AVMSD verbatim, as follows:

> *…images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity, such images accompany or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purpose. Forms of audiovisual commercial communication include, inter alia, radio or television advertising, sponsorship, teleshopping and product placement.*

#### 4.26.2.1.2. Television advertising

Amended Audiovisual Law, in Article 1.17, defines television advertising by transposing the text of the revised AVMSD verbatim:

> *television advertising - any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotion purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment.*

#### 4.26.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.26.2.1.4. Surreptitious commercial communication

Article 1.16 of the amended Audiovisual Law defines surreptitious commercial communication:

> *surreptitious audiovisual commercial communication means the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programs when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.*

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#### 4.26.2.1.5. Misleading commercial communication

Article 3 (b) of the Law 158/2008, as republished, on misleading advertising and comparative advertising defines misleading advertising as:

> *advertising which, in any way, including by way of presentation, induces or may mislead the persons to whom it is addressed or who make contact with it and which, because of the misleading character, may affect their economic behaviour or which, for that reason, prejudices or may harm a competitor.*

#### 4.26.2.1.6. Virtual advertising

Article 1.25 of the amended Audiovisual Law provides a definition of virtual advertising:

> *virtual advertising - broadcasting technique for television advertising which allows image processing, during broadcast of some events, by replacing images of the advertising on the panels inside the place where the events unfold, with advertising messages introduced by broadcasters, or by overlapping new images with such messages in any part of the image transmitted.*

#### 4.26.2.1.7. Sponsorship

Article 1.19 of the amended Audiovisual Law defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

> *any contribution made by public or private legal persons or by natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes, with a view to promoting their name, trade mark, image, activities or products.*

#### 4.26.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.26.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.26.2.1.10. Product placement

Article 1.21 of the amended Audiovisual Law provides for the definition of product placement, by transposing the text of the revised AVMSD:

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*any of the audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trademarks thereof so that it is featured within a program or a user-generated video in return for payment or for similar consideration.*

#### 4.26.2.1.11. Other definitions

N/A.

### 4.26.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

The Law 190/2022 (Article 42[8]) amending the Audiovisual Law introduced the legal basis for the provisions applying to VSPs in Chapter III, as well as specific requirements, inclusive of the obligation to respect the restrictions and prohibitions vis-à-vis commercial communications from Article 29 of the Audiovisual Law, which are elaborated further below.

Article 42[8]:

*(1)The providers of video-sharing platforms under the jurisdiction of Romania have the obligation to take measures in order to comply with the provisions of Art. 29 para (1) and (2), both with regard to audiovisual commercial communications that are promoted, marketed or organised by those video-sharing platform providers, and with regard to audiovisual commercial communications that are not promoted, marketed or organised by them, taking into account the limited control exercised by the respective video-sharing platforms over these audiovisual commercial communications.*
*(2) The providers of video-sharing platforms have the obligation to take measures in order to clearly inform the users when the programs and videos generated by the users contain audiovisual commercial communications, provided that these communications are declared, according to para (7) lit. c), or if the provider is aware of this.*

However, there are a few provisions introduced as amendments to the Audiovisual Law with no clear indication if their scope includes the VSPs (e.g. Art 31.1 concerning product placement), or their scope will remain limited, as under current legislation.

Besides, VSPs, in relation with commercial communications, must respect general obligations pertaining to respect of morality, religious and political beliefs (see amended Article 29 (1), in conjunction with Article 42[8] (Law 190/2022)). Finally, Article 42[7] paragraphs b) and c) provides the obligation to protect the general public from incitement to violence or hatred and from public instigation to crimes.

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#### 4.26.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 29 paragraph 5 of the amended Audiovisual Law provides for the prohibition of encouraging excessive consumption of alcohol, as follows: Audiovisual commercial communications for alcoholic beverages may not encourage excessive consumption of those beverages and may not specifically target minors.

In relation to cigarettes and tobacco-related products, Article 29 paragraph 6 of the amended Audiovisual Law provides for the prohibition as follows: All forms of audiovisual commercial communication for cigarettes and other tobacco products, including electronic cigarettes and refill bottles, are prohibited.

#### 4.26.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 29 paragraph 7 of the amended Audiovisual Law prohibits audiovisual commercial communications for medicinal products, as follows: Audiovisual commercial communications concerning medicines or medical treatments, available in Romania only on the basis of a medical prescription, are prohibited.

#### 4.26.2.2.3. Surreptitious audiovisual commercial communications

Article 29 paragraph 3 of the amended Audiovisual Law prohibits surreptitious audiovisual commercial communications: "Audiovisual commercial communications with hidden commercial content are prohibited."

Article 29 paragraph 1 (a) of the amended Audiovisual Law stipulates that audiovisual commercial communications broadcast by audiovisual media service providers must: "a) be readily recognisable as such, and surreptitious audiovisual communications shall be prohibited."

#### 4.26.2.2.4. Subliminal techniques in commercial communications

Article 29 paragraph 1 (b) of the amended Audiovisual Law stipulates that audiovisual commercial communications broadcast by audiovisual media service providers must: "b) not use subliminal techniques".

#### 4.26.2.2.5. Prejudice with regard to human dignity

Article 29 paragraph 1 (c) of the amended Audiovisual Law obliges audiovisual commercial communications to: "c) to respect human dignity".

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#### 4.26.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

Article 29 paragraph 1 (d) of the amended Audiovisual law stipulates that audiovisual commercial communications: "d) not include or promote acts of discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation."

#### 4.26.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 29 paragraph 1 (f) of the amended Audiovisual law provides the obligation for audiovisual commercial communications: "f) not encourage behaviour that is harmful to public health or safety."

#### 4.26.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Audiovisual commercial communications are, according to Article 29 paragraph 1 (g) of the amended Audiovisual law: "g) not encourage behaviour that is grossly prejudicial to the protection of the environment".

#### 4.26.2.2.9. Causing physical, mental or moral detriment to minors

According to Article 29 paragraph 2 of the amended Audiovisual Law, audiovisual commercial communication must not cause any moral, physical or mental harm to minors and, in particular:

*a) not directly exhort minors to buy or rent a product or service, by exploiting their lack of experience or credulity;*
*b) not directly encourage minors to persuade their parents or other persons to buy the goods or services that are the subject of advertising;*
*c) not exploit the special trust that minors have in parents, teachers or other persons;*
*d) not unreasonably show minors in dangerous situations.*

Article 42[7] (Law 190/2022) presents the obligation of the VSPs to take appropriate measure to protect:

*a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development, and in particular from programmes containing gratuitous violence and pornography, in accordance with Article 39(1).*

#### 4.26.2.2.10. Other

N/A.

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## 4.26.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.26.3.1. Sponsorship

Article 34 sets conditions for sponsored programmes.

### 4.26.3.2. Product placement

At present, Article 31 paragraphs 1 and 2 of the amended Audiovisual Law, establishes rules on product placement for audiovisual media services for programmes produced after 19 December 2009 and containing product placement. However, it is yet unclear whether it applies or not to VSPs.

## 4.26.4. Obligations regarding (v)blogs and (v)blogging

(V)blogs and (v)bloggers are not mentioned in the legal texts, as of yet.

## 4.26.5. Other relevant information

N/A.

## 4.26.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

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#### 4.26.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.26.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue.

#### 4.26.6.3. Environmental or "green" claims for products

There is a reference in Article 29 paragraph 1 (g) of the amended Audiovisual Law not to stimulate behaviours that seriously harm the protection of the environment, applicable to VSPs in conjunction with Article 42[8] paragraph 1 (Law 190/2022).

#### 4.26.6.4. Other

N/A.

### 4.26.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs

#### 4.26.7.1. Self- and co-regulatory bodies

##### 4.26.7.1.1. Context of establishment and legal background

Since the update of the Audiovisual Law in 2022, self- and co-regulatory measures have not been implemented yet.

Article 6.1 of the Law 190/2022 refers to self-regulation for all AV media services:

*Co-regulation and self-regulation shall be encouraged and considered necessary in the field of audiovisual media services, and shall be implemented through codes of conduct adopted at the national level, as provided for by this Law and in compliance with its provisions. Those codes of conduct shall be developed in cooperation between audiovisual media service providers, video-sharing platform service providers or the organisations representing them and the representatives of other sectors concerned.*

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Also, Article 42[8] paragraph 3 of the Law 190/2022 (Chapter III[6] of the amended Audiovisual Law) refers to self and co-regulation for VSP services:

> *(3) In the field of video-sharing platforms, the use of co-regulation and self-regulation shall be encouraged through codes of conduct in order to effectively reduce the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended.*

#### 4.26.7.1.2. Stakeholders involved

In addition to the CNA, there are no self-regulatory bodies involved in self-regulatory mechanisms pertaining to obligations of VSPs.

#### 4.26.7.1.3. Scope and objectives

Article 42[10] of Law 190/2022 provides that the CNA "encourages the use of co-regulation and self-regulation."

#### 4.26.7.1.4. Code(s) of conduct

At present, there are no codes yet. Law 190/2022 refers to codes of conduct in order, for instance, to reduce children's exposure to audiovisual commercial communications on foods and beverages containing fats, trans fatty acids, salt or sodium and sugars (Article 42[8] paragraph 3). Also, Article 39.3 refers to codes of conduct of the European Union on systems that describe the potentially harmful nature of the content of an audiovisual media service.

The Code of Advertising Practice, as developed by the RAC is applicable to the members of the organisation and represents a set of ethical rules to be observed by all those involved in advertising and in any form of commercial communication, in order to provide proper, honest and decent communication observing the law and practice principles in advertising and commercial communication.

#### 4.26.7.1.5. Role of the (self-)regulatory bodies

N/A.

#### 4.26.7.1.6. Period of activity (if limited)

N/A.

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#### 4.26.7.1.7. Role of the regulatory authority in a co-regulatory system

##### *4.26.7.1.7.1. Regulatory body*

According to Law 190/2022, in Article 42[10] the CNA encourages self and co-regulation and evaluates the measures taken by VSPs to respect legal obligations: "(1) For the purpose of implementing the measures provided in Article 42[7] and 42[8] para (6) - (8), the Council encourages the use of co-regulation and self-regulation."

Further, Article 42[10] provides:

> *(2) The Council shall establish, by means of decisions, the necessary mechanisms to assess the appropriateness of the measures referred to in Articles 42[7] and 42[8] para (6) - (8), implemented by video-sharing platform providers.*

For the purpose of implementing the measures provided in Article 42[9], para (6) in the same Article 42[9] *states the role of the CNA:*

> *(65) The full mechanisms of the implementing measures will be established by the Council. These mechanisms should be easy to access and use and allow for the transmission of notifications by electronic means.*

##### *4.26.7.1.7.2. Co-regulatory scheme*

See under 4.26.7.1.1.

##### *4.26.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.26.7.2. Monitoring/evaluation, compliance and sanctioning powers

Law 190/2022, in Article 42[9], paragraphs 1-3 on enforcement and sanctions stipulates:

> *(1) Where the content of a video-sharing platform infringes Articles 42^7 and 42^8 and no other effective means are available to enforce those provisions and avoid the risk of serious harm to the collective interests of the public or the legitimate interests of a person, the National Audiovisual Council shall request:*
> *(a) the video-sharing platform providers to remove or restrict access to illegal content, or to display a warning to users when accessing such content, or to disable the user's account for a period of up to 12 months;*
> *(b) the data storage providers providing storage space for the video-sharing platforms to remove, disable or restrict access to a video-sharing platform;*
> *(c) the registrars that allocate domain names to video-sharing platforms to remove the domain name of the video-sharing platform.*

Article 42[9] paragraphs 2-3 stipulates that the CNA may act based on a decision, which needs to be "sufficiently precise and duly reasoned".

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## 4.26.8. Cross-sector and cross-border collaboration

Law 190/2022, in Article 42[9] paragraph 5 on enforcement and sanctions, stipulates that the CNA, in the activity of supervision and control, may request of the National Institute for Research and Development in Informatics – ICI Bucharest, in the case of the registering of domains and subdomains in the ".ro" area, data related to the service provider (audiovisual services, VSPs or user-generated content). It can consult with the National Authority for Protection of Consumers and the Ministry of Finance with regard to misleading advertising.

## 4.26.9. Update on plans and practices related to new obligations of VSPs

N/A.

## 4.26.10. Studies, reports and research

N/A.

## 4.26.11. Data compilation

This factsheet is based on data compiled by Dr. Manuela Preoteasa, Associate Professor, Faculty of Journalism and Communication Sciences, University of Bucharest.

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# 4.27. SE – Sweden – National legal summary[534]

## 4.27.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Radio- och tv-lag*[535] (Radio and TV Act – RTA)[536]
- *Marknadsföringslag*[537] (Marketing Act[538])
- *Alkohollag*[539] (Alcohol Act)

Self- and co-regulatory instruments:

- *Medieombudsmannen Publicitetsregler – etik för press, radio och tv*[540] (Code of Ethics for Press, Radio and Television in Sweden monitored by the Swedish Media Ombudsman and the Swedish Media Council)[541]

## 4.27.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored

[534] The factsheet on Sweden incorporates feedback received on the information related to the Radio and TV Act from Rebecca Parman from the Swedish Press and Broadcasting Authority (MPRT), during the checking round with the national regulatory authorities.
[535] https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/radio--och-tv-lag-2010696_sfs-2010-696.
[536] English version (not updated): https://www.mprt.se/globalassets/dokument/lagar-och-regler/the-swedish-radio-and-television-act.pdf
[537] https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/marknadsforingslag-2008486_sfs-2008-486.
[538] https://www.government.se/4abc0a/contentassets/747603b3d1a04351b1773524c7de3c84/2008486-marketing-act.
[539] https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/alkohollag-20101622_sfs-2010-1622.
[540] https://medieombudsmannen.se/publicitetsregler/.
[541] https://medieombudsmannen.se/about-the-media-ombudsman/code-of-ethics-for-press-radio-and-television-in-sweden/.

