

The EU Audiovisual Media Services Directive and its transposition into national law – a comparative study of the 27 Member States

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Member State: Luxembourg

Grand-ducal regulation on advertising, sponsorship, teleshopping and self-promotion

Important Notice

This text is an unofficial translation conducted at the University of Luxembourg in the framework of a research project on the transposition of the “**Audiovisual Media Services Directive**” in the Member States of the European Union.

The original legal acts which Member States notified to the European Commission as national execution measures were retrieved from official national databases. In order to focus on the core of the research project, several national legal acts have been shortened to include only those provisions of relevance for the study. Subsequently, the modified acts were translated by a translation agency external to the university*.

The translations only serve the purpose of being an information source; there is no guarantee whatsoever that the translations correctly correspond to the original versions of the laws. Therefore, evidently, the texts have no legal value. The original, as well as the translated version of the legal acts, are available at: www.medialaw.lu, where additional information on the comparative study may be found.

* We would like to thank the Service de Médias et des Communications Luxembourg (Media and Communications Service, www.mediacom.public.lu) for valuable support in the translation by providing drafts of earlier unofficial translations which could be used for this translation of the amended regulation.

Member State: Luxembourg

Grand-ducal Regulation dated 17 December 2010 fixing the rules applying in matters of “commercial communications in audiovisual media services”¹

Originally:

Grand-ducal regulation of 5 April 2001 fixing the rules applying in matters of advertising, sponsorship, teleshopping and self-promotion in television programmes

Official Journal: Mémorial A-42 of 17 April 2001, pp.936

Amended by:

- Grand-ducal regulation of 24 June 2008, Mémorial A- 91 of 02 July 2008, pp.1243
- Grand-ducal regulation of 17 December 2010, Mémorial A-241 of 24 December 2010, pp.4039

Codified Text

I, Henri, Grand Duke of Luxembourg, Duke of Nassau,

Having regard to the amended Law dated 27 July 1991 on Electronic Media,²

Having regard to Directive 2010/13/EU of the European Parliament and the Council of 10 March 2010 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), codified version of Directive 2007/65/EC of the European Parliament and the Council of 11 December 2007 amending Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities,

In view of the opinions of the *Chambre de Commerce* (hereinafter Chamber of Commerce) and the *Chambre des Métiers* (hereinafter Chamber of Trade),

Having heard my *Conseil d'Etat* (hereinafter Council of State),

Upon the report of my Prime Minister, Minister of State, and further to deliberation of the government sitting in committee,

¹ As amended by grand-ducal regulation of 2010.

² Mémorial A - 47 of 30 July 1991, p. 972 as further amended.

Order as follows:

(Grand-ducal regulation of 2010)

Article 1 - Scope of application

“The provisions of the present grand-ducal regulation apply to audiovisual media services referred to in Article 26 of the law as amended of 27 July 1991 on Electronic Media.”

(Grand-ducal regulation of 2008 and 2010)

Article 2 – Insertion of television advertising and teleshopping “in television services”³

“(1) Where television advertising or teleshopping is inserted during programmes, it shall be done in such a way that the integrity and value of the programmes, taking into account natural breaks in the programme and the duration and nature thereof, and the rights of the rights holders are not prejudiced.

(2) The transmission of audiovisual films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted once for each period of at least 30 minutes. The transmission of children’s programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.”

Article 3 *(repealed by grand-ducal regulation of 2010)*

Article 4 – Advertising and “teleshopping”⁴ for certain products “in television services”⁵

(1) *(repealed by grand-ducal regulation of 2010)*

“(1)⁶ Teleshopping for medicinal products which are subject to a marketing authorization within the meaning of Directive “2001/83/EC of the European Parliament and the Council of 6 November 2001 on the Community code relating to medicinal products for human use is prohibited.”⁷

“(2)⁸ Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

³ As amended by grand-ducal regulation of 2010.

⁴ As amended by grand-ducal regulation of 2010.

⁵ As amended by grand-ducal regulation of 2010.

⁶ New numbering introduced by grand-ducal regulation of 2010, previous paragraph 1 was deleted.

