

G-Regs™

## Italy – LD 177/2005; “AVMS Code”



**Full title:** The Consolidated Text (Act) on Radio and Audiovisual Media Services<sup>1</sup> (known as the Italian AVMS Code) - Legislative Decree No. 177 31st July 2005

**Relevant Amendments** - Legislative Decree of 15 March 2010, No. 44 (Implementing Directive 2007/65/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities - Audiovisual Media Services Directive – AVMSD)

Articles: 2,37,38,39 amended; Articles: 40 (2-bis), 40 (2-ter), 36-bis inserted

<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2010-03-15;44!vig=2014-09-25>

- Legislative Decree 28 June 2012, No. 120 - Amendments to legislative decree 15th March 2010, No. 44, implementing directive 2007/65/EC.

Article 1 introduces major changes to Article 34 regarding the protection of minors (not yet implemented within this document)

Article 2 (1) amends Article 38 (12) on Advertising Limits.

<http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2012-06-28;120!vig=2014-09-25>

**Title of relevant section:**

- Chapter I (General Principles) of Title I (Principles): Article. 2: Definitions;
- Chapter II (Protection of minors in audiovisual programming) of Title IV (Regulation of Radio and Audiovisual Media Services): Article 34 – Protection of Minors.
- Chapter III (Cross-Border Broadcasts) of Title IV: Article 36-bis – General Principles of Radio and Audiovisual Commercial Communications;
- Chapter IV (Provisions on advertising, sponsorship and product placement) of Title IV: Article 37 – Advertising Breaks; Article 38 – Advertising Limits; Article 39: Sponsorship; Article 40: Teleshopping; Article 40-bis: Product Placement

**Article 2<sup>2</sup>****Definitions**

1. For the purposes of this consolidated act the following definitions shall apply:

a) “Audiovisual media service”:

1) A service, as defined by Articles 56 and 57 of the Treaty of the functioning of the European Union which is under the editorial responsibility of a media service provider

<sup>1</sup> Title renamed to: “The Consolidated Text/Law on Radio and Audiovisual Media Services” (*Testo unico dei servizi di media audiovisivi e radiofonici*) from: The Consolidated Law of Radio and Television (Italian Broadcasting Law) – Art. 1(1) of LD 44/2010

<sup>2</sup> Art. 2: Amended (replaced) by Art. 4(1) of LD 44/2010

**URL of source:** <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=>

---

and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate the general public through electronic communications networks. Such audiovisual media services shall be defined as television broadcasting, as defined in point (i) of this article and, in particular, analogue and digital television, live streaming, webcasting, near-video-on-demand, or on-demand audiovisual media services, as defined in point (m) of this article (points (i) and (m) can be found at the bottom of this section).

Not included in the definition of "audiovisual media service" are: Services provided in the pursuit of activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest; any form of private correspondence, including e-mails; services the principal purpose of which is not the provision of programmes; services where any audiovisual content is merely incidental and not its principal purpose. Examples include:

- a) Websites that contain audiovisual elements only in an ancillary manner, such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service.
- b) online games;
- c) search engines;
- d) electronic versions of newspapers and magazines;
- e) Stand-alone text-based services;
- f) Games of chance involving a stake representing a sum of money, excluding broadcasts devoted to gambling or games of chance;

c) "electronic communications networks", means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, networks used for radio and television broadcasting, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, and cable television networks, irrespective of the type of information conveyed;

(dd) audiovisual commercial communication; "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 and including television advertising, sponsorship, teleshopping and product placement; Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes;

(i) "linear audiovisual media service" or "television broadcasting" means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule

(m) "non-linear audiovisual media service", or "on-demand audiovisual media service" means an audiovisual media service provided by a media service provider for the viewing of programmes at a time determined by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider.