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content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

#### 4.27.2.1. Definitions

**Table 53. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Under the definitions of advertisements and commercial advertising. |
| **Advertiser** | Under the definition of advertisement. |
| **Surreptitious commercial communication** | No. |
| **Misleading commercial communication** | No. |
| **Virtual advertising** | Yes. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

*Source: Swedish response to European Audiovisual Observatory standardised survey*

##### 4.27.2.1.1. Audiovisual commercial communications

Chapter 3, section 1 item 4 of the RTA defines audiovisual commercial communications as:

> *Product placement, sponsorship, advertising, teleshopping or similar that accompanies, or is included in, a television programme or user-generated video.*

##### 4.27.2.1.2. Television advertising

Television advertising is covered under the definitions of advertisements and commercial advertisements, provided for in Chapter 3, section 1 item 1 and 17 of the RTA, as follows:

> *Section 1 item 1:*
> *Advertising and other communications that are not advertising but are broadcast on behalf of someone else and whose purpose is to promote a thing or an idea.*

Section 1 item 17:

> *Advertising: any form of message*

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*a) that is broadcast either in return for payment or for similar consideration or broadcast for self-promotional purposes; and*
*b) that aims to market goods, services, real estate, jobs or other commodities.*

Chapter 9 a, section 8, provides obligations with regard to identification of advertising on video-sharing platforms, as follows:

*A video-sharing platform provider that provides advertising shall ensure that, before and after each advert, there is a special bumper that clearly separates the advertising from the other content. The bumper shall consist of sound or images. In the case of split-screen advertising, the bumper shall always be visible. Provisions on the identification of advertising can be found in Section 9 of the Marketing Act.*

#### 4.27.2.1.3. Advertiser

While the definition of advertiser is indirectly contained in Chapter 8 of the RTA, the definitions of advertisements and commercial advertisements in Chapter 3 of the RTA and section 9 of the Marketing Act in relation to the definition of commercial advertisement under television advertising, section 9, of the Marketing Act require that the party responsible for marketing is clearly indicated in the advertisement.

#### 4.27.2.1.4. Surreptitious commercial communication

There is no definition of surreptitious commercial communication.

#### 4.27.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication. Nevertheless, certain practices not complying with the Marketing Act, Articles 9-10 and 12-17 and practices set out in points 1 to 23 of Annex I to Directive 2005/29/EC are considered misleading marketing according to Article 8 of the Marketing Act.

#### 4.27.2.1.6. Virtual advertising

Chapter 3, section 1 item 24 of the RTA defines virtual advertising as:

*The broadcasting of messages that are electronically inserted into the television image on fixed objects which are usually used for announcements, or where announcements can be physically placed.*

#### 4.27.2.1.7. Sponsorship

Chapter 3, Section 1 item 18, of the RTA defines sponsorship as follows:

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*Contributions made by someone who does not provide or produce radio broadcasting, on-demand radio, television broadcasting, on-demand television, searchable teletext, video-sharing platforms or user-generated videos to finance those services, programmes or videos in order to promote the name, trademark, image, activities, products or interests of the contributor.*

#### 4.27.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.27.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.27.2.1.10. Product placement

Chapter 3, section 1 item 14, of the RTA defines product placement as:

*The presence in a programme or user-generated video of a good, service or trademark, if this is done for marketing purposes and in return for payment or similar consideration to the media service or video-sharing platform provider, or to whoever created or uploaded a user-generated video on a video-sharing platform, unless the good or service is of insignificant value and has been provided free of charge.*

#### 4.27.2.1.11. Other definitions

While there are no provisions in rules and regulations regarding the techniques of online commercial communications, such as direct marketing, commercial profiling, behaviourally targeted advertising, etc., discussions in Sweden are rather focused on the integrity aspects and data protection mechanisms, from the point of view of consumer protection.

### 4.27.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers, related to commercial communications.

Chapter 9 a of the RTA provides for the obligation of the VSP providers to take appropriate measures related to the identifiability of product placement and sponsorship, with relevant restrictions found further below.

In section 8, the law also stipulates that:

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*A video-sharing platform provider that provides advertising shall ensure that, before and after each advert, there is a special bumper that clearly separates the advertising from the other content. The bumper shall consist of sound or images. In the case of split-screen advertising, the bumper shall always be visible. Provisions on the identification of advertising can be found in section 9 of the Marketing Act.*

Information of the applicability of other laws regulating certain areas, details of which are found below, is additionally found in Section 12 of Chapter 9 a of the RTA:

*Provisions on marketing bans can also be found in the Alcohol Act (2010:1662), the Act (2013:1054) on the Marketing of Infant Formula and Follow-On Formula, the Medicinal Products Act (2015:315), the Gambling Act (2018:1138) and the Act (2018:2088) on Tobacco and Similar Products.*

Finally, the aim behind the obligation on the part of VSPs to adopt measures is explained in Section 13:

*A video-sharing platform provider shall take appropriate measures to ensure that the users of the platform act in accordance with what is provided for in this chapter and in Chapter 7, section 3, second paragraph, of the Alcohol Act.*

#### 4.27.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

The RTA covers the applicability of provisions prohibiting marketing for tobacco and tobacco-related products and alcohol, which can also be found in the Swedish Alcohol Act, the Swedish Act on the Marketing of Infant Formula and Follow-On Formula, the Swedish Medicinal Products Act, the Swedish Gambling Act, the Swedish Act on Tobacco and Similar Products and the Swedish Act on Tobacco-Free Nicotine Products. As mentioned previously, the related provisions of these laws are applicable to VSP providers, as indicated in Chapter 9 a, section 12, of the RTA.

The Swedish Alcohol Act stipulates measures relative to the marketing of alcohol in Chapter 7, Section 1:

*When marketing alcoholic beverages or alcoholic beverage-like preparations to consumers, particular moderation must be observed. Advertising or other marketing measures may not be intrusive, solicitous, or encourage the use of alcohol.*
*Marketing may not be explicitly aimed at or portray children or young people under the age of 25.*

Chapter 7, section 3, in the same law states:

*When marketing alcoholic beverages or alcoholic beverage-like preparations to consumers, commercial advertisements may not be used in television broadcasts, pay TV, or audio-radio broadcasts.*

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*A provider of a video-sharing platform may not provide such commercial advertisements as referred to in the first paragraph before, during, or after user-generated videos or television programmes on the platform.*

#### 4.27.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Chapter 9 a, section 11, of the RTA provides restrictions as follows:

*A video-sharing platform provider shall not provide advertising for medical treatments that are only available on prescription before, during or after user-generated videos or television.*

#### 4.27.2.2.3. Surreptitious audiovisual commercial communications

Section 8 of the Marketing Act on Misleading Marketing provides that:

*Marketing practices which are misleading pursuant to any of the provisions of Sections 9, 10 or 12-17 shall be deemed unfair if they influence or are likely to influence the recipient's ability to take a well-founded commercial decision.*
*Such misleading marketing practices as are set forth in sections 1-23 of Annex I to Directive 2005/29/EC shall always be deemed unfair.*

#### 4.27.2.2.4. Subliminal techniques in commercial communications

The same rules as for surreptitious audiovisual commercial communications apply.

#### 4.27.2.2.5. Prejudice with regard to human dignity

There are no restrictions on this matter specific to VSPs.

#### 4.27.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Chapter 9 a, section 3, of the RTA states:

*A video-sharing platform provider shall take appropriate measures to ensure that user-generated videos, television programmes and audiovisual commercial communications on the platform do not contain the content referred to in the provisions on*
*1. unlawful threats in Chapter 4, section 5 of the Swedish Criminal Code;*
*2. inciting crime in Chapter 16, section 5 of the Swedish Criminal Code;*
*3. agitation against a population group in Chapter 16, section 8 of the Swedish Criminal Code;*
*4. child pornography offences in Chapter 16, section 10a of the Swedish Criminal Code;*

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*5. unlawful depiction of violence in Chapter 16, section 10c of the Swedish Criminal Code; or*
*6. public incitement to terrorism or particularly serious crime in section 7 of the Terrorist Offences Act (2022:666).*

The Criminal Code provides for the unlawfulness of threats against another person or another person's property, liberty or peace. It also treats any incitement to commit a criminal act, whether transmitted orally or in a written document disseminated or made available for dissemination, or in some other communication to the public, and any other attempts at inducing others to commit a criminal act, etc. as a criminal offence. It also provides for criminal charges for acts, in a statement or other communication that is disseminated, which threatens or expresses contempt for a population group by allusion to various characteristics, such as race, colour, national or ethnic origin, etc. It further provides for the prohibition of child pornographic images.

Also, the Swedish Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime, refers to international treaties prohibiting these acts.

#### 4.27.2.2.7. Encouragement of behaviour prejudicial to health or safety

Chapter 9 a, section 3, of the RTA states that a provider of a VSP shall take appropriate measures to ensure that user-generated videos, television programmes and audiovisual commercial communications made available on the platform do not include content in breach of certain provisions in the Swedish Criminal Code and the Swedish Act on Criminal Responsibility for Public Provocation, Recruitment and Training concerning Terrorist Offences and other Particularly Serious Crime (2010:299), which deal with various aspects, including the unlawfulness of threats against another person or another person's property, liberty, peace, etc.

#### 4.27.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

There are no restrictions on this matter specific to VSPs.

#### 4.27.2.2.9. Causing physical, mental or moral detriment to minors

Chapter 9 a, section 1, of the RTA stipulates:

*A video-sharing platform provider shall take appropriate measures to ensure that user-generated videos, television programmes and audiovisual commercial communications involving realistic and detailed depictions of violence or pornographic images are not provided in such a way that there is a significant risk of children being able to watch them, unless this is nevertheless justifiable for particular reasons.*

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Chapter 9 a, section 9, stipulates that a video-sharing platform provider may not interrupt user-generated videos or television programmes primarily aimed at children under 12 years of age for commercial advertising. Nor may the provider insert commercial advertising immediately before or after user-generated videos or television programmes or segments thereof primarily aimed at children under 12 years of age.

Chapter 9 a, section 10, stipulates that a video-sharing platform provider may not provide commercial advertising intended to capture the attention of children under 12 years of age before, during or after user-generated videos or television programmes.

#### 4.27.2.2.10. Other

Chapter 9 a, section 2, stipulates that personal data collected or otherwise generated by video-sharing platform providers in order to fulfil the requirement for measures pursuant to Chapter 9 a, section 1, may not be processed for commercial purposes.

## 4.27.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aim at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.27.3.1. Sponsorship

Chapter 9 a, section 6, of the RTA obliges VSP providers to identify sponsors, when entering into or facilitating a sponsorship agreement for user-generated videos or television programmes, and to thereby:

> *[…] state who has sponsored the video or programme. Such notice shall be given at the beginning or the end of the video or television programme.*

Chapter 9 a, section 7, stipulates that certain prohibitions and restrictions on sponsorship agreements (listed in Chapter 7, sections 2-3a of the RTA) regarding, *inter alia*, alcohol, tobacco, electronic cigarettes, gambling and medicinal products, apply to VSP providers that enter into or facilitate a sponsorship agreement for user-generated videos or television programmes.

### 4.27.3.2. Product placement

Chapter 9 a, section 4, stipulates that a video-sharing platform provider that enters into or facilitates agreements on product placement in user-generated videos or television programmes shall ensure that there is information about the existence of product

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placement in these videos or television programmes. The information shall be provided at the beginning and at the end of the video or programme and when it resumes after an advertising break. The information shall solely consist of a neutral statement on the occurrence of product placement and of the product or service that has been placed in the video or programme.

In addition to product placement identification, restrictions can be found in Chapter 9 a, section 5. This provision prohibits VSP providers from "entering into or facilitating an agreement of product placement in user-generated videos or television programmes", if the product placement relates to goods and services such as, *inter alia*, alcohol, tobacco, electronic cigarettes and medicinal products (listed in Chapter 6, section 2, points 1–8 of the RTA) or if the video or programme is primarily aimed at children under 12 years of age.

## 4.27.4. Obligations regarding (v)blogs and (v)blogging

(V)blogs are not specifically mentioned, but the preparatory work relating to the amendments to the RTA refers to the scope of application of relevant rules, in terms of inclusion of all economic activities, except services without economic purposes that do not compete with TV broadcasters or on-demand services and hence fall outside this scope,[542] for example private web pages and distribution of audiovisual content produced by private users for the purpose of exchange within interest groupings.

(V)blogs are mentioned in the publications of the Swedish Press and Broadcasting Authority, MPRT (SPBA),[543] as covered by the constitutional protection regulations applicable to online publications.

## 4.27.5. Other relevant information

Appropriate measures in Article 28b (3): Regarding the appropriate measures referred to in the AVMSD, the RTA does not include a list of the measures, but the preparatory work clarifies that the appropriate measures referred to in Chapter 9a shall consist of measures such as those listed in Article 28b (3) of the revised AVMSD, as appropriate.

Practicability of the measures imposed on VSP providers: No specific provision of the RTA deals with the issue of practicability of the measures imposed on VSP providers, but it is described in further detail in the preparatory work, where the size of the VSP, the nature of the service and the content are mentioned as relevant factors when deciding what is an "appropriate measure".

[542] https://www.riksdagen.se/sv/dokument-lagar/dokument/proposition/en-moderniserad-radio--och-tv-lag_H703168/html.
[543] Myndigheten för press, radio och tv, http://www.mprt.se/.

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Registration/notification system: A new obligation for providers of VSPs to register with the SPBA is included in Chapter 2, section 2, of the RTA. The Authority already keeps a public database of registered media service providers. This register will now also include providers of VSPs.

## 4.27.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.27.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.27.6.2. Gambling, betting, betting tipsters, etc.

Chapter 9 a, section 5, stipulates that a video-sharing platform provider may not enter into or facilitate an agreement on product placement in user-generated videos or television programmes if 1) the product placement relates to the goods and services listed in Chapter 6, section 2 [point 5], or 2) the video or programme is primarily aimed at children under 12 years of age:

> *In television broadcasts or on-demand television, product placement shall not appear of*
> *5) gambling products from companies that do not have the required licence in accordance with the Gambling Act (2018:1138).*

Chapter 9 a, section 7, stipulates that the provisions on the prohibition of and restrictions on sponsorship in Chapter 7 [section 2 b] apply to a video-sharing platform provider that enters into or facilitates sponsorship agreements for user-generated videos or television programmes.

