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Belgium – German Media Decree



Full title: Decree of 27th June 2005 on audiovisual media services and cinema screenings for the German-speaking community

Key Amendment: Decree of 3 December 2009 amending the Decree of 27 June 2005 on Broadcasting and Cinema Screenings, which implemented the provisions from the EU AVMS Directive 2007/65/EC.

Title of relevant sections:

- Title I: General Provisions
 - Article 1: Scope
 - Article 2: Definitions
- Title II: Programmes
 - Chapter I: General Provisions
 - Article 3: Scope
 - Article 6: General provisions concerning audiovisual commercial communication
 - Article 6.1: Regulating audiovisual commercial communications
 - Article 6.2: The protection of minors in audiovisual communication
 - Chapter II: Special provisions for televisual media services
 - Section 1: General provisions
 - Article 6.3: Minimum Information
 - Article 7: Television advertising and teleshopping
 - Article 10: Sponsorship
 - Article 10.1: Product Placement
 - Section 2: Special provisions for linear televisual media services
 - Article 11: Scope
 - Article 15: Televisual commercial communications
 - Section 3: Special provisions for non-linear televisual media services
 - Section 4: Special provisions for programmes of the open channel and for the transmission of public Parliamentary sessions
 - Art. 16.1: Sessions of parliament
 - Chapter III: Special provisions for auditory media services
 - Section 1: Special provisions for linear auditory media services
 - Article 17: Minimum Information
 - Article 18: Right of Reply
 - Article 19: Advertising in linear audiovisual media services of the BRF¹

TITLE 1

GENERAL PROVISIONS

Article 1

Scope

This decree applies to the organization of audiovisual media services, to the provision of networks and services and associated bodies for broadcasting audiovisual media services

¹ *Belgischer Rundfunk* (BRF) (Belgian Broadcasting) is the public-service broadcasting organization serving the German-speaking Community of Belgium.

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	falling within the area of responsibility of the German-speaking Community, as well as to cinema screenings organised in the German-speaking region.
Article 2	Definitions
Art. 2.2.1	'Audiovisual commercial communications': audiovisual commercial communication or auditory commercial communication
Art. 2.2.2	'Auditory commercial communication': sound, directly or indirectly promoting the promoting of goods and services or the image of natural or legal personalities, who pursue an economic activity. This sound is included in a programme in return for payment, a similar consideration or as self-promoting advertising or contained therein. Under auditory commercial communication is to be understood radio advertising, sponsorship and product placement, to mention a few
Art. 2.2.3	'Audiovisual media service': a service within the context of Articles 49 and 50 of the EC Treaty, for which an audiovisual media service provider carries the editorial responsibility and whose main objective is the provision of television or auditory programmes for the purpose of information, entertainment or education of the general public by way of electronic communication networks. These audiovisual media services operate either as linear or non-linear television or auditory media services and/or audiovisual commercial communication.
Art. 2.2.4	'Auditory media service': a service within the context of Articles 49 and 50 of the EC Treaty, for which an auditory media service provider carries the editorial responsibility and whose main objective is the provision of programmes for the purpose of information, entertainment or education of the general public by way of electronic communication networks. These audiovisual media services are either linear audiovisual media services or non-linear auditory media services and/or auditory commercial communication
Art. 2.2.5	'Audiovisual media service provider': the natural or legal personality who accepts the editorial responsibility for the selection of audiovisual content of the audiovisual media services and determines how they will feature
Art. 2.15.1	'Television advertising': any reference in the execution of a trade, business, craft or free profession that is allowed to feature in television by a public or private broadcasters or person either in return for payment or a similar return of service or for self-promotion with the aim of promoting goods or the performance of services, including immovable property, rights and obligations in return for payment;
Art. 2.21.1	'Radio advertising': every reference in the execution of a trade, business, craft or free profession that is allowed to feature in radio broadcasting by a public or private broadcasters or a natural person either in return for payment or similar return of service or for self-promotion with the aim of promoting goods or the performance of services, including immovable property, rights and obligations, in return for payment;
Art. 2.25.1	'Linear audiovisual media services': an audiovisual media service provided by a media service provider for the simultaneous viewing of programmes based on a chronological transmission schedule
Art. 2.27.2	'Non-linear audiovisual media service': an audiovisual media service provided by a media service provider for the reception at a point in time selected by the user and on whose individual on-demand request from a catalogue of programmes prepared by the media service provider (on-demand service);