---

#### Article 34

#### Provisions for the protection of minors

6. Television broadcasters, also analogue, transmitting on any broadcast platform are

URL of source: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177/vig=>

---

obliged to observe the provisions for protecting minors foreseen by the self-regulation Code of Media and Minors approved on the 29 November 2002, and successive amendments. Any amendments to the Code or the adoption of new self-regulatory acts shall be implemented by decree of the Italian Minister of Economic Development, adopted according to article 17, subparagraph 3, of Law No.400 of 23 August 1988, subject to the opinion of the Parliamentary Commission as referred to in Law No.451 of December 1997, and successive amendments.<sup>3</sup>

---

**Article 36bis<sup>4</sup>****General Principles of Radio and Audiovisual Commercial communications**

1. Audiovisual commercial communications provided by media services providers under Italian jurisdiction shall respect the following regulations:

- a) Audiovisual commercial communications shall be readily recognisable as such; surreptitious audiovisual commercial communication shall be prohibited;
- b) Audiovisual commercial communications shall not use subliminal techniques;
- c) Audiovisual commercial communications shall not:
  - 1) Prejudice respect for human dignity;
  - 2) Include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
  - 3) Encourage behaviour prejudicial to health or safety;
  - 4) Encourage behaviour grossly prejudicial to the protection of the environment;
- d) All forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited; Audiovisual commercial communications shall also be prohibited if carried out in an indirect form through the use of names, brands, symbols or other elements characteristic of tobacco products or of companies whose principal activity is the manufacture or sale of such products, when by the form, method and means used or according to any other univocal element such use may be considered suitable for the purposes of advertising the products themselves. For the purpose of determining the main activity of the company, reference must be made to the incidence of sales for each of its activities, the main activity being that which is prevalent among all others at a national level;
- e) Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage excessive consumption of such beverages;
- f) Audiovisual commercial communications for medicinal products and medicinal treatment available only on prescription shall be prohibited;
- g) Audiovisual commercial communications shall not cause physical or moral detriment to minors. They shall not exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors placed in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

2. The Ministry, in agreement with the Authority and on hearing the Italian Ministry of

---

<sup>3</sup> Art.9 LD 44/2010 amended Art. 34(6) LD 177/2005

<sup>4</sup> Art. 36-bis: inserted by Art. 10(2) of Legislative Decree 44/2010

URL of source: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177?vig=>

---

Health, shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages 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.

3. The provisions of this article shall also apply to radio broadcasters and the services provided by them.

---

#### Article 37<sup>5</sup>

##### Advertising breaks

1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. 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, acoustic or spatial means.

2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception. Television advertising and teleshopping spots may be inserted during programmes provided they do not prejudice a programme's integrity, taking into account natural breaks and its duration and nature, or the rights of the right holders.

3. The insertion of advertising messages during the transmission of theatrical, operatic and musical works is permitted with due regard to the principles as referred to in the paragraphs above and in any case during the intervals usually made in theatre halls.

4. The transmission of news programmes, cinematographic works, films made for television (excluding series, serials, and documentaries), may be interrupted by television advertising or teleshopping once only for each scheduled period of at least thirty minutes.

5. Television advertising or teleshopping shall not be inserted during religious services: The transmission of children's programmes may be interrupted by television advertising 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.

6. To local television broadcasters, also analogical, who broadcast exclusively at a national level, with the exception of interconnecting broadcasting, notwithstanding the provisions of directive 89/552/EEC<sup>6</sup>, and successive amendments, on the subject of advertising messages during the transmission of theatrical, cinematographic, operatic and musical works, two advertising interruptions for each act or time independently of the duration of the works themselves, shall be permitted, in addition to those inserted during the natural breaks of those works; likewise, for works of a scheduled duration of between 90 and 109 minutes, two advertising interruptions for each act or time shall be permitted; for works of a scheduled duration equal to or greater than 110 minutes three advertising interruptions plus a supplementary interruption shall be permitted for every 30 minutes of a scheduled duration of over 110 minutes.

7. For the purposes of this article, scheduled duration means the transmission time from the start of the programme's opening tune to the end of its closing tune, excluding inserted advertising, as foreseen in the scheduled programming.