> *Chapter 7, section 2 b, stipulates that a company whose principal activity is to provide gambling services and that does not have the necessary licence pursuant to the Swedish Gambling Act (2018:1138) may not sponsor a programme […].*

Chapter 9 a, section 12, provides that provisions prohibiting marketing can also be found in […] the Swedish Gambling Act (2018:1138) […].

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#### 4.27.6.3. Environmental or “green” claims for products

No specific provisions deal with this issue.

#### 4.27.6.4. Other

N/A.

## 4.27.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.27.7.1. Self- and co-regulatory bodies

#### 4.27.7.1.1. Context of establishment and legal background

The SPBA has a general obligation to cooperate with other relevant authorities (e.g., the Swedish Media Council on media literacy and The Swedish Consumer Agency on market law obligations).

The SPBA is further tasked with contributing to / assisting with systems for co-regulation regarding the appropriate measures VSP providers must take. The government states in its preparatory work however that it is likely that very few platform providers will be covered by the RTA. Therefore, there are currently limited opportunities for co-regulation in Sweden. The work at European level should be taken into account on a national level.

For the self-regulatory measures mentioned in sub-sections 4.27.7.1.2, 4.27.7.1.5 and 4.27.7.2, the applicable rules are relevant when content is edited. Therefore, rules apply when VSPs provide their own content or edit the content of the content providers. Outside of this scope of activity, VSPs are more often content providers, in which case, the rules presented in the above-mentioned sub-sections do not apply.

Besides, it should be noted that content providers (i.e., VSPs) bear a limited responsibility for content (for both regulatory and self-regulatory cases). VSPs are required to do their best to ensure the content follows relevant regulations.

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#### 4.27.7.1.2. Stakeholders involved

In addition to the SPBA, self-regulatory measures are established within the Media Ethics Board (MEB).[544] The MEB is composed of representatives of the public and industry stakeholders. The MEB is led by a judge and trials are limited to questions on damage due to publicity injury for a private individual (unmotivated invasion of privacy). Cases are tried upon complaint by individuals. Trial by MEB is free of charge for the individual. If a mass medium is criticised by the MEB, it is ordered to pay a fee that goes towards financing the self-regulatory system.

#### 4.27.7.1.3. Scope and objectives

See under 4.27.7.1.1.

#### 4.27.7.1.4. Code(s) of conduct

Self-regulatory measures include ethical rules for the press monitored by the Public Media Ombudsman (PMO)[545] and the Media Ethics Board (MEB)[546] as well as the Swedish Advertising Ombudsman.

#### 4.27.7.1.5. Role of the (self-)regulatory bodies

The Public Media Ombudsman (PMO),[547] an independent self-disciplinary body handling complaints about the editorial content of newspapers, magazines, broadcast media and their websites and social media, and the Media Ethics Board (MEB),[548] cover all media publication within the scope of self-regulation, regardless of the platform used – thus also radio, TV broadcasts and web publications.

A prerequisite is that the publication is covered by constitutional legal protection in the form of freedom of the press and freedom of expression or that publication occurs in social media under the brand of a mass media company and that it contains statements that the publisher can control. Publication must also take place in a mass medium managed by a company connected to one of the founding organisations of the organisation behind the PMO and MEB or must have been performed by a company or individual directly associated with the self-regulatory system or fulfilling the requirements relating to coverage by constitutional protection for periodic publication.

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[544] Etikprövningsmyndigheten, https://etikprovning.se/.
[545] https://medieombudsmannen.se/about-the-media-ombudsman/code-of-ethics-for-press-radio-and-television-in-sweden/.
[546] https://accountablejournalism.org/press-councils/Sweden.
[547] Pressombudsmannen, https://www.dagensmedia.se/om/pressombudsmannen/.
[548] Etikprövningsmyndigheten, https://etikprovning.se/.

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#### 4.27.7.1.6. Period of activity (if limited)

N/A.

#### 4.27.7.1.7. Role of the regulatory authority in a co-regulatory system

N/A.

##### *4.27.7.1.7.1. Regulatory body*

N/A.

##### *4.27.7.1.7.2. Co-regulatory scheme*

N/A.

##### *4.27.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.27.7.2. Monitoring/evaluation, compliance and sanctioning powers

The competent regulatory body is primarily the SPBA, but the Swedish Broadcasting Commission (an independent body within the SPBA), the Swedish Consumer Ombudsman and the Swedish Authority for Privacy Protection also have supervisory responsibilities (Chapter 16, sections 2-4 a, of the RTA).

The SPBA may decide on orders necessary to ensure that a VSP provider complies with the provisions on appropriate measures in Chapter 9a, sections 1, 3 and 13, of the RTA. At the request of the SPBA, a VSP provider must provide the information needed for supervision. The SPBA may also decide on orders necessary to ensure that a VSP provider complies with the obligation to register with the SPBA in Chapter 2, section 2, of the RTA. The orders related to the obligation to register may be combined with a conditional fine.

The Swedish Broadcasting Commission shall, in the same way as for television programmes, exercise supervision over the provisions on product placement, sponsorship and advertising. Failure to comply with the conditions set out in these provisions may result in the imposition of a special fee.

The Consumer Ombudsman shall, in the same way as for television, exercise supervision with regard to the provisions on advertising and children, as well as the prohibition on advertisements for medical treatments which are available only after prescription. An infringement shall be regarded as improper marketing in accordance with the Marketing Act.

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The SPBA was tasked to begin the process of developing an out-of-court redress mechanism for video-sharing platforms. The mechanism had to be independent from the SPBA. The SPBA reported its finding to the Swedish government in June 2022.[549]

With regard to radio and TV programs, only physical persons can complain to the MEB. With regard to publications in the press both physical and legal persons can request a correction or reply with the PMO and the MEB.

## 4.27.8. Cross-sector and cross-border collaboration

The MPRT has a general obligation to cooperate with other relevant authorities (e.g., Swedish Media Council[550] on media literacy and The Swedish Consumer Agency[551] on market law obligations).

## 4.27.9. Update on plans and practices related to new obligations of VSPs

N/A.

## 4.27.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- Information and analysis of the new regulations, Lindahl, December 2020[552]
- Analyses of the market law association of the court case of the Patent and Market Court of Appeal, case number PMT 12229-19, March 2021[553], related to marketing of alcoholic beverages on Facebook[554]

[549] https://www.mprt.se/nyhetsrum/nyhetslista/2022/mekanism-for-tvistlosning-mellan-anvandare-och-leverantorer-av-videodelningsplattformar/.
[550] Statens medieråd, https://statensmedierad.se/.
[551] Konsumentverket, https://www.konsumentverket.se/languages/english-engelska/.
[552] https://pressrum.lindahl.se/posts/blogposts/nyhetsbrev-ict-december.
[553] https://www.domstol.se/globalassets/filer/domstol/patentochmarknadsoverdomstolen/avgoranden/2021/pmt-12229-19.pdf.
[554] www.marknadsrattsforeningen.se/wp-content/uploads/2021-05-20_Presentation_Magdalena-Berg..pdf.

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## 4.27.11. Data compilation

This factsheet is based on data compiled by Malin Wallin, a lawyer at Wallin Olofsson Advokatbyrå.

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# 4.28. SK – Slovakia – National legal summary[555]

## 4.28.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Zákon z 22. júna 2022 o mediálnych službách a o zmene a doplnení niektorých zákonov - Zákon o mediálnych službách*[556] (Media Service Act 2022 (MSA 2022))
- *Zákon z 29. novembra 2017 o ochrane osobných údajov a o zmene a doplnení niektorých zákonov*[557] (Act of 29 November 2017 on personal data protection and amending and supplementing certain Acts (Data Protection Act))
- *Zákon z 22. júna 2022 o vydavateľoch publikácií a o registri v oblasti médií a audiovízie a o zmene a doplnení niektorých zákonov(zákon o publikáciách)*[558] (Act on Publishers of Publications and on the Media and Audiovisual Register (Publications Act 2022))
- *Zákon č. 469/2002 Z. z. o environmentálnom označovaní výrobkov*[559] (Act No. 469/2002 Coll. on the environmental labelling of products)

Self and co-regulatory instruments:

- *Odporúčania pre internetovú reklamu*[560] Rules for Internet advertising. Bratislava: Interactive Advertising Bureau Slovakia, 2018

## 4.28.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, television advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor

[555] The factsheet on Slovakia incorporates feedback received from the Office of the Slovak Council for Media Services during the checking round with the national regulatory authorities.
[556] https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/264/20220801
[557] https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2018/18/20220330
[558] https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2022/265/20220801
[559] https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2002/469/20121201
[560] https://www.iabslovakia.sk/recommend/odporucania-pre-internetove-reklamu/

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and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.28.2.1. Definitions

**Table 54. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | No. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | Yes. |
| **Sponsored content** | Covered under sponsorship. |
| **Product placement** | Yes. |
| **Other:** | / |

*Source: Slovak response to European Audiovisual Observatory standardised survey*

#### 4.28.2.1.1. Audiovisual commercial communications

Article 71, paragraph 1, of the MSA 2022 defines the term commercial media communication as follows:

> *1) Commercial media communication is audio, video or audiovisual information that directly or indirectly promotes the goods, services or reputation of a person performing an economic activity, and*
> *(a) is provided as part of or accompanies a user-generated program or video for remuneration or similar consideration, or for self-promotional purposes; or*
> *b) is an advertising program service.*

#### 4.28.2.1.2. Television advertising

The MSA 2022 in Article 81, paragraph 1, defines television advertising as:

> *(1)... any public announcement broadcast for remuneration or other similar consideration, including self-promotion, intended to support the sale, purchase or rental of goods or services, including real estate, rights and obligations, or to achieve another effect monitored by the advertiser or broadcaster.*

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#### 4.28.2.1.3. Advertiser

There is no definition of advertiser, but the MSA 2022 deals with the relationship between media commercial communication and advertisers. According to Article 79 of the MSA 2022, the broadcaster is obliged to ensure that the advertiser cannot in any way influence the content of the programs and the time of inclusion of the programs in a way that would affect the editorial responsibility or editorial independence of the broadcaster or on-demand audiovisual media service provider.

#### 4.28.2.1.4. Surreptitious commercial communication

Article 72, Paragraph 1 and Paragraph 2 of the MSA 2022, defines surreptitious commercial communication as follows:

> *(1) Surreptitious commercial media communication is audio, video or audiovisual information that directly or indirectly promotes the goods, services, trademark, trade name or activities of a person performing an economic activity, if the broadcaster or the audiovisual media service provider of an on-demand audiovisual media service intentionally uses this for promotional purposes in the context of programme and could, by its nature, mislead the public as to the substance of this information. This information is considered to be intentional in particular if it is provided in return for payment or for other consideration.*
> *(2) Surreptitious commercial media communication is prohibited.*

#### 4.28.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication, but the MSA 2022, in Article 73, paragraphs 1 and 2, requires that: "commercial media communication must be easily distinguishable from other components of a program service or an audiovisual media service on demand" and forbids the use of subliminal human perception.

#### 4.28.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.28.2.1.7. Sponsorship

Article 92, paragraphs 1, 2 and 3 of the MSA 2022, defines sponsorship as follows:

> *(1) Sponsorship is a benefit intended for the direct or indirect financing of a program, program service, on-demand audiovisual media service, video-sharing platform or user-created video to promote a person's name or trade name, trademark, reputation, goods or activities of the person who has provided such benefit.*

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*(2) Sponsorship is not a performance under paragraph 1 provided by a person who is a broadcaster, an on-demand audiovisual media service provider or a provider of a video-sharing platform and who has produced the program or created the video.*
*(3) Sponsorship is not a performance of persons participating in collective financing according to § 103.*

According to Article 16 (paragraphs 1,2,3) of the Publications Act 2022, sponsorship for the purposes of this Act is a performance intended to directly or indirectly finance a publication in order to promote the name or trade name, trademark, reputation, goods or activities of a person who provided such performance.

#### 4.28.2.1.8. Sponsor

Article 92, paragraph 4 of the MSA 2022 defines a sponsor as follows:

*4) A sponsor is a person who has provided a performance pursuant to paragraph 1.*

According to Article 94, paragraphs 1 and 2:

*(1) The sponsor of the program, program service or on-demand audiovisual media service must not be a person whose main activity is the production or sale of cigarettes, other tobacco products, electronic cigarettes, or refill bottles for electronic cigarettes.*
*(2) The sponsor of the program or program service must not be a person whose main activity is the production, sale or rental of weapons or ammunition.*

A similar definition is applied in Article 16, paragraph 3 of the Publications Act 2022

#### 4.28.2.1.9. Sponsored content

There is no definition of sponsored content, but it is covered under the definition of sponsorship (see under 4.28.2.1.7.).

#### 4.28.2.1.10. Product placement

Article 95 of the MSA 2022 defines product placement:

*Product placement is audio, video, or audiovisual information about a product, service, or trademark that is included in a program or video created by a user for remuneration or other similar consideration.*

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#### 4.28.2.1.11. Other definitions

There is no legislation in Slovakia that directly regulates definitions and rules for the techniques of online commercial communications, such as: direct marketing, commercial profiling, behaviourally targeted advertising, banners and display advertising, etc.

These techniques are partially addressed by the Data Protection Act, which, according to Article 15, paragraphs 1 and 2, stipulates that the operator of information society services processes personal data on the basis of the consent of the data subject legally, if the data subject has reached the age of 16. If the data subject is under 16 years of age, such processing of personal data is lawful only under the conditions and to the extent that such consent has been given or approved by his or her legal representative. Also, according to Article 66, paragraphs 1, 2,3 of the same act, profiling that discriminates against individuals on the basis of specific categories of personal data is prohibited.

The Interactive Advertising Bureau Slovakia (IABS)[561], the largest Slovak association operating in the field of Internet advertising and the digital environment, published, in 2018, an updated version of the recommendations and rules for Internet advertising, applicable to members of the IABS (see under 4.28.7.1.2.). These IABS recommendations recommend, *inter alia*, to website operators that they not use any ads that automatically (without the user's knowledge/interaction) overlay the content of the page.