Art. 2.31.1	'Product Placement': the inclusion in a programme in any form of audiovisual commercial communication, in return for payment or a similar return of service, of a product, a service or the attaching of its corresponding brand with a reference so that it could feature in a programme;
Art. 2.38	'Sponsorship': any contribution from sources not involved in the provision of audiovisual medium services or from producers who are actively engaged in public or private undertakings of audiovisual media service manufacturing for the funding of audio-visual media services or programmes with the objective to promote their name, their brand, their image, their business activities or their services;
Art. 2.39.1	'Televsual Commercial Communication': images with or without sound, which, directly or indirectly promote the sale of goods and services or the image of natural or legal personalities, who are actively engaged in an economic undertaking. These images may be inserted in programmes in return for payment or a similar consideration or as self-promotion, or be contained therein. Forms of televsual commercial communications include, for example, television advertising, sponsorship, teleshopping and product placement;
Art. 2.39.2	'Televsual media service': a service in the meaning of Articles 49 and 50 of the EC Treaty, for which televsual media service providers accept the editorial responsibility and its main purpose, namely the provision of programmes of information, entertainment or education for the general public by way of electronic communication networks. These televsual media services are either linear televsual media services or non-linear televsual media services and/or televsual commercial communication.
TITLE 2	PROGRAMMES
CHAPTER 1	GENERAL PROVISIONS
Article 3	Scope
	Notwithstanding, Act of 27 June 1986 on the Belgian radio and television centre of the German-speaking Community, this Title shall apply to audiovisual media services of the Belgian radio and television centre of the German-speaking Community, hereinafter the BRF - Belgischer Rundfunk (<i>public service broadcaster</i>), the programmes in accordance with Article 16(1) and from private audiovisual media service providers subject to the jurisdiction of the German-speaking community.
Article 6	General provisions concerning audiovisual commercial communication
	<p>§1. Audiovisual commercial communication may not:</p> <ol style="list-style-type: none"> 1. violate human dignity, 2. contain or promote discrimination based on gender, race or ethnic origin, nationality, religion or belief, disability, age or sexual orientation; 3. promote behaviour that jeopardizes health or safety; 4. promote behaviour that grossly jeopardizes the protection of the environment; 5. impair the religious, philosophical or political opinion. <p>§2. Audiovisual media service providers shall develop codes of conduct regarding the development of inappropriate audiovisual commercial communication concerning the excessive intake of food and beverages, nutrients or substances with a nutritional or</p>