8. Without prejudice to the ban of teleshopping advertising of medical treatment, radio

---

<sup>5</sup> Art. 37: Amended by Art. 11(1) LD 44/2010

<sup>6</sup> Council Directive 89/552/EEC of 3 October 1989 concerns the coordination of certain legal and administrative provisions of Member States concerning television broadcasting. (TV without Frontiers Directive)

URL of source: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177?vig=>

---

and television advertising of Medical institutes is regulated by specific provisions on the subject of health advertising according to law No.175 of 5 February 1992, as amended by law No.42 of 26 February 1999, by law No.362 of 14 October 1999, as well as article 7, subparagraph 8, of law No.112 of 3 May 2004, and successive amendments.

9. Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria: 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 or sedative or that it contributes towards 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.

10. The transmission of data and information to the user as specified in article 26, subparagraph 3, may also include the broadcasting of advertising.

11. The provisions of this article shall likewise apply to advertising and teleshopping broadcast by radio.

---

#### Article 38<sup>7</sup>

#### Advertising Limit

1. The broadcasting of advertising messages by the general public service television concessionaire<sup>8</sup> may not exceed 4 per cent of the weekly scheduled programming and 12 per cent of each hour; any excess, in any case no greater than 2 per cent during an hour, must be made up for in the hour previous to or following it.

2. The broadcasting of television advertising spots by a free-to-air (in unencrypted form) broadcaster, also analogical, nationally, unlike the general public service television concessionaire, may not exceed 15 per cent of the daily programme schedule and 18 per cent of a determined and distinct hour of the clock; any excess, in any case not greater than 2 per cent during an hour, must be made up for in the hour previous to or following it. An identical limit is fixed for subjects authorised, according to article 29, to broadcast contemporarily on at least 12 user catchment areas, with reference to contemporary programming times.

3. The maximum daily transmission time dedicated to advertising by national radio and television broadcasters, unlike general public service television concessionaire, shall be increased to 20 per cent if it includes forms of advertising other than advertising spots, such as tele-promotions, without prejudice to the daily overcrowding and time limits for television broadcasters as referred to in subparagraph 2 for advertising spots. For the same subjects the broadcasting time dedicated to such forms of advertising other than advertising spots must not, however, exceed one hour and 12 minutes a day.

4. In any case the proportion of television advertising spots and teleshopping spots within a determined and distinct hour must not exceed 20 per cent.

5. The broadcasting of television advertising spots by the pay-TV broadcaster, even analogue, cannot exceed 16 per cent for the year 2010, 14 per cent for the year 2011, and starting from the year 2012, 12 per cent of a determined and distinct time; any infringement, however not greater than 2 per cent during an hour, must be recuperated in the previous or following hour.

---

<sup>7</sup> Art. 38: Amended by Art. 11(1) LD 44/2010

<sup>8</sup> RAI - Radiotelevisione Italian SpA – Italy's national public broadcasting company

URL of source: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177/vig=>

6. Provisions as referred to in subparagraphs 2 to 5 shall not apply to announcements by the broadcasters, also analogical, relating to their own programmes and/or collateral products deriving directly from these, sponsorship announcements and/or product placement.

7. The broadcasting of radio advertising messages by radio broadcasters other than by general public services television concessionaire cannot exceed, for each hour of programming, 20 per cent for national radio, 25 per cent for local radio and 10 per cent for national or local radio by analogue community radio broadcasters. Any excess of advertising messages, in any case no greater than 2 per cent in an hour, must be made up for in the hour previous to or following it.

8. Without prejudice to the hourly advertising limits as referred to in subparagraph 7, for local radio broadcasters, the maximum daily transmission time dedicated to advertising, including forms of advertising other than advertisement spots, shall be 35 per cent.

9. The transmission of television advertising messages by broadcasters, also analogical operating locally, may not exceed 25 per cent of each hour and each day of scheduling. Any excess, in any case no greater than 2 per cent in an hour, must be made up for in the hour previous to or following it.

10. Local advertising is reserved for broadcasters, also analogical, and to radio broadcasters operating locally. Subjects other than broadcasters, also analogical, and of radio broadcasters operating locally, including the general public service television concessionaire, shall be obliged to transmit advertising messages contemporarily, and with identical content, to all catchment areas served. Analogue and digital television and radio broadcasters, authorised according to article 29, may broadcast, in addition to national advertising, local advertising that is different for each area under authorisation, temporarily interrupting the interconnection.