### 4.28.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

As a general note, it should be noted that the MSA 2022, in Article 48, paragraph 1, obliges VSPs to:

> *… take appropriate measures to protect*
> *(a) minors from user-generated programmes, videos and commercial media communications that may impair the physical, mental or moral development of minors in accordance with the conditions set out in section 62(1),*
> *(b) the public from programmes, user-generated videos and commercial media communications which contain the promotion of violence or which openly or covertly incite violence or hatred, disparage or denigrate on the grounds of sex, race, colour, language, faith and religion, political or other opinion, property, disability, age, sexual orientation, birth, national or social origin, genetic characteristics, nationality, membership of a nationality or ethnic group,*
> *(c) the public from programmes, user-generated videos and commercial media communications that*

[561] Združenie pre internetovú reklamu, https://www.iabslovakia.sk/o-nas/

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*1. contain elements of the criminal offense of distributing child pornography,*[562]
*2. publicly incite the commission of any of the criminal acts of terrorism or publicly approve any of the criminal acts of terrorism,*[563]
*3. contain elements of the factual nature of any of the crimes against humanity, crimes of extremism or war crimes.*[564]

Article 51 of the MSA 2022 further states that:

*(1) The video-sharing platform provider shall be subject to the obligations set out in sections 72(2), 73, 74, 75(1) and (3), 76, 77(1) and 78 in relation to commercial media communications that it markets, sells or arranges.*
*(2) The video-sharing platform provider shall be obliged to inform end users in a comprehensible manner that a programme or video created by a user contains commercial media communication if it has knowledge of that fact or if it has been notified of that fact in the manner referred to in section 49(1)(b).*

Restrictions and prohibitions on the aforementioned related provisions are provided below.

#### 4.28.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

According to Article 76 of the MSA 2022, media commercial communication relating to alcoholic beverages must not target minors, as well as not encourage immoderate consumption of alcoholic beverages. Paragraph 2 further stipulates that:

*… Media commercial communication concerning alcoholic beverages, with the exception of sponsorship and product placement, may not*
*a) be specifically addressed to minors or show minors consuming these drinks,*
*b) combine the consumption of alcoholic beverages with an increase in physical performance or driving a motor vehicle,*
*c) claim that alcoholic beverages have healing properties, a stimulating or calming effect or that they help to solve personal problems,*
*d) give the impression that alcohol consumption contributes to social and sexual success,*
*e) present abstinence or sobriety as a deficiency,*
*(f) emphasise the alcoholic strength of the drink as an indication of its quality.*

Article 77 of the MSA 2022 prohibits commercial media communication concerning cigarettes, other tobacco products, electronic cigarettes and refill bottles for electronic cigarettes, and stipulates that: "…the circumvention of this prohibition through the use of

[562] Section 369 of the Criminal Code
[563] Section 140b of the Criminal Code
[564] Section 417 to section 435 of the Criminal Code

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brand names, trademarks, emblems or other prominent features of these products is prohibited".

According to Article 95, Paragraph 2, the placement of products by persons whose main activity is the production or sale of cigarettes, other tobacco products, electronic cigarettes or filling bottles for electronic cigarettes is prohibited.

The Publications Act, in Article 16, prohibits the sponsor from being a person whose main activity is the manufacture or sale of cigarettes, other tobacco products, electronic cigarettes or refill bottles for electronic cigarettes (and from being a person whose main activity is the manufacture, sale or rental of weapons or ammunition).

#### 4.28.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

According to Article 75 of the MSA 2022, media commercial communication for medicinal and/or veterinary products which are subject to prescriptions is prohibited, including for medicinal products containing narcotic drugs, psychotropic substances and preparations. This provision further prohibits commercial media communication from including certain elements which:

*a) give the impression that a medical examination or procedure is unnecessary,*
*b) offer the determination of the diagnosis or the method of treatment by correspondence,*
*(c) give the impression that the effects of the medicinal product are guaranteed …*
*d) indicate that the good health of the person could be improved by taking the medicine,*
*e) indicate that the good health of the person could be affected by not taking the medicine,*
*f) address exclusively or mainly children …*

Commercial media communication concerning medicinal products, with the exception of sponsorship and product placement, must adhere to identifiability obligations.

#### 4.28.2.2.3. Surreptitious audiovisual commercial communications

According to Article 72, paragraph 2 of the MSA 2022:

*(2) Surreptitious media commercial communication is prohibited.*

#### 4.28.2.2.4. Subliminal techniques in commercial communications

The MSA 2022, in Article 73, paragraph 2, prohibits subliminal techniques in commercial communication.

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#### 4.28.2.2.5. Prejudice for human dignity

In accordance with Article 74 (a) of the MSA 2022, prejudice with regard to human dignity is prohibited: "Commercial media communication must not violate freedom and equality in the dignity and rights of people."

#### 4.28.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

MSA 2022, Article 74 (b) stipulates that:

> *Media commercial communication shall not contain or promote discrimination based on sex, race, colour, language, religion or belief, political or other opinion, property, disability, age, sexual orientation, birth, national or social origin, genetic characteristics, nationality, belonging to a nationality or ethnic group.*

#### 4.28.2.2.7. Encouragement of behaviour prejudicial to health or safety

According to Article 74 (c) of the MSA 2022, media commercial communications must not encourage actions that harm or endanger health or safety.

#### 4.28.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 74 (d) of the MSA 2022 stipulates that: "Media commercial communications must not encourage actions which seriously harm the protection of the environment."

#### 4.28.2.2.9. Causing physical, mental or moral detriment to minors

According to Article 78 of the MSA 2022, media commercial communication must not cause physical, mental or moral harm to minors by directly encouraging minors to:

> *1. purchase or rent goods or services by abusing their inexperience or gullibility,*
> *2. purchase or rent goods or services the sale of which is prohibited to such persons pursuant to special regulations,*
> *3. convince their parents or other persons of the need to buy the goods or services offered to them.*

Media commercial communication must not abuse the special trust of minors towards parents, pedagogical staff or other persons nor unreasonably portray minors in dangerous situations.

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#### 4.28.2.2.10. Other

Article 77 of the MSA 2022 prohibits media commercial communication concerning:

*(a) the needs or availability of organs, tissues and cells in order to offer or obtain a financial gain or comparable advantage,*
*b) infant formulas,*
*(c) weapons or ammunition.*

## 4.28.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.28.3.1. Sponsorship

According to Article 16 (Paragraphs 2,3) of the Publications Act 2022:

*(2) The publisher of the publication is obliged to ensure that the sponsored non-periodical publication, communications of the periodical publication or part of the agency service to which the sponsorship applies is marked by the sponsor.*

A sponsor may not be a person whose main activity is the manufacture or sale of cigarettes, other tobacco products, electronic cigarettes or refill bottles for electronic cigarettes, nor a person whose main activity is the manufacture, sale or rental of weapons or ammunition. Also, according to Article 22, paragraph 1 of the Publications Act 2022, the Ministry of Culture and the Council for Media Services are the bodies supervising compliance with the obligations under this Act.

### 4.28.3.2. Product placement

Article 96 of the MSA 2022, Paragraph 1, sets out the rules relating to product placement, prohibiting it in news programmes, non-fiction programmes, consumer affairs programmes, and religious and children's programmes.

According to Article 96, Paragraph 3 of the MSA 2022:

*(3) The broadcaster and the on-demand audiovisual media service provider are obliged to ensure that the program in which product placement is permitted meets the following conditions:*
*a) the program does not directly support the purchase, sale or rental of goods or services, especially with specific references to these goods or services,*
*b) the program does not attach undue importance to the goods or services in question,*

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*c) the public is clearly informed about the existence of product placement by labelling at the beginning and end of the program, as well as when the program continues after an interruption after an advertising block.*

## 4.28.4. Obligations regarding (v)blogs and (v)blogging

Vlogs are not explicitly defined in the MSA 2022. However, according to the wording of the law, a vlog falls into the category of user-created video. According to Article 8, paragraph 3, a user-generated video is: "a set of moving images with or without sound representing, regardless of its duration, a separate item created by a user and uploaded to a video-sharing platform by that user or any other user".

In this context, user-generated videos are subject to all rules and restrictions regarding commercial communications, which are set out in section 4.28.2.2. of this factsheet.

Blogs, on the other hand, are not defined in the MSA 2022 and its requirements do not apply to blogs. The term blog is not explicitly defined in the Publications Act 2022. However, blogs fall under the category of media content, which is designated as a "publication" in this law. According to Article 2, Paragraph 1, a publication is:

*Content or a set of contents expressed in words, letters or images, publicly disseminated in the territory of the Slovak Republic or intended to be made available to the public in the territory of the Slovak Republic with the aim of informing, entertaining or educating the general public.*

## 4.28.5. Other relevant information

N/A.

## 4.28.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

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#### 4.28.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

According to Article 99 of the MSA 2022, broadcasting of political propaganda or announcements promoting religion or atheism are prohibited, unless a specific legislation provides otherwise.

#### 4.28.6.2. Gambling, betting, betting tipsters, etc.

The MSA 2022 does not directly prohibit gambling advertising, but this prohibition indirectly applies to minors, as Article 78 (a) states that:

> *Commercial media communication must not cause physical, mental or moral harm to minors by directly encouraging minors to purchase or rent goods or services by abusing their inexperience or trustworthiness.*

#### 4.28.6.3. Environmental or “green” claims for products

No specific provisions deal with this issue.

In Slovakia, the environmental labelling of products is covered by an Act on the environmental labelling of products. This is the labelling of products for which the entire life cycle has been taken into account, that is to say, from raw material to product, through use to disposal or recycling. It is awarded by the Ministry of the Environment in cooperation with the Slovak Environmental Agency (Centre for Environmental Assessment and Labelling of Products and Technology). It has been awarded since 1997. An environmental mark is a mark by which, based on verification by the procedure established by this law, it is certified that the relevant product meets above-standard requirements in terms of environmental protection compared to other products from the same product group. This law regulates the conditions and procedure for awarding and using environmental labels, which are: a) the environmental label ("environmentally suitable product" b) the environmental label “European flower”. The mark does not apply to the labelling of beverages and foodstuffs or to the labelling of medicines. It also does not apply to the labelling of medical devices intended only for professional use or for use under professional supervision, or for medical prescription.

#### 4.28.6.4. Other

N/A.

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## 4.28.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

### 4.28.7.1. Self- and co-regulatory bodies

#### 4.28.7.1.1. Context of establishment and legal background

According to Article 127, paragraphs 1 and 2 of the MSA 2022, the identification of self-regulatory body is as follows:

> *1) A self-regulatory body is an initiative or self-regulatory body operating in the territory of the Slovak Republic enforcing a self-regulatory mechanism applied on the basis of a code of conduct or similar self-regulatory system of conduct in the field of content services (hereinafter "code").*
> *(2) The exercise of supervision over the observance of obligations under this Act may also be carried out by means of a code enforced by a self-regulatory body and registered by the regulator in the records or published by the Commission.*

According to Article 127, paragraph 3 of the MSA 2022, the self-regulatory system is to be considered a code if it regulates a person, area, activity or content service within the scope of this Act, especially inappropriate media commercial communication, which relates to alcoholic beverages, or accompanies or introduces programs for children and concerns foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fats, trans fats, salt or sodium and sugars, for which an excessive intake in the general diet is not recommended.

The Council for Media Services carries out the entry of self-regulatory mechanisms and self-regulatory bodies into the register based on a written request of a self-regulatory body. It also monitors and evaluates the activity of self-regulatory mechanisms and the self-regulatory bodies that enforce these mechanisms. Finally, it also keeps a list of self-regulatory bodies is a list in which the Council for Media Services registers self-regulatory bodies that have met the conditions for registration. The Council for Media Services will present the analysis of self-regulatory mechanisms and bodies in the provision of content services in the annual report for the relevant year.

As of the end of 2022, no self-regulatory body has yet applied to the Council for Media Services for registration. Thus, no self-regulatory body is registered in the list maintained by the Council yet.

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#### 4.28.7.1.2. Stakeholders involved

IAB Slovakia, which is a self-regulatory association for online advertising, consists of 58 members, including the biggest Slovak publishers, media agencies, tech platforms, advertisers and other important online market subjects. While it provides an official online audience measurement, IABmonitor,[565] it also works on the development of the Internet as an advertising medium and is active in educating in digital marketing.

According to Article 108, paragraphs 1, 2, 3, 4, 5, 6, and 7 of the MSA 2022, the Council for Media services of the Slovak Republic[566] implements state regulation in the field of broadcasting, retransmission, provision of on-demand audiovisual media services and provision of content-sharing platforms, while the Ministry of Culture[567] issues generally binding legal regulations, unless they are issued by the Council for Media Services and maintains a register and represents the Slovak Republic in the Standing Committee on Cross-border Television of the Council of Europe.

Finally, the Commission for the Protection of Minors, founded by the Council for Media Services as a special body of co-regulation for the area of protection of minors in the application of a unified labelling system and another accepted labelling system[568] , must be involved in the process too in the field of protection of minors.

According to Article 14a of the MSA 2022, the Commission for the Protection of Minors is established as a special body of co-regulation for the protection of minors. The competence of the Commission, under paragraph 2, includes:

> *a) Develop a draft of a generally binding legal regulation, which will establish the details of the uniform marking system and the method of its application, which it submits to the Ministry of Culture,*
> *b) develop a draft of a generally binding legal regulation, which establishes a list of accepted marking systems and details of the method of their application, which it submits to the Ministry of Culture,*
> *d) methodically guide the procedures for determining age suitability by persons performing age suitability assessment.*

According to Article 108, Paragraph 3 of the MSA 2022, the Commission for the Protection of Minors performs state administration in the field of protection of minors to the extent defined by this law.

[565] https://www.iabslovakia.sk/iabmonitor-2/.
[566] Rada pre vysielanie a retransmisiu, http://www.rvr.sk/.
[567] Ministerstvo kultúry, https://www.culture.gov.sk/en/ministerstvo/ministry-of-culture-of-the-slovak-republic/
[568] https://www.rpms.sk/node/88.

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#### 4.28.7.1.3. Scope and objectives

Future codes of conduct will regulate commercial communications relating to alcoholic beverages and ensure protection of children against food and beverages that are high in fat, sugar or salt.