	physiological effect, especially not to be recommended are those like fats, trans fatty acids, salt/sodium and sugar in the diet.
Article 6.1	Regulating audiovisual commercial communication
	<p>§1. Audiovisual commercial communication must be easily recognizable as such. Surreptitious advertising in the audiovisual commercial communication is prohibited.</p> <p>§2. In audiovisual commercial communication, no technologies of the subliminal influencing may be involved.</p> <p>§3. Audiovisual commercial communication for alcoholic drinks may not specially focus on minors and may not promote the excessive enjoyment of such drinks.</p>
Article 6.2	The protection of minors in audiovisual commercial communication
	<p>Audiovisual commercial communications shall not cause physical or moral detriment to minors.</p> <p>Therefore they shall not directly exhort minors to buy or hire goods or direct services to minors in order to take advantage of their inexperience or credulity, minors may not directly be encouraged to persuade their parents or a third party to purchase the advertised goods or services.</p> <p>They may not exploit the special trust minors place in parents, teachers or other confidants. It may not show minors in dangerous situations without justified reason</p>
CHAPTER 2	SPECIAL PROVISIONS FOR TELEVISUAL MEDIA SERVICES
Section 1	General Provisions
Article 6.3	Minimum Information
	<p>Televsual media service providers must make it possible for the recipients of the service to make the following information easily, directly and permanently accessible:</p> <ol style="list-style-type: none">1. The name of the media service provider;2. The geographic address at which the media service provider is established;3. Information, which makes it possible to take up speedy contact with the media service provider in order to communicate with him directly and to communicate effectively with him, including his e-mail address or his website;4. The information that the service is under the supervision of the Media Council of the German-Speaking Community
Article 7	Television advertising and teleshopping
	<p>§1. Television advertising and teleshopping must be easily recognisable as such and be distinguishable from the editorial content. Notwithstanding the use of new advertising techniques, television advertising and teleshopping must through optical and/or acoustic and/or spatial means be unambiguously distinguishable from the other programme parts.</p> <p>Isolated advertising and teleshopping spots shall remain the exception, except for the transmission of sporting events</p> <p>§2. News, religious programmes and children's programmes, as well as the broadcasting of religious services, must not be interrupted by advertising and teleshopping spots.</p> <p>The transmission of films made for television (with the exception of series, serials and documentaries), cinematographic works and news programmes may, for each scheduled</p>

period of at least thirty minutes, be interrupted once for television advertising and/or teleshopping.

It is forbidden to broadcast advertising or teleshopping spots ten minutes prior to and ten minutes after the end of a children's programme.

§3. The insertion of television advertising and teleshopping spots during a live programme may not impair the integrity of the programmes and must take into account the natural breaks of the programme, as well as the duration and nature of the programme and not impair the rights of the rights holders

Article 10

Sponsorship

§1. Sponsored audiovisual media services or programmes must meet the following requirements:

1. Their content and - with television programmes - their programme place may not be affected in such a way that the editorial responsibility and independence of the media service provider are affected.
2. They may not directly encourage the purchase, rental or leasing of the goods or services, particularly not by making special promotional references to those goods or services.
3. The viewers must be clearly informed about the existence of a sponsorship agreement. Sponsored programmes are clearly to be identified as such - for example, through name, logo and/or any other symbol of the sponsor, such as a reference to its products or services or another distinctive sign - in an appropriate way at the beginning, during and/or end of the programme.

§2. The sponsorship of audiovisual media services or programmes by companies, whose active business comprises the production or sale of medicines and medical treatment, may include the name or the image of the company in the advertising, however, not specific medicines or medical treatments, especially when these are only available on prescription in the Member State, under whose sovereignty the media service provider resides and operates.

§3. News programmes and current affairs programmes for political informative purposes may not be sponsored. The showing of sponsorship logos in children's programmes, documentaries and religious programmes are forbidden.

Article 10.1

Product Placement

§1. Product placement is prohibited.

§2. In deviation from § 1, product placement is allowed under the following provisions:

1. In cinematographic works, films and series made for televisual media services, sports programmes and light entertainment programmes, or
2. If no payment is involved, but only specific goods or services, such as production props and prizes towards their inclusion in a programme when the allocation is free of charge.

The deviation, in accordance with Section 2 (1), does not apply to children's programmes.

Programmes that contain product placement must meet at least all of the following requirements:

1. Their content and - in television programmes - their scheduling may not be affected in such a way that the editorial responsibility and independence of the media service provider are affected.
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2. They may not directly encourage the purchase, rental or leasing of the goods or services, especially not by making special promotional references to those goods or services.
 3. They may not expose the relevant product too strongly.
 4. The viewers must be clearly informed about the existence of a product placement. Programmes with product placement are to be appropriately marked at the beginning and end of the programme, as well as when the programme resumes after an advertising break, in order to avoid any possible viewer confusion. This requirement applies only to programmes produced by the media service provider himself, or produced by a company affiliated to the media service provider or commissioned.