⁷ As amended by grand-ducal regulation of 2010.

⁸ New numbering introduced by grand-ducal regulation of 2010, previous paragraph 1 was deleted.

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

Article 5 – “Audiovisual media services or audiovisual programmes which are sponsored”⁹

(1) Sponsored “audiovisual media services or audiovisual programmes”¹⁰ shall meet the following requirements:

(a) “their content and in the case of television services, their programming”¹¹ shall in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence “of the audiovisual media service provider”¹²;

“(b) they shall not directly encourage the purchase or rental of the goods or services, in particular by making special promotional references to those products or services.

(c) viewers shall be clearly informed of the existence of a sponsorship 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 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;”¹³

(2) “Audiovisual media services or audiovisual programmes”¹⁴ shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

(3) Sponsorship of “audiovisual media services or audiovisual programmes”¹⁵ by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking but shall not promote specific medicinal products or medical treatments available only on prescription “(…)”¹⁶.

(4) News and current affairs programmes shall not be sponsored.

⁹ As amended by grand-ducal regulation of 2010.

¹⁰ As amended by grand-ducal regulation of 2010.

¹¹ As amended by grand-ducal regulation of 2010.

¹² As amended by grand-ducal regulation of 2010.

¹³ As amended by grand-ducal regulation of 2008.

¹⁴ As amended by grand-ducal regulation of 2010.

¹⁵ As amended by grand-ducal regulation of 2010.

(Grand-ducal regulation of 2010)

“Article 5bis – Product placement

(1) By way of derogation from the prohibition provided in Article 26ter (7) of the law as amended of 27 July 1991 on Electronic Media, product placement is permitted in audiovisual media services:

- a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes; or
- b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme. The derogation provided for in a) does not apply to children's programmes.

(2) Programmes that contain product placement shall meet at least all of the following requirements:

- (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- (b) 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;
- (c) they shall not give undue prominence to the product in question;
- (d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and 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 requirements of point d) may be waived provided if the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to that provider.

In any event programmes shall not contain product placement of:

- tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
- specific medicinal products or medical treatments available only on prescription.”

(Grand-ducal regulation of 2008)

“Article 6 – Transmission time devoted to “television”¹⁷ advertising and teleshopping “in television services”¹⁸

(1) The proportion of advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.

(2) Paragraph (1) shall not apply to announcements made by the “television service provider”¹⁹ in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placement.

(3) Teleshopping windows shall be clearly identified as teleshopping windows by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.”

¹⁶ As deleted by grand-ducal regulation of 2010.

¹⁷ As amended by grand-ducal regulation of 2010.

¹⁸ As amended by grand-ducal regulation of 2010.

¹⁹ As amended by grand-ducal regulation of 2010.

Article 7 – “Television services”²⁰ exclusively devoted to teleshopping

Television “services”²¹ may be devoted exclusively to teleshopping. Television advertising is authorized on such channels. Article 2 and “paragraphs (1) and (2)”²² of Article 6 of the present regulation do not apply to these channels.”²³

Article 8 – “Television services”²⁴ exclusively devoted to self-promotion

Television “services”²⁵ may be devoted exclusively to self-promotion. “Other forms of “audiovisual commercial communication”²⁶ are authorized on such channels. Article 2 and “paragraphs (1) and (2)”²⁷ of Article 6 of the present regulation do not apply to these channels.”²⁸

Article 9 – Execution

Our Prime Minister, Minister of State, is entrusted with the execution of this regulation which shall be published in the *Mémorial*.

²⁰ As amended by grand-ducal regulation of 2010.

²¹ As amended by grand-ducal regulation of 2010.

²² As amended by grand-ducal regulation of 2010.

²³ As amended by grand-ducal regulation of 2008.

²⁴ As amended by grand-ducal regulation of 2010.

²⁵ As amended by grand-ducal regulation of 2010.

²⁶ As amended by grand-ducal regulation of 2010.

²⁷ As amended by grand-ducal regulation of 2010.

²⁸ As amended by grand-ducal regulation of 2008.