According to Article 127, paragraph 3 of the MSA 2022, the self-regulatory system is to be considered a code if it regulates a person, area, activity or content service within the scope of this Act, especially inappropriate media commercial communication, which relates to alcoholic beverages, or accompanies or introduces programs for children and concerns foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fats, trans fats, salt or sodium and sugars, for which an excessive intake in the general diet is not recommended.

#### 4.28.7.1.4. Code(s) of conduct

Up to date, there are no such codes yet.

#### 4.28.7.1.5. Role of the (self-)regulatory bodies

According to Article 127 (1) and (2), a self-regulatory body shall enforce a self-regulatory mechanism applied on the basis of a code of conduct.

Article 128 of the MSA 2022 provides details regarding the registration of self-regulatory mechanisms and self-regulatory bodies in the records maintained by the regulator. According to paragraph 2 of the said article, the regulator shall register the code:

*a) which several content service providers, making up a significant part of the market in a defined type of content service, are committed to complying with,*
*b) which determines the rules for content services or the communications contained in them or rules of conduct for content service providers,*
*c) which determines an effective mechanism for enforcing the rules according to letter b), including appropriate sanctions,*
*d) which determines regular, transparent and independent monitoring and evaluation of compliance with the code.*

Pursuant to Article 128, paragraph 3, the regulator must make an entry in the register based on a written request submitted by the self-regulatory body. The application must also include a description of the mechanism for enforcing the rules of conduct, a description of effective and appropriate sanctions, and a description of the mechanism for monitoring and evaluating compliance with the code. The application must be accompanied by the code and a list of persons who have undertaken to comply with the code. The applicant must notify the regulator of any change in the application, the code or the list of persons who have undertaken to comply with the code within 30 days of the change.

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4.28.7.1.6. Period of activity (if limited)

N/A.

4.28.7.1.7. Role of the regulatory authority in a co-regulatory system:

*4.28.7.1.7.1. Regulatory body*

According to Article 125, paragraph 1 of the MSA 2022, the Council for Media Services must keep and update evidence concerning providers of content services and provided content services within its scope and self-regulation, which forms part of the register (hereinafter referred to as "evidence"). According to Article 125, Paragraph 2 of the MSA 2022, the evidence contains:

> *2) The records shall include:*
> *a) licenses and their amendments,*
> *b) the entries in the register and changes thereto, including entries*
> *1. of broadcasters subject to the competence of the regulator, including the data within the scope of § 20(1) and the programme services broadcast by them, including the data within the scope of § 161(1)(a) to (e), (2) and (3),*
> *2. providers of on-demand audiovisual media services to which the competence of the regulator extends, including data within the scope pursuant to § 28(1) and on-demand audiovisual media services provided by them, including data within the scope pursuant to § 177(1)(a) to (c),*
> *3. the retransmission operators subject to the competence of the regulator, including data within the scope of § 180(1)(a) and (b) and § 182(3),*
> *4. providers of video-sharing platforms subject to the jurisdiction of the regulator, including data within the scope of § 47(1) and video-sharing platforms provided by them, including data within the scope of § 187(1)(a) to (c) and § 188(1)(a),*
> *(c) self-regulatory data,*
> *(d) information on on-demand audiovisual media service providers that provide on-demand audiovisual media services exclusively through a video-sharing platform.*

According to Article 110, paragraphs 1 and 2 of the MSA 2022, the competence of the Council for Media Services in the area of performance of state administration includes decision-making in:

> *...(g) assessing the appropriateness of the public protection measures taken by the video-sharing platform provider.*

The Council for Media Services is also empowered to monitor and evaluate the activities of self-regulatory mechanisms and self-regulatory bodies that enforce these mechanisms.

*4.28.7.1.7.2. Co-regulatory scheme*

According to Article 110 (3) of the MSA 2022, the regulator in the area of performance of state administration shall:

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*h) co-operate with self-regulatory bodies in the areas regulated by this Act,*
*i) create co-regulatory mechanisms in the areas regulated by this Act.*

#### *4.28.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.28.7.2. Monitoring/evaluation, compliance and sanctioning powers

Articles 132-134 provide the Council for Media Services with regulatory powers in executing its legal duties, including sanctioning over the violation of relevant rules and regulations. According to Article 134 of the MSA 2022, the regulator imposes the following sanctions for violations of the obligation imposed by this Act:

*a) notice of violation of the law,*
*b) publication of a notice of violation of the law,*
*c) suspension of the broadcasting or provision of the program or part thereof,*
*d) a fine,*
*e) revocation of the authorisation for a serious breach of duty.*

According to Article 124 and Article 125 of the MSA 2022, the regulator is obliged to publish an annual report containing all relevant information for the relevant calendar year on the regulator's activities, the status of broadcasting and retransmission, the provision of on-demand audiovisual media services and the provision of video-sharing platforms.

The regulator keeps and updates records concerning content service providers and provided content services within its scope and self-regulation, which forms part of the register.

## 4.28.8. Cross-sector and cross-border collaboration

In addition to the information provided under 4.28.7.1.2., it should be mentioned that the Commission for the Protection of Minors[569] will perform state administration in the field of protection of minors to the extent defined by this Act.

The performance of state administration in the area of digital broadcasting and retransmission is also performed by the Ministry of Transport and Construction of the Slovak Republic,[570] which coordinates the activities of bodies performing state administration in the area of digital broadcasting. For these purposes, the Ministry of Transport is setting up an inter-ministerial group; the statute and rules of procedure of the group are approved by the Ministry of Transport. Ministries, other central state administration bodies and other

[569] Komisia pre ochramu maloletých.
[570] Ministerstvo Dopravy a Výstavby Slovenskej Republiky, https://www.mindop.sk/uvod.

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state administration bodies co-operate with the regulator on issues related to broadcasting, retransmission, on-demand provision of audiovisual media services and the provision of content-sharing platforms, providing the necessary co-operation.

According to Article 110 (3) of MSA 2022, the regulator shall:

> *(...) (k) cooperate actively with partner supervisors in the member states and their associations and organisations;*
> *l) negotiate pursuant to sections 154 and 155 with the competent authority of another member state,*
> *m) cooperate with the Commission in the areas regulated by this Act,*
> *n) participate in the exchange of information and co-operate with international organisations or bodies of other states operating in the areas regulated by this Act,*
> *o) participate in the work of the European Regulators Group for Audiovisual Media Services,*
> *p) co-operate with the supervisory authorities of another member state in proceedings against a content service which does not fall within the competence of the regulator or other state bodies of the Slovak Republic, even though it operates in the territory of the Slovak Republic.*

## 4.28.9. Update on plans and practices relative to new obligations of VSPs

N/A.

## 4.28.10. Studies, reports and research

N/A.

## 4.28.11. Data compilation

This factsheet is based on data compiled by Norbert Vrabec, Assoc. Prof., Faculty of Mass Media Communication, University of Ss. Cyril and Methodius in Trnava.

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# 4.29. SI – Slovenia – National legal summary[571]

## 4.29.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Zakon o avdiovizualnih medijskih storitvah ZAvMS, Uradni list RS, št. 87/11, 84/15 in 204/21[572] (Law on Audiovisual Media Services – Law on AVMS)
- *Zakon o varstvu potrošnikov pred nepoštenimi poslovnimi praksami* (Law on the Protection of Consumers against Unfair Commercial Practices[573])
- *Zakon o zdravstveni ustreznosti živil in izdelkov ter snovi, ki prihajajo v stik z živili*[574] (Act Regulating the Sanitary Suitability of Foodstuffs, Products and Materials Coming into Contact with Foodstuffs)
- *Zakon o varstvu potrošnikov*[575] (Consumer Protection Act)

Secondary legislation:

- *Splošni akt o metodologiji nadzorstva avdiovizualnih medijskih storitev, radijskih programov in platform za izmenjavo videov*[576] (General Act on the methodology for the supervision of audiovisual media services, radio programs and video-sharing platforms)
- *Splošni akt o izvensodnem reševanju sporov med uporabniki in ponudniki platform za izmenjavo videov*[577] (General Act on out-of-court dispute resolution between users and providers of video-sharing platforms)
- Splošni akt o promocijskem umeščanju izdelkov in sponzoriranju[578] (General Act on product placement and sponsorship)

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[571] The factsheet on Slovenia incorporates feedback received from Igor Žabjek, Head of the Monitoring Department at the Agency for Communication Networks and Services of the Republic of Slovenia (AKOS), during the checking round with the national regulatory authorities.

[572] http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6225. Law amended by the Act amending and supplementing the Act on Audiovisual Media Services. (http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8476).

[573] https://e-justice.europa.eu/fileDownload.do?id=f596c53d-d630-4346-9d55-303be104de77.

[574] http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1381.

[575] http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO513.

[576] https://www.akosrs.si/fileadmin/user_upload/Osnutek_Splosnega_akta_o_metodologiji_nadzorstva_avdiovizualnih_medijskih_storitev__radijskih_programov_in_platform_za_izmen.pdf?_x_tr_sl=sl&_x_tr_tl=en&_x_tr_hl=en&_x_tr_pto=wapp.

[577] http://pisrs.si/Pis.web/pregledPredpisa?id=AKT_1267.

[578] https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-1707?sop=2022-01-1707.

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Self- and co-regulatory instruments:

- *Priporočila k marketingu vplivnežev*[579], (2020 Recommendations for influencer marketing, from the Slovenian Advertising Chamber)
- *Slovenski Oglaševalski Kodeks 2009*[580] (Slovenian Advertising Code 2009)

## 4.29.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.29.2.1. Definitions

**Table 55. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | Yes. |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | Yes. |
| **Misleading commercial communication** | Yes (indirectly via "misleading commercial practice") |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No. |
| **Sponsored content** | No. |
| **Product placement** | Yes. |

[579] https://www.soz.si/sites/default/files/priporocila_k_marketingu_vplivnezev_-_2020.pdf.
[580] https://www.soz.si/sites/default/files/soz_sok_slo.pdf.

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| | |
|---|---|
| **Other:** | / |

*Source: Slovenian response to European Audiovisual Observatory standardised survey*

#### 4.29.2.1.1. Audiovisual commercial communications

The Law on AVMS, in Article 3 (13), provides a definition of audiovisual commercial communications by transposing the text of the revised AVMSD verbatim as follows:

> *Audiovisual commercial communication means pictorial images with or without sound intended for the direct or indirect promotion of the goods, services or logo of a natural or legal person engaged in an economic activity; such images are accompanied by, or included in programme content or user-generated videos, in return for payment or similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include television advertising, sponsorship, teleshopping and product placement.*

#### 4.29.2.1.2. Television advertising

Article 3 (15) of the Law on AVMS defines television advertising as:

> *… any form of communication broadcast by a natural or legal person in return for payment or other similar compensation or for the purpose of self-promotion and which concerns a trade, business, activity, craft or a profession and aims to encourage the supply of goods and services, including real estate, rights and obligations. Forms of television advertising are advertisements, informative advertising, self-advertisements, paid video notices and other forms of television advertising, which are defined by the Agency in its general act.*

Applicable rules are found in Articles 27 – 32, including the provision of general obligations with regard to television advertising, such as identifiability and recognisability, restrictions regarding specific programmes and products, as well as restrictions based on protection-of-minors principles, and on the scheduling and duration of television advertising.

#### 4.29.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.29.2.1.4. Surreptitious commercial communication

Article 3 (17) of the Law on AVMS defines surreptitious audiovisual commercial communication by transposing the text of the revised AVMSD verbatim as follows:

> *Surreptitious audiovisual commercial communication means the verbal or visual representation of the goods, services, name, trademark or activity of a producer of goods or service providers in program content where such representation is intended by the publisher*

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*of advertising and is likely to mislead the public. A surreptitious advertising communication shall be deemed to have been published with intent, in particular, when it is published in return for payment or similar compensation.*

#### 4.29.2.1.5. Misleading commercial communication

The Law on the Protection of Consumers against Unfair Commercial Practices, in Article 5 (Misleading actions), defines a commercial practice as misleading if it contains false information and is likely to deceive the average consumer. It adds:

*(2) A commercial practice shall also be regarded as misleading if, in a specific case, taking account of all its features and circumstances, it causes or is likely to cause the average consumer to take a transactional decision that (s)he would not have taken otherwise, and it includes:*
*1. any marketing of a product, including comparative advertising, which creates confusion with any other products, trademarks, trade names or other distinguishing marks of a competitor …*

Article 12, Consumer Protection Act, in Article 12, stipulates: "(1) Advertising of goods and services must not be against the law, indecent or misleading". The definition of "misleading commercial communication" can therefore be deduced from the article quoted above.

#### 4.29.2.1.6. Virtual advertising

There is no definition of virtual advertising.

#### 4.29.2.1.7. Sponsorship

The Law on AVMS in Article 3 (18) defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

*Sponsorship means any form of contribution and any contribution by natural or legal persons not engaged in the provision of audiovisual media services or services of video-sharing platforms or the production of audiovisual works or user-generated videos to the financing of audiovisual media services for the purpose of promotion or promoting their name or company, brand, logo, business or product.*

Chapter Five, Articles 24 and 25, of the Law on AVMS deal with sponsorship requirements not applicable to VSPs, such as clear identification of sponsorship, and restrictions and the prohibition on sponsorship around specific types of programmes, such as reports and informative content programs, as well as medicinal products, the provision of health services, or tobacco and tobacco products.

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#### 4.29.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.29.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.29.2.1.10. Product placement

The Law on AVMS in Article 3 (21) defines product placement by transposing the text of the revised AVMSD:

> *Product placement means any form of audiovisual commercial communication involving or referring to a product, service or their brand via appearance in programming or user-generated video in return for payment or similar compensation.*

Only the provisions of Articles 19 to 22 of this Act apply to audiovisual commercial messages that are marketed, sold or edited by video-service platform providers themselves. While "product placement" is defined by the law, the restrictions pertaining to this concept apply to audiovisual media services and do not extend to VSPs.

