

Luxembourg 01 April 2021

The undersigned Claudine Bohnenberger, certified translator with the Court of Justice in Luxembourg by ministerial decree of 18 December, 1991 in application of the Law of 7 July, 1971 hereby certifies that the translation of the document regarding Grand Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications(...)/ Coordinated text of 8 March 2021 corresponds in content and in form to the version submitted for the translation.

In case of litigation the original version is binding.

Claudine Bohnenberger
Certified translator

Grand ducal regulation of 5 April 2001 on the applicable rules for « commercial communications in audio-visual media services»^{1 2}

(Memorial A - 42 of 17 April 2001, p. 936; dir. 97/36/CE; 89/352/CEE; new publication in Memorial A - 88 of 1 August 2001, p. 1807) amended by:

Grand ducal regulation of 24 June 2008 (Memorial A - 91 of 2 July 2008, p. 1243)

Grand ducal regulation of 17 December 2010 (Memorial A - 241 of 24 December 2010, p. 4039; dir. 2007/65/CE)

Grand ducal regulation of 8 November 2019 (Memorial A - 770 of 13 November 2019)

Grand ducal regulation of 26 February 2021 (Memorial A - 175 of 8 March 2021).

Coordinated text of 8 March 2021

applicable as of 12 March 2021

Art. 1. Scope

(Grand ducal regulation of 17 December 2010)

«The provisions of the present grand ducal regulation apply to the audio-visual media services referred to in article 26 of the amended law of 27 July 1991 on electronic media.»

(Grand ducal regulation of 24 June 2008)

«Art. 2. Insertion of «television»¹ advertisement and tele-shopping «in television services»¹

(1) The insertion of television advertisement or tele-shopping in programmes may not harm the integrity of «the programmes»¹ 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 advertisement and/or tele-shopping once per airtime of thirty minutes. Children's programmes can be interrupted by television advertisement (...)³ once per airtime of thirty minutes, provided that the scheduled duration «of the programme»¹ exceeds thirty minutes. Television advertisement or tele-shopping spots may not be inserted during the broadcasting of religious services.»

(Grand ducal regulation of 26 February 2021)

«Tele-shopping sequences are forbidden in children's programmes.»

Art. 3. (. . .) *(repealed by the Grand ducal regulation of 17 December 2010)*

Art. 4. «Commercial communications for specific products in audio-visual media services»⁴

(1) (. . .) *(repealed by the Grand ducal regulation of 17 December 2010)*

(2) Tele-shopping regarding medication subject to authorisation before it is put on the market, within the meaning of «directive 2001/83/CE of the European Parliament and Council of 6 November 2001 on a community code relating to medicinal products for human use»¹, as well as tele-shopping regarding medical treatments is forbidden.

(3) Television advertisement and tele-shopping for alcoholic beverages must comply with the following criteria:

- a) it may not specifically target minors and, in particular, show minors consuming these beverages;
- b) it may not link the consumption of alcohol to the improvement of physical performance or the driving of an automotive vehicle;
- c) it may not convey the impression that consuming alcohol promotes social or sexual success;
- d) it may not suggest that alcoholic beverages have therapeutical properties or a stimulating, sedative or anti-conflictual effect;
- e) it may not encourage immoderate consumption of alcoholic beverages and convey a negative image of abstinence and sobriety;
- f) it may not highlight beverages with a high alcohol level.

(Grand ducal regulation of 26 February 2021)

«(4) Except for sponsoring and product placement, commercial communications for alcoholic beverages in on-demand audio-visual media services shall comply with the criteria specified in paragraph (3).»

¹ As amended by the grand ducal regulation of 17 December 2010.

² Legal basis: amended law of 27 July 1991 on electronic media.

³ Deleted by the grand ducal regulation of 26 February 2021.

⁴ Amended by the grand ducal regulation of 26 February 2021.