§3. The §§ 1 and 2 apply only to programmes produced after 19 December 2009.

Section 2 Special provisions for linear televisual media services

Article 11 Scope of application

This section is applicable to linear televisual media services

Article 11.1 Right of reply

Chapter II and III of the law of 23 June 1961, relating to the right of reply and inserted by the Act of 4 March 1977, apply to the linear televisual media services of the TV broadcaster.

Article 15 Televisual commercial communications and teleshopping

§1. The share of TV advertising and teleshopping spots may not exceed 20% within a full hour of broadcasting time.

Not to be considered as advertising for the purpose of the preceding section:

1. References by the television broadcaster to own programmes and ancillary products, derived directly from these programmes, are;
2. Sponsorship references and
3. Product placement.

§2.

1. *(deleted)*²
2. *(deleted)*³
3. Teleshopping windows must be optically and acoustically clearly marked as such and a duration of at least fifteen minutes without a break

§3. The provisions of this decree apply to pure advertising and teleshopping television channels, as well as to television channels that exclusively serve the purpose of self-promoting advertising. The Articles 7 § 3, 12 and 15 § 1 of this decree do not apply to such channels.

Section 3 Special provisions for non-linear televisual media services

Article 15.1 Right of reply

² Deleted via Art. 27(3) Decree of 3 December 2009 amending the Decree of 27 June 2005 on Broadcasting and Cinema Screenings

³ Deleted via Art. 27(3) Decree of 3 December 2009 amending the Decree of 27 June 2005 on Broadcasting and Cinema Screenings

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Any natural or legal person, whose legitimate interests - particularly but not exclusively, his honour and reputation - have been impaired due to an assertion of facts in a publication or in a transmission of non-linear televisual media services, which fall under the jurisdiction of the German-speaking community, have a right of reply. The request of reply is to be placed within thirty days of the mentioned publication or of the broadcast.

The right of reply must be submitted within thirty days subsequent to the request being substantiated at a time and in a way that is appropriate to the publication or broadcast to which it relates.

A request to reply may be declined if the applicant has no legitimate interest in the publication of such a reply, or, if the reply would involve a criminal offence, if the content provider risks civil proceedings or risks violating public decency.

Section 4 Special provisions for programmes of the open channel and for the transmission of public Parliamentary sessions

Article 16.1 Sessions of parliament

Broadcasts of public sessions of the Parliament of the German-speaking community may not contain any television advertising. Sponsored programmes and product placements are not allowed. The programmes are not subject to government supervision.

CHAPTER 3 SPECIAL PROVISIONS FOR AUDITORY MEDIA SERVICES

Section 1 Special provisions for linear auditory media services

Article 17 Minimum Information

Linear auditory media service providers must make it possible for the recipients of the service to at least make the following presented information accessible:

1. Designation/ name of the auditory media service;
2. Location of the transmitter;
3. Information on the frequencies used;
4. Radio Data System, using the RDS-PI code provided by the Ruling Chamber.

The information mentioned in paragraph 1(1-3) is to be given at the beginning and the end of the programme. Moreover, they are to be repeated during the programme at regular intervals

Article 18 Right of Reply

Chapter II and III of the Act of 23 June 1961 on the right of reply, inserted by the Act of 4 March 1977, apply to the linear audiovisual media services of the radio broadcasters

Article 19 Advertising in linear auditory media services of the BRF⁴

The proportion of transmission time for advertising spots and other forms of advertising in the linear auditory media services of the BRF must not exceed 15% of daily transmission time.

⁴ *Belgischer Rundfunk* (BRF) (Belgian Broadcasting) is the public-service broadcasting organization serving the German-speaking Community of Belgium.

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The proportion of transmission time for advertising spots and other forms of advertising within a given clock hour shall not exceed 20%.