Article 26 (product placement) addresses programming where product placement is not allowed (children's programmes, religious and informative program content, such as reports and daily news broadcasts, and consumer protection and international broadcasts) and provides for rules related to product placement (not affecting the content of programmes, not directly encouraging purchase or rental of products and services, etc.) and its identification. It also stipulates that the Slovenian communications regulator, the Agency for Communication Networks and Services of the Republic of Slovenia (AKOS)[581] (referred to as the Agency in relevant legislation) shall further elaborate rules on labelling the programme consents:

> *(6) The Agency shall, by means of a general act, determine the method of labelling the program contents referred to in the fourth indent of the fourth paragraph of this article.*

In May 2022, AKOS adopted the General Act on product placement and sponsorship, which determines the method of labelling program content (from Article 26, paragraph 4, indent 4 of the ZAvMS). This General Act also defines the terms and regulates in more detail the requirements and restrictions related to sponsoring from Article 24 of the ZAvMS. No reference is made in this to video-sharing platforms or to user-generated content. Also, while Article 26 of the Law on AVMS deals with product placement, VSPs have been obliged to comply with only Articles 19-22 (see under 4.28.2.2.).

[581] Agencija za komunikacijska omrežja in storitve Republike Slovenije, http://www.akos-rs.si/.

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#### 4.29.2.1.11. Other definitions

While the Law on AVMS, in line with the text of the revised AVMSD, makes references to audiovisual commercial communication in user-generated programming or videos, and sponsorship and product placement definitions, no reference is made to techniques of online commercial communications (such as: direct marketing, commercial profiling, behaviourally targeted advertising, banners and display advertising, search engine optimisation, overlay ads, etc.)

However, the self-regulatory code of the Advertising Chamber includes in its scope advertising in other electronic media, including advertising on the Internet, purchased online advertising space (e.g. banners, text ads) and other forms of advertising in unoccupied space (including viral messages of an advertising nature via e-mail and other channels, video and other advertising content on portals that are intended for socialising) and any other content that is not published on the advertiser's website and that can be claimed to have been published by the advertiser.

Under the Section, "What is the Subject of the Code?", the following answer is provided:

> *Advertising in other electronic media, including advertising on the Internet in online advertising space purchased for this purpose (e.g. advertising banners, text ads ...) and other forms of advertising in non-purchased space (also viral messages of an advertising nature via e-mail and other channels, video and other advertising content on portals intended for socializing) and all other content that is not published on the advertiser's website and which can be claimed to have been published by the advertiser.*

### 4.29.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

While Articles 19 and 20 of the Law on AVMS provide for general rules and restrictions (applicable to audiovisual commercial communications), pertaining to issues presented below in this Section, Article 38.č requires VSPs to respect these provisions as well as the ones under Article 22 on prohibition of certain products in audiovisual commercial communications (see under 4.28.2.2.1. and 4.28.2.2.2. below).

> *Article 38č*
> *(1) The provisions of Articles 19 to 22 of this Act shall apply to audiovisual commercial messages that are marketed, sold or edited by video exchange platform providers themselves.*
> *(2) Providers of video exchange platforms shall, in accordance with their capabilities, take appropriate measures to ensure that audiovisual commercial messages that they do not market, sell or edit themselves meet the requirements of Articles 19 to 22 of this Act. These*

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*requirements shall be included in the general conditions applicable to the video-sharing platform.*
*(3) Providers of video-sharing platforms shall clearly inform users when user-generated programs and videos contain audiovisual commercial messages, if such messages are reported by users. Platform providers will provide a function by which users who upload videos to the platform, if they are aware of it or can reasonably be expected to be aware of it, can declare whether these videos contain audiovisual commercial messages.*
*(4) In order to fulfil the requirements from this article and to fulfil the requirements from the first paragraph of Article 38.b of this law, which refer to audiovisual commercial messages, the providers of video exchange platforms choose appropriate measures based on the nature of the content in question, the damage that may be caused, the characteristics of the category of persons to be protected, and according to the rights and legitimate interests of the providers of video-sharing platforms, users who created or uploaded content to the platform, and according to the general public interest. The measures must be feasible and proportionate and take into account the scope of the video-sharing platform's service and the nature of the services offered. The measures referred to in this article must not lead to measures of prior control or filtering of content when uploading to the platform inconsistent with the law governing electronic business on the market.*

#### 4.29.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 22 (ban on audiovisual commercial communications) of the Law on AVMS provides for restrictions as follows:

*Article 22 (ban on audiovisual commercial communications)*
*Audiovisual commercial communications for tobacco and tobacco products, electronic cigarettes and containers for filling electronic cigarettes … and alcoholic beverages … shall be subject to regulations governing the restriction of the use of tobacco and related products*.

Also, the Act Regulating the Sanitary Suitability of Foodstuffs, Products and Materials Coming into Contact with Foodstuffs gives further details about the degree of alcohol allowed in advertisements (Article 15), but also the time slots during which ads can be shown (Article 15a). Besides, content should not include depictions of excessive consumption or links between alcohol consumption and success in life, in social life, or in sexual life; it should not be aimed at young people or depict them drinking alcohol and it should not depict people under 25, etc. Alcohol advertising must also include a warning (Article 15b).

#### 4.29.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 22 (ban on audiovisual commercial communications) of the Law on AVMS stipulates restrictions as follows:

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*(1) Audiovisual commercial communications for (…) medicinal products (…) are subject to regulations governing the restriction of the use of tobacco and related products …"*
*(2) Audiovisual commercial communications for healthcare activities, healthcare services or healthcare providers are prohibited.*
*(3) Audiovisual commercial communications for the collection of blood components or audiovisual commercial communications indicating financial refunds, prizes or other benefits to blood donors or due to self-advertising in the territory of the Republic of Slovenia are prohibited, except for audiovisual commercial communications for collection of blood components and public transfusion services in the territory of the Republic of Slovenia.*

#### 4.29.2.2.3. Surreptitious audiovisual commercial communications

Chapter Five, Audiovisual commercial communications, Article 19, of the Law on AVMS provides that:

*(2) Surreptitious audiovisual commercial communication is prohibited.*

The Consumer Protection Act of 1998 (last updated in 2018) also addresses the issue of advertising (under Articles 12 to 15) and the Act includes in its scope services provided online (under Article 1):

*According to this law, information society services are those economic activities that are carried out via the World Wide Web or the Internet and include the sale of services and goods based on the conclusion of contracts via the World Wide Web or the Internet, as well as free services such as the transmission of data and advertising messages, unless otherwise regulated by these or other laws.*

Article 15a (Consumer Protection Act) includes the requirement to clearly identify online advertising:

*In all advertising messages that are part of or represent an information society service, if this is not already regulated to the same or greater extent by another regulation, in addition to the data referred to in Article 2 of this Act, it must be ensured that the advertising message is clearly identifiable as such, and which company is the recipient thereof. If the advertising message includes special offers (discounts, premiums, gifts, etc.), they must be clearly identifiable, and the conditions for obtaining them must be accessible and clear and unambiguously stated. The same applies to permitted prize competitions or games of chance.*

#### 4.29.2.2.4. Subliminal techniques in commercial communications

Chapter Five, Audiovisual commercial communications, Article 19, of the Law on AVMS provides that:

*(3) Audiovisual commercial communications may not use technology which does not allow users to consciously perceive such communications.*

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#### 4.29.2.2.5. Prejudice for human dignity

Chapter Five, Audiovisual commercial communications, Article 20 (first indent) of the Law on AVMS stipulates that audiovisual commercial communications may not:

*- adversely affect respect for human dignity*

The Consumer Protection Act of 1998 under Article 12a forbids "improper advertising":

*Improper advertising of goods and services means advertising that contains content that is offensive or could be offensive to consumers, readers, listeners and viewers, or content that is contrary to morality.*

#### 4.29.2.2.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

Chapter Five, Audiovisual commercial communications, Article 20 (second indent) of the Law on AVMS stipulates that audiovisual commercial communications may not:

*- contain or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation*

#### 4.29.2.2.7. Encouragement of behaviour prejudicial to health or safety

Chapter Five, Audiovisual commercial communications, Article 20 (third and fourth indent) of the Law on AVMS stipulates that audiovisual commercial communications may not:

*- promote behaviours or actions that are or could be harmful to human health or safety, the protection of the environment or cultural heritage*
*- market non-compliant products that are not medicinal products but present properties for the treatment and prevention of disease and pose a risk to public health.*

#### 4.29.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Chapter Five, Audiovisual commercial communications, Article 20 (third indent) of the Law on AVMS stipulates that audiovisual commercial communications may not:

*- promote behaviours or actions that are or could be harmful (…) to the protection of the environment or cultural heritage*

#### 4.29.2.2.9. Causing physical, mental or moral detriment to minors

Article 21, in Chapter Five of the Law on AVMS, states that audiovisual commercial communications must not:

*cause physical, mental or moral harm to minors, and … must not, in particular:*

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- *encourage minors to buy or rent products or services due to their inexperience or credulity;*
- *encourage minors to persuade their parents or others to buy the advertised goods or services;*
- *exploit the trust of minors in their parents, teachers or other persons;*
- *recklessly portray minors in dangerous situations.*

Article 15 of the Consumer Protection Act of 1998 (last updated in 2018) also stipulates that:

> Advertising must not contain content that causes or could cause physical, mental or other harm to children or content that takes advantage of or could take advantage of their trust or lack of experience.

#### 4.29.2.2.10. Other

N/A.

## 4.29.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aim at identifying the rules and practices pertaining to these two specific categories of commercial communications.

### 4.29.3.1. Sponsorship

There are no specific rules for VSPs with regard to sponsorship in the law applicable to VSPs.

### 4.29.3.2. Product placement

There are no specific rules for VSPs with regard to product placement in the law applicable to VSPs.

## 4.29.4. Obligations regarding (v)blogs and (v)blogging

There are no specific rules concerning (v)blogs. However, they may in the future be subject to a self-regulatory Slovenian Advertising Code, which does not yet include VSPs, but which should be updated in 2023.

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The industry self-regulatory body – the Slovenian Advertising Chamber (SOZ),[582] in 2020 created Recommendations for influencer marketing, with the aim of ensuring high professional and ethical standards in the field of influencer marketing. The Recommendations include a set of guidelines to ensure that influencers understand the various definitions of paid advertising, self- advertising, joint advertising, advertorials and affiliate marketing, stating, e.g., that: "In affiliate marketing, the influencer actually acts as a secondary advertiser, so care must be taken to ensure that the content complies with all relevant regulations."

The recommendations also provide guidelines on the understanding of what is "payment", and what is "influence". They stress the importance of the identification of advertising:

> *The main thing to remember is that the intent must be obvious – any labelling (or other means) you use to emphasise the advertising nature of the post must be: stated up front (even before people click/continue viewing the post); highly visible (so that people notice it); suitable for the channel (what can be seen and when) and suitable for all potential devices (highly visible even on mobile phone screens!).*

## 4.29.5. Other relevant information

The SOZ's Recommendations for influencer marketing emphasise that advertising should be clearly recognisable as such – a clear advertising tag should be used, and influencers should be aware of advertising regulations:

> *If an influencer advertises his/her products / services or participates in affiliate marketing, his/her publications/content are likely to be subject to other regulations. Make sure you are properly aware of everything that is regulated, especially when:*
> *- making claims (for example about quality – you will need to support the claim),*
> *- advertising products/services that are subject to marketing-communication age or other restrictions (e.g. alcoholic beverages, gambling …),*
> *- promoting products advertising for which is regulated by special regulations (e.g. food and nutritional supplements, medicines and medical devices, beauty and health products, cars …),*
> *- organising prize games or awarding prizes,*
> *- publishing ads addressing a sensitive target group such as children.*

[582] Slovenska Oglaševalska Zbornica, https://www.soz.si/.

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## 4.29.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less-explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

### 4.29.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

### 4.29.6.2. Gambling, betting, betting tipsters, etc.

Advertising for gambling is not prohibited in Slovenia.

The Slovenian Advertising Code provides rules in relation to the advertising of games of chance, including online gambling (Article 24). In particular, it is provided that advertising must not unrealistically present the possibility of winning, and above all, it must not claim that winning may also depend on knowledge or other factors that the consumer can influence. Gambling advertising must also not claim that higher stakes, regular or frequent participation or the like, significantly increase the chance of winning a prize (24 (1)).

Advertising of gambling games must not be aimed at children and adolescents, and they must not be shown in advertisements or published in media that are mainly intended for children and young people (24 (3)).

### 4.29.6.3. Environmental or “green” claims for products

No specific provisions deal with this issue.

### 4.29.6.4. Other

N/A.

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# 4.29.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

## 4.29.7.1. Self- and co-regulatory bodies

### 4.29.7.1.1. Context of establishment and legal background

The Slovenian Advertising Code, adopted by the industry self-regulatory body – the Slovenian Advertising Chamber – does not refer to VSPs, but this mechanism should be updated in 2023 to include VSPs. The Law on AVMS does include self- or co-regulatory measures regarding commercial communications on VSPs.

### 4.29.7.1.2. Stakeholders involved

Stakeholders include advertisers and advertising agencies.

### 4.29.7.1.3. Scope and objectives

The Slovenian Advertising Code is a self-regulatory act aimed at providing for respect for creative freedoms in advertising, within the framework of abidance by professional principles, to ensure that advertising is:

> *unrestricted in constructive creative freedom, taking into account all protected rights of others; consistent with morality and the principles of conscientiousness and honesty; responsible towards individuals, groups and society as a whole taking into account in particular the peculiarities of certain particularly sensitive groups (e.g. children and adolescents); in accordance with the fundamental principles of competitiveness; in its appearance aesthetic and consistent with the requirements of the cultural environment; to a minimum extent additionally regulated by compulsory regulations adopted by the state bodies; respectful of the Slovenian language …*

### 4.29.7.1.4. Code(s) of conduct

The Slovenian Advertising Code covers advertising in newspapers, magazines and other printed publications, as well as advertising on posters and in other advertising spaces and media in public places, advertising in brochures and leaflets, advertising via e-mail, mobile phones, television, radio and cinemas, as well as other electronic media, including advertising on the Internet: purchased online advertising space (e.g. banners, text ads ...);

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other forms of advertising in unoccupied space (including viral messages of an advertising nature via e-mail and other channels, video and other advertising content on portals that are intended for socialising); and any other content that is not published on the advertiser's website and that can be claimed to have been published by the advertiser. It also includes electronic and video media. Covered as well are: advertising written and designed in the style of editorial content, often referred to as an "advertorial", and commissioned and paid or published in exchange for other compensation, sales promotion, and direct marketing.