Art. 5. Sponsoring

(1) «Audio-visual media services or audio-visual programmes that are sponsored»¹ must comply with the following requirements:

a) «their content and, in the case of television services, their airtime»¹ may in no case be influenced by the sponsor in a way to impact the responsibility and editorial independence «of the audio-visual media service provider »¹;

(Grand ducal regulation of 24 June 2008)

- «b) they are not directly inciting to purchase or rent the goods or services, more specifically by specific promotional references to these products or services;
- c) viewers are clearly informed of the existence of a sponsoring agreement. Sponsored « programmes»¹ must be clearly identified as such by the name, the logo and/or any other symbol of the sponsor, for instance with a reference to the latter's products or services or a distinctive sign, in an appropriate way at the beginning, at the end or during «the programme»¹»

(2) « Audio-visual media services or audio-visual programmes»¹ may not be sponsored by companies the main activity of which is the manufacturing or the sale of cigarettes or other tobacco products «as well as electronic cigarettes and refills». ²

(3) Sponsoring of «audio-visual media services or audio-visual programmes»¹ by companies active, among others, in the manufacturing or the sale of medication and medical treatments, may promote the name or the image of the company, but may not promote medication or treatments that are available only on prescription (. . .)¹.

(4) Television news and information «and news»² «programmes»¹ may not be sponsored .

(Grand ducal regulation of 17 December 2010)

«Art. 5bis. Product placement

(1) (. . .) *(repealed by the grand ducal regulation of 26 February 2021)*

(2) Programmes including product placements will comply, at least, with the following requirements:

- a) their content «and their insertion in a schedule, in the case of television broadcasting, or in a catalogue, in the case of on-demand audio-visual media services»² may in no case be influenced by the sponsor in a way to impact the responsibility and editorial independence of the audio-visual media service provider;
- b) they are not directly inciting to purchase or rent the goods or services, more specifically by specific promotional references to these products or services;
- c) they are not highlighting the relevant product in an unjustified way;
- d) « viewers are clearly informed of the existence of a product placement by an appropriate identification at the beginning and at the end of the programme, as well as when the programme resumes after an advertising interruption, so as to avoid any confusion on behalf of the viewer.»²

The requirements under point d) are not mandatory if the relevant programme was not produced and not ordered by the audio-visual media service provider or by an affiliate company of such provider.

(3) In any case, programmes will not include the placement:

- of tobacco products or cigarettes, «as well as of electronic cigarettes and refills»² or product placement from companies mainly active in the manufacturing or sale of «such products»²;
- of specific medications or medical treatments only available on prescription . »

(Grand ducal regulation of 24 June 2008)

«Art. 6. Airtime for «television»¹ advertisement and tele-shopping «in television services»¹»

(Grand ducal regulation of 8 November 2019)

«(1) The proportion of television advertisement spots and of tele-shopping spots between 6:00am and 6:00pm may not exceed 20 % of this time period. The proportion of television advertisement spots and of tele-shopping spots between 6:00pm and midnight may not exceed 20 % of this time period.

(2) Paragraph (1) does not apply to :

- a) messages broadcast by the radio or television organism in connection with its own programmes and related programmes that are directly derived from these programmes, or to programmes and audio-visual media services of other entities of the same radio or television group ;
- b) to sponsoring advertisement ;
- c) to product placement ;

¹ As amended / deleted by the grand ducal regulation of 17 December 2010.

² Added / replaced by the grand ducal regulation of 26 February 2021.

d) to neutral spots included between the editorial content and television advertisement spots or tele-shopping spots, and between each spot.»

(Grand ducal regulation of 24 June 2008)

«(3) Tele-shopping windows must be clearly identified as such by visual and acoustic means and have a minimum uninterrupted duration of at least fifteen minutes.»

Art. 7. «Television services»¹ exclusively focussing on tele-shopping

Television «services»¹ can be exclusively «focussed»¹ on tele-shopping. *(Grand ducal regulation of 24 June 2008)* «Advertising is authorised on these channels. Article 2 and «paragraphs (1) and (2)»¹ of article 6 of the present regulation shall not apply to these channels.» (...) ²

Art. 8. «Television services»¹ exclusively focussing on self-promotion

Television «services»¹ can be exclusively «focussed»¹ on self-promotion. *(Grand ducal regulation of 24 June 2008)* «Other forms of «audio-visual commercial communications»¹ are authorised on these channels. Article 2 and «paragraphs (1) and (2)»¹ of article 6 of the present regulation shall not apply to these channels.»

Art. 9. Entry into force

Our Prime Minister, State Minister is in charge of the enforcement of the present regulation, which will be published in the Memorial (Official journal).

¹ As amended by the grand ducal regulation of 17 December 2010.

² Repealed implicitly by the grand ducal regulation of 24 June 2008.

³ Amended implicitly by the grand ducal regulation of 17 December 2010.

⁴ Legal basis: amended law of 27 July 1991 on electronic media and more specifically articles 35bis and 35ter.