#### 4.29.7.1.5. Role of the (self-)regulatory bodies

The Advertising Tribunal, which operates under the auspices of the Advertising Chamber, is exclusively competent to assess the compliance of advertising with the Slovenian Advertising Code, and on the basis of this Code it may assess any advertising in the territory of the Republic of Slovenia, except in cases expressly excluded in this Code.

The composition, mode of operation, procedures, powers and responsibilities of the Advertising Tribunal include the provision of complaints (both by a legal entity and a natural person), when they assess that an individual advertisement (or) action violates the provisions of the Slovenian Advertising Code.

Mandatory elements of the complaint include: name, surname, postal address and telephone number of the applicant; an explanation of the complaint and, if possible, a statement of the articles of the code which the complainant considers that the advertisement (action) violates; an indication of the ad that is the subject of the complaint (an attachment of the ad in electronic form is preferred); indication of at least one medium of publication. The Advertising Tribunal makes decisions upon the complaint in terms of determination of (non)breach of the Code, which are made public and widely accessible.

The code, *inter alia*, does not cover website content, except for that defined as being in the scope of the law, (see under 4.28.7.1.4.), sponsorship, except for advertisements that communicate sponsorship.

#### 4.29.7.1.6. Period of activity (if limited)

N/A.

#### 4.29.7.1.7. Role of the regulatory authority in a co-regulatory system:

N/A.

##### *4.29.7.1.7.1. Regulatory body*

N/A.

##### *4.29.7.1.7.2. Co-regulatory scheme*

N/A.

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*4.29.7.1.7.3. Relationship and roles of stakeholders*

N/A.

### 4.29.7.2. Monitoring/evaluation, compliance and sanctioning powers

In June 2022, AKOS adopted a new General Act on the methodology for the supervision of audiovisual media services, radio programs and video-sharing platforms.[583] Some of the relevant provisions include:

> *II. METHOD OF DETERMINING THE MEETING OF REQUIREMENTS AND RESTRICTIONS*
> *Article 3 (method of determining compliance with requirements and restrictions)*
> *(1) Compliance with program requirements and restrictions applicable to radio programs and requirements and restrictions applicable to audiovisual media services as well as video-sharing platform services, to be verified by the Agency by analysing the recordings of the content, data on the broadcast content and on the basis of other information necessary to establish the facts and in accordance with the classification set out in the general act.*
> *(2) The Agency shall carry out analyses of content on the basis of its own recordings and data, recordings and data which it outsources, or recordings and data obtained from the issuer or provider.*

It further reaffirms the obligations of VSPs to keep recordings of published videos, if these are the subject of a user complaint and sets the guidelines as per storage of data and recordings.

Finally, in May 2022, AKOS adopted a General Act on out-of-court settlement of disputes between users and providers of video-sharing platforms – and launched a consultation on the document.[584]

## 4.29.8. Cross-sector and cross-border collaboration

The Slovenian Advertising Chamber is a full member of the European Advertising Standards Alliance (EASA),[585] so the provisions of the Code are also used in the procedure for resolving international complaints in the EASA member states.

[583] http://pisrs.si/Pis.web/pregledPredpisa?id=AKT_1276.
[584] http://pisrs.si/Pis.web/pregledPredpisa?id=AKT_1267.
[585] https://www.easa-alliance.org/.

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## 4.29.9. Update on plans and practices relative to new obligations of VSPs

As outlined above, AKOS has introduced several General Acts in order to implement the AVMS Directive, including the General Act on the notification of on-demand audiovisual media services and on the notification of video-sharing platform services, which entered into force in July 2022.[586]

As noted previously, the Slovenian Advertising Chamber is in the process of reviewing its code, which dates from 2009 (and is rather outdated). A new version of the code should be ready in 2023.

## 4.29.10. Studies, reports and research

N/A.

## 4.29.11. Data compilation

This factsheet is based on data compiled by Deirdre Kevin, consultant and expert in media regulation, media law and media market trends, CommSol Ltd.

[586] https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-2044?sop=2022-01-2044.

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# 4.30. UK – United Kingdom – National legal summary[587]

## 4.30.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- The Communications Act 2003, as amended (The Communications Act)[588]
- The Gambling Act 2005[589]

Secondary legislation:

- Human Medicines Regulation 2012[590]

Self- and co-regulatory instruments:

- The UK Code of Broadcast Advertising (The BCAP Code)[591]
- The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing Edition [Appendix 3, dealing with advertising rules for video-sharing platforms regulated by statute] (The CAP Code)[592]
- Ofcom Broadcasting Code[593]

Guidance and recommendations:

- Ofcom, Guidance for providers on advertising harms and measures[594]
- Ofcom, Guidance for providers on control of advertising[595] Advertising Standards Authority, Influencer Marketing - Key Advice Resources[596]
- Competition and Markets Authority Guidance: Social media endorsements: being transparent with your followers[597]

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[587] The factsheet on the United Kingdom incorporates feedback received on the information related to Ofcom's responsibilities from Jenna Omassi, International Policy Manager at Ofcom's International and Online Safety Policy teams during the checking round with the national regulatory authorities.
[588] https://www.legislation.gov.uk/ukpga/2003/21/contents
[589] https://www.legislation.gov.uk/ukpga/2005/19/contents
[590] https://www.legislation.gov.uk/uksi/2012/1916/contents
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[592] https://www.asa.org.uk/static/47eb51e7-028d-4509-ab3c0f4822c9a3c4/4869041b-06d3-4745-b209d2a5c37500b3/The-Cap-code.pdf
[593] https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code
[594] https://www.ofcom.org.uk/__data/assets/pdf_file/0015/229011/vsp-guidance-harms-and-measures.pdf
[595] https://www.ofcom.org.uk/__data/assets/pdf_file/0014/229010/vsp-guidance-control-of-advertising.pdf
[596] https://www.asa.org.uk/news/influencer-marketing-key-advice-resources.html
[597] https://www.gov.uk/government/publications/social-media-endorsements-guide-for-influencers/social-media-endorsements-being-transparent-with-your-followers.

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## 4.30.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.30.2.1. Definitions

**Table 56. Definition of the main concepts related to commercial communications**

| Concept | Existence of a definition |
|---|---|
| **Audiovisual commercial communications** | Yes. |
| **Television advertising** | *No (but defined for broadcasting)* |
| **Advertiser** | No. |
| **Surreptitious commercial communication** | No. |
| **Misleading commercial communication** | No. |
| **Virtual advertising** | No. |
| **Sponsorship** | Yes. |
| **Sponsor** | No (but defined for broadcasting) |
| **Sponsored content** | No (but defined for broadcasting and on-demand service programmes). |
| **Product placement** | Yes. |
| **Other** | Direct marketing, Profiling, Display advertising (Banners, pop-ups, preferential and paid for search listing) and other forms |

*Source: UK's response to European Audiovisual Observatory standardised survey*

### 4.30.2.2. Audiovisual commercial communications

The Communications Act, Section 368Z13 (applicable to VSPs) defines audiovisual commercial communication as:

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*a set of moving or still images, or of legible text, or of a combination of those things (with or without sounds), which— (a) is designed to promote (directly or indirectly) the goods, services or image of a person pursuing an economic activity, and (b) accompanies or is included in a video in return for payment, or for other valuable consideration, or for self-promotional purposes, and forms of audiovisual commercial communication include advertising, sponsorship, teleshopping and product placement;*

It should be noted that this definition is used only in Part 4B of the Communications Act, which covers video-sharing platforms.

#### 4.30.2.2.1. Television advertising

There is no definition of television advertising.

However, the BCAP Code, on page 4, defines "advertisement" specifically for broadcasting:

*advertisement means publicity by advertisers, including spot advertisements and broadcaster promotions with advertisers (outside programme time), that is broadcast in return for payment or other valuable consideration to a broadcaster or that seeks to sell products to viewers or listeners. The promotion of broadcasters' own-branded activities, goods and events (such as websites, t-shirts and concerts), which enhance audience involvement and are not designed to make a profit or promote commercial partnerships, are excluded*

#### 4.30.2.2.2. Advertiser

There is no definition of advertiser.

#### 4.30.2.2.3. Surreptitious commercial communication

There is no definition of surreptitious commercial communication.

The Communications Act (Part 4B, s.368Z(4)(b)) and the CAP Code (Appendix 3) prohibit techniques which exploit the possibility of conveying a message subliminally or surreptitiously on VSPs, for advertising under the control of the VSP provider. Additionally, the BCAP Code prohibits it too.

#### 4.30.2.2.4. Misleading commercial communication

There is no definition of misleading commercial communication: the statutory UK VSP regime does not cover misleading advertising.

However, the CAP (page 16) and the BCAP Codes have whole sections that cover a variety of misleading practices.

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#### 4.30.2.2.5. Virtual advertising

There is no definition of virtual advertising.

#### 4.30.2.2.6. Sponsorship

The Communications Act, in Section 368Z13 (applicable to VSPs) defines:

> *"sponsorship" means any contribution made by a person not engaged in providing video-sharing platform services to the financing of video-sharing platform services or videos with a view to promoting the name, trade mark, image, activities, services or products of that person or another person;"*

It should be noted that this definition is used in Part 4B of the Communications Act, which covers video-sharing platforms.

#### 4.30.2.2.7. Sponsor

There is no definition of sponsor specifically relating to VSPs. However, the Ofcom Broadcasting Code defines "sponsor" as *any public or private undertaking or individual (other than a broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trademarks and/or its activities* (see Section 9.14 of the Code).

#### 4.30.2.2.8. Sponsored content

There is no definition of sponsored content specifically relating to VSPs. However, definitions are provided for broadcasting and on-demand service programmes.

The Ofcom Broadcasting Code defines "sponsored programming" as a programme

> *(which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor. It includes advertiser-funded programmes* (see Section 9.14).

Additionally, the Communications Act defines "sponsorship announcement" (s.368G, Part 4A) for on-demand service programmes as:

> *(17) (a)anything included for the purpose of complying with subsection (8) or (9), and (b)anything included at the same time as or otherwise in conjunction with anything within paragraph (a).*

#### 4.30.2.2.9. Product placement

The Communications Act, Section 368Z13 (referencing Part 4B on VSPs) provide for the definitions of product placement as follows:

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*368Z13. product placement means the inclusion of, or of a reference to, a product, a service or a trade mark within a video in return for payment or for other valuable consideration;*

Besides, a definition is provided in the Ofcom Broadcasting Code too. Product placement is

*the inclusion in a programme of, or of a reference to, a product, service or trademark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider, and is not prop placement* (see Section 9.5 of the Code).

#### 4.30.2.2.10. Other definitions

The CAP Code (Appendix 3), dealing with advertising rules for video-sharing platforms regulated by statute, refers directly to unsolicited email marketing (direct marketing) requiring it to be obviously identifiable without the need for opening (Rule 2.2). It also requires that marketers have obtained consent for email marketing except in specific circumstances and must allow users to opt-out (Rule 10.6). It also refers to profiling using user data and requires consumers to be informed if this is being done, such as through a privacy statement, and allow for withdrawal of consent, erasure of data and the means to obtain a copy of data used. (Rule 10.2)

All online forms of display advertising must comply with all the rules for non-broadcast advertising set out in the CAP Code and the code specifically makes reference to banners, pop-ups, preferential listing in comparison sites, paid for search listings and other forms as being within scope of the code (page 5). The CAP Code as a whole applies generally to online advertising (including VSPs), but on a self-regulatory basis.

### 4.30.2.3. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms to, inter alia, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including the VSP providers related to commercial communications.

As a general remark, it should be noted that the 2003 Communications Act amendments, in Part 4B relate to video-sharing platforms. Relative to commercial communications, it distinguishes between commercial communication controlled by VSPs and commercial communication not controlled by the VSPs.

VSP providers are responsible for ensuring compliance with the general advertising requirements and provisions on prohibited and restricted products where the advertising is marketed, sold or arranged by them and take measures for ensuring that advertising meets the general advertising requirements, provisions on prohibited and restricted products, and requirements relating to the transparency of advertising, when the advertising is not

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marketed, sold or arranged by the VSP provider. Details on these measures are provided below.

#### 4.30.2.3.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco related products, including electronic cigarettes and refill containers

Communications Act 2003 (as amended) Section 368Z, paragraph (2), provides for the prohibition of cigarettes, other tobacco products, as well as electronic cigarettes or electronic cigarette refill containers:

> *(2) Audiovisual commercial communications for the following products are prohibited in a video-sharing platform service—*
> *(a) cigarettes or other tobacco products;*
> *(b) electronic cigarettes or electronic cigarette refill containers;*

Appendix 3 of the CAP Code provides for the same prohibitions vis-à-vis cigarettes and tobacco products:

> *31.3 Advertisements for the following are prohibited:*
> *31.3.a cigarettes and other tobacco products;*
> *31.3.b electronic cigarettes and electronic cigarette refill containers;*

Paragraph (3) of the said section provides restrictions for audiovisual commercial communications for alcoholic drinks in a video-sharing platform service in the following manner:

> *(3) Audiovisual commercial communications for alcoholic drinks are only permitted in a video-sharing platform service if—*
> *(a) they are not aimed specifically at persons under the age of 18, and*
> *(b) they do not encourage immoderate consumption of alcohol.*

Appendix 3 of the CAP Code provides for the similar restrictions:

> *31.4 Advertisements for alcoholic drinks must comply with the general advertising requirements set out in 31.1 (a-b) and 31.2 (a-i), and must not:*
> *31.4.a be aimed at persons under the age of eighteen;*
> *31.4.b encourage immoderate consumption of alcohol.*

Similar rules can be found in Part 4A of the Communications Act and in the Ofcom Code (see Section 9, dealing with sponsorship and product placement restrictions).

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#### 4.30.2.3.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Communications Act 2003 (as amended) Section 368Z, paragraph (2) prohibits prescription-only medicine:

> *(2) Audiovisual commercial communications for the following products are prohibited in a video-sharing platform service—*
> *...*
> *(c) any prescription-only medicine.*

Also, the CAP Code, in Rule 12.12, which is also based on the Human Medicines Regulation 2012 stipulates that prescription-only medicines and treatments cannot be advertised to the public.

Specific to VSPs, CAP Code's Appendix 3, Rule 31.3c provides for the same prohibition:

> *Advertisements for the following are prohibited:*
> *...*
> *31.3.c prescription-only medicines*

#### 4.30.2.3.3. Surreptitious audiovisual commercial communications

Surreptitious audiovisual commercial communications are prohibited, according to Section 368Z, paragraph 4 of the Communications Act:

> *(4) Audiovisual commercial communications included in a video-sharing platform service—*
> *(a) must be readily recognisable as such, and*
> *(b) must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.*

Also, the CAP Code's Appendix 3. Rule 31.1. provides for the same prohibitions:

> *31.1 Advertisements included on a regulated VSP:*
> *31.1.a must be readily recognisable as such; and,*
> *31.1.b must not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.*

#### 4.30.2.3.4. Subliminal techniques in commercial communications

The prohibitions related to subliminal techniques in commercial communications are inclusive of those related to surreptitious audiovisual commercial communications above.

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#### 4.30.2.3.5. Prejudice for human dignity

In accordance with Section 368Z of the Communications Act, paragraph (5) (a), audiovisual commercial communications included in a video-sharing platform service must not:

*(a) prejudice respect for human dignity;*

Also, the CAP Code, Appendix 3, Rule 31.2 provides for the same prohibition:

*31.2 Advertisements on a regulated VSP must not:*
*31.2.a prejudice respect for human dignity;*

#### 4.30.2.3.6. Inclusion or promotion of any discrimination (e.g., on the grounds of sex, racial or ethnic origin, nationality, religion, etc.)

The Communications Act, in Section 368Z, paragraph (5) (b), stipulates that the audiovisual commercial communications included in a video-sharing platform service must not:

…
*(b) include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;*

The same prohibition is found in the CAP Code, Appendix 3, Rule 31.2:

*31.2 Advertisements on a regulated VSP must not:*
*31.2.b include or promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;*

#### 4.30.2.3.7. Encouragement of behaviour prejudicial to health or safety

Audiovisual commercial communications included in a video-sharing platform service must not, in accordance with Section 368Z of the Communications Act, paragraph (5) (c):

…
*(c) encourage behaviour prejudicial to health or safety;*

CAP Code, Appendix 3, Rule 31.2c prohibits advertisements on a regulated VSP to:

*31.2.c encourage behaviour prejudicial to health or safety;*

#### 4.30.2.3.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

In accordance with Section 368Z of the Communications Act, paragraph (5) (d), audiovisual commercial communications included in a video-sharing platform service must not:

…

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*(d) encourage behaviour grossly prejudicial to the protection of the environment;*

Also, the same prohibition is found in the CAP Code, Appendix 3, Rule 31.2d, which stipulate that the advertisement on a regulated VSP must not:

*31.2.d encourage behaviour grossly prejudicial to the protection of the environment.*

#### 4.30.2.3.9. Causing physical, mental or moral detriment to minors

The Communications Act, Section 368Z, paragraph (5), stipulates that the audiovisual commercial communications included in a video-sharing platform service must not:

…
*(e) cause physical, mental or moral detriment to persons under the age of 18;*
*(f) directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;*
*(g) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;*
*(h) exploit the trust of such persons in parents, teachers or others; or*
*(i) unreasonably show such persons in dangerous situations.*

The prohibitions in the CAP Code, Appendix 3, Rule 31.2 stipulate that the advertisement on a regulated VSP must not:

*31.2.e cause physical, mental or moral detriment to persons under the age of 18;*
*31.2.f directly exhort such persons to purchase or rent goods or services in a manner which exploits their inexperience or credulity;*
*31.2.g directly encourage such persons to persuade their parents or others to purchase or rent goods or services;*
*31.2.h exploit the trust of such persons in parents, teachers or others; or,*
*31.2.i unreasonably show such persons in dangerous situations.*

#### 4.30.2.3.10. Other

N/A.

## 4.30.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

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#### 4.30.3.1. Sponsorship

Ofcom published a guidance for video sharing platform providers dealing with advertising harms and measures. VSP providers shall take appropriate measures, as listed in Schedule 15A of the Communications Act, when dealing with advertising. In this case, "advertising" is to be understood as including sponsorship and product placement.

Besides, there are general rules about transparency and there is extensive guidance for "influencers" on how to ensure they are not in violation of the CAP Code by the Advertising Standards Authority[598] and there is guidance for influencers from the Competition and Markets Authority[599].

#### 4.30.3.2. Product placement

The applicability of general rules, as well as guidance from different institutions for sponsorship above is also applicable for product placement.

## 4.30.4. Obligations regarding (v)blogs and (v)blogging

As (v)blogs are not considered audiovisual media services, there are no specific rules that apply.

However, guidance for influencers from the Competition and Markets Authority do extensively cover the parts related to advertisement, in terms of e.g., identifiability and recognizability as well as honesty about sponsored or advertised content, refraining from misleading practices, etc.

## 4.30.5. Other relevant information

N/A.

## 4.30.6. Content related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less

[598] https://www.asa.org.uk/.
[599] https://www.gov.uk/government/organisations/competition-and-markets-authority.

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explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

#### 4.30.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.30.6.2. Gambling, betting, betting tipsters, etc.

Rules 16.1-16.5 of the CAP Code set out extensive rules related to gambling that draw on the Gambling Act 2005. These are aimed at ensuring such advertising is socially responsible, protects minors, and does not prey upon vulnerabilities. All of these apply equally to any online advertising including on VSPs.

#### 4.30.6.3. Environmental or “green” claims for products

The CAP Code Rules 11.1-11.9 contain provisions on the use of green claims in advertising that apply to all online advertising including VSPs. These are aimed at ensuring claims are clear and justified.

#### 4.30.6.4. Other

N/A.

### 4.30.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

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### 4.30.7.1. Self- and co-regulatory bodies

#### 4.30.7.1.1. Context of establishment and legal background

The general duties of the UK's communications regulatory authority Ofcom[600] are outlined in the Communications Act, Section 3, which empower Ofcom to encourage and promote self-regulation and gives it designation powers in Section 368T. Its specific functions regarding VSPs are set out in Part 4B (s.368X).

Ofcom has designated the Advertising Standards Authority (ASA) to carry out duties related to the regulation of audiovisual commercial communications including on VSPs.[601] This includes drawing up guidance and rules, handling complaints, and referring non-compliance to Ofcom. This co-regulatory arrangement covers all advertising marketed, sold or arranged by VSPs, or audiovisual media service providers. Ofcom retains direct oversight over the appropriateness of the measures taken by VSPs to ensure commercial communications not marketed, sold or arranged by the VSP also complies with the law and standards.

There is a Memorandum of Understanding[602] between OFCOM and the ASA (Broadcast) Limited[603] (ASA(B)), and the Broadcast Committee of Advertising Practice Limited (BCAP) and the Broadcast Advertising Standards Board of Finance Limited (BASBOF) on information sharing, which represents a cooperation between the named parties on related matters.

#### 4.30.7.1.2. Stakeholders involved

The principal stakeholders involved in self and co-regulatory schemes are, as mentioned previously, Ofcom and ASA.

ASA is the independent authority set up by industry that administers the self-regulatory codes related to advertisement and commercial communications. It is funded by the Advertising Standards Board of Finance, which collects a levy from industry, and it works in the public interest, including the activities related to investigating and ruling on complaints and conducting research.

Also, the Committee of Advertising Practice is the self-regulatory body that creates, revises and enforces the applicable codes, in this respect, the CAP Code. CAP's members

[600] https://www.ofcom.org.uk/home.
[601] https://www.ofcom.org.uk/__data/assets/pdf_file/0016/229012/vsp-advertising-designation-of-asa.pdf.
[602] https://www.asa.org.uk/static/23cc61df-e57c-4957-81ac15378b7730b7/5c2e367f-7778-405e-b2a09066860bc4ef/mou-asa-ofcom.pdf.
[603] https://www.ofcom.org.uk/__data/assets/pdf_file/0016/229012/vsp-advertising-designation-of-asa.pdf. An information-sharing agreement between Ofcom and the ASA has been established too: https://www.ofcom.org.uk/__data/assets/pdf_file/0019/229006/letter-to-guy-parker-261121.pdf and https://www.ofcom.org.uk/__data/assets/pdf_file/0020/229007/letter-to-kevin-bakhurst-291121.pdf.

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include organisations that represent the advertising, sales promotion, direct marketing and media businesses, which agree to comply with the CAP Code.

Appendix 3 of the CAP Code specifically deals with advertising rules for on-demand services regulated by statute.

#### 4.30.7.1.3. Scope and objectives

Objectives of the established co-regulatory schemes is to ensure compliance with the general advertising requirements and provisions on prohibited and restricted products, as well as general advertising and transparency requirements for advertising which is or not marketed, sold or arranged by VSPs.

#### 4.30.7.1.4. Code(s) of conduct

The CAP Code is the rule book for non-broadcast advertisements, sales promotions and direct marketing communications (marketing communications), primarily concerned with the content of marketing communications, with some rules also covering the administration of sales promotions, the suitability of promotional items, etc.

Appendix 3 of the CAP Code specifically deals with advertising rules for VSPs regulated by statute.

#### 4.30.7.1.5. Role of the (self-)regulatory bodies

As explained in the Designation document by Ofcom, under the system of co-regulation for VSPs, as for audiovisual media services, the ASA exercises powers:

> Article 6, Designation Document:
> *to determine, following a complaint or otherwise, whether a Notified Service Provider is contravening or has contravened any of the Rules;*
> *(ii) to draw up, and review and revise as appropriate, interpretive guidance concerning the Rules; and*
> *(iii) to carry out, commission or support (financially or otherwise) research in connection with its Designated Duty.*

For commercial communication that is controlled by the VSP Ofcom acts as the statutory backstop for the ASA, which is primarily responsible.

#### 4.30.7.1.6. Period of activity (if limited)

N/A.

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#### 4.30.7.1.7. Role of the regulatory authority in a co-regulatory system:

##### *4.30.7.1.7.1. Regulatory body*

Derived from the aforementioned Designation document by Ofcom, for commercial communication controlled by VSPs, Ofcom is in charge of passing on complaints it receives, approving changes to the codes, informing notifying services and handling appeals or cases of non-compliance with ASA decisions referred by the ASA using its powers of enforcement.

For commercial communication not controlled by the VSPs, Ofcom assesses the appropriateness of measures they take based on its previously mentioned guidance.

##### *4.30.7.1.7.2. Co-regulatory scheme*

In accordance with the legislation, Ofcom has already designated ASA to be the part of a co-regulatory system for VSPs for commercial communication that is controlled by the VSP, with Ofcom acting as the statutory backstop for the ASA, while for commercial communication not controlled by the VSPs, Ofcom assesses the appropriateness of measures they take based on its Guidance for providers on control of advertising, where Ofcom considers a range of information (e.g. advertising models, information from VSPs, commercial arrangements) in order to distinguish between the two categories.

##### *4.30.7.1.7.3. Relationship and roles of stakeholders*

The detailed information on the relationship of stakeholders has been provided earlier, with respective roles and obligations of both ASA and Ofcom.

### 4.30.7.2. Monitoring/evaluation, compliance and sanctioning powers

According to Reporting Obligations and Key Performance Indicators, set out in the Schedule attached to the Designation document, ASA has to report to Ofcom by April of each year. This includes qualitative and quantitative data on complaints and actions taken. Ofcom will review the effectiveness of the system.

Ofcom further has the power to impose financial sanctions or even interruption of service in case of breaches of applicable rules, while the ASA does not have the power to sanction (paragraph 4.60 of the Ofcom's statement on regulation of advertising on VSPs above).

## 4.30.8. Cross-sector and cross-border collaboration

The UK has a Digital Regulation Cooperation Forum that was formed in July 2020 by The Competition and Markets Authority (CMA), the Information Commissioner's Office (ICO) and the Office of Communications (Ofcom). The Financial Conduct Authority (FCA) joined fully just less than a year later. The aims of the Forum are to promote greater coherence in

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regulation, to work collaboratively in areas of common interest, and to enhance capacity.[604] Among its objectives is also to strengthen international engagement with regulatory bodies to share information and best practice. The Forum devises annual workplans and reports publicly on its activities.

Ofcom is a very active member of the European Platform of Regulatory Authorities (EPRA), which has been a forum for sharing information and working collaboratively on VSP issues among others.

## 4.30.9. Update on plans and practices relative to new obligations of VSPs

The self- and co-regulatory system in UK is operational, which can also be seen in ASA's several rulings in cases involving VSPs. At present, some examples relate to the self-regulatory system and there are not yet examples of action taken in relation to ASA advertising rules. In 2022, the ASA banned an ad on Twitch livestream for misleading advertising and upheld six complaints about commercial communication on YouTube for a number of different reasons. In this year, the ASA has also banned multiple posts on Instagram Reel and Story for not being identifiable advertising, and posts on both TikTok and Instagram for alcohol advertising,

It should also be noted that the UK government has introduced the Online Safety Bill that would replace some parts of Part 4B (on VSPs) in the Communications Act. It would also increase the scope of Ofcom's role in relation to all online platforms, as Ofcom currently only regulates the 19 notified VSPs in the UK. This will have implications for commercial communications as well. The Online Safety Bill is expected to return to Parliament in the coming months.

## 4.30.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- ASA, Protecting children online - 2020-2021 report, 2021[605]
- ASA report on age-restricted ads appearing in online mixed-age media, 2021[606]

[604] https://www.gov.uk/government/publications/drcf-terms-of-reference/terms-of-reference.
[605] https://www.asa.org.uk/resource/protecting-children-online-2020-2021-report.html.
[606] https://www.asa.org.uk/resource/asa-report-on-age-restricted-ads-appearing-in-online-mixed-age-media.html.

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## 4.30.11. Data compilation

This factsheet was produced based on data compiled by Sally Broughton Micova, Associate Professor in Communications Policy and Politics, University of East Anglia.

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