11. There are no specific clauses in the advertising contracts that impose the television or radio, analogical or digital broadcasters to broadcast programmes that are different to or additional to advertising messages.

12. Promotional messages, as part of initiatives promoted by institutions, organisations, trade associations, publishers and booksellers, aimed at raising public awareness regarding books and reading, broadcast by public and private radio and TV broadcasters for free or at concessional terms, and as well as promotional films (trailers) or previews of upcoming European cinematographic works, shall not be considered for the purposes of calculating the maximum limits according to this article.<sup>9</sup>

13. For the purpose of this article the clock hour is counted, starting, for each day of programming, from the hour and minute of the start of programmes of each broadcaster, also analogical; for “daily programming time” means the time in each 24 hour day, between the effective start and finish of the programmes of each broadcaster, also analogical.

---

#### Article 39<sup>10</sup>

#### Provisions on Radio and Audiovisual Media Services and on Sponsorship

1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:

a) The content and, in the case of television broadcasting, the scheduling of a

---

<sup>9</sup> Legislative Decree 28 June 2012, n. 120 (GU 30/07/2012, 176) Amendments to Legislative Decree 15th March 2010, No. 44, implementing directive 2007/65/CE: Art. 2(1) has amended art. 38 (12). – replacing “advertising messages” with “promotional messages”.

<sup>10</sup> Art. 39: Amended by Art. 13(1) LD 44/2010

URL of source: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=>

---

sponsored programme shall, in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the media service provider or the public licensee in respect of the transmissions;

b) Sponsored programmes shall be clearly identified as such and the name or logo of the sponsor indicated at the beginning and end of the programme;

c) They shall not encourage the purchase or rental of the goods or services of the sponsor or of a third party, in particular by making special promotional references to those products or services.

2. Audiovisual media services or programmes shall not be sponsored by natural persons or legal persons whose principal activity is the manufacture or sale of cigarettes or other tobacco products or the manufacture or sale of drinks of high alcohol content.

3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription.

4. Sponsorship of local broadcasters, also analogue, can also be expressed by means of audible and visual signals, transmitted when programmes are interrupted and accompanied by the name and the brand of the sponsor and in all forms permitted by directive 89/552/EEC<sup>11</sup>, and successive amendments. ("Community/local broadcaster", is the broadcaster with the editorial responsibility of providing programmes intended for local television broadcasting, committed to: broadcast no more than 5 per cent of advertising for each hour of transmission; to broadcast original self-produced programmes for at least 50 per cent of the daily scheduling time from 7 to 21)

5. Television and radio news programmes and political affairs programmes shall not be sponsored.

6. The showing of a sponsorship logo during children's programmes, documentaries and religious programmes is prohibited.

7. The provisions of this article shall also apply to radio stations and the services provided by them.

---

#### Article 40<sup>12</sup>

#### Provisions on Teleshopping

1. Teleshopping that offends human dignity, incites discrimination on grounds of race, sex or nationality, offends religious and political beliefs, or encourages behaviour prejudicial to health or safety or to the protection of the environment shall be prohibited. Teleshopping advertising cigarettes or other tobacco products shall be prohibited.

2. Teleshopping must not exhort minors to enter into contracts for the purchase or rental of products or services. Teleshopping must not cause moral or physical detriment to minors and must respect the following criteria for their protection:

a) Shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity;

b) Shall not directly exhort minors to persuade parents or others to purchase such products or services; c) shall not exploit the special trust minors place in

---

<sup>11</sup> Council Directive 89/552/EEC of 3 October 1989 concerns the coordination of certain legal and administrative provisions of Member States concerning television broadcasting. (TV without frontiers directive)

<sup>12</sup> Art. 40: Art. 14(1) inserted Art. 40(2-bis) and Art. 40(2-ter)

URL of source: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=>

---

parents, teachers or others;

d) Shall not unreasonably show minors in dangerous situations

2-bis. Teleshopping windows that do not fall within the limits according to article 38, shall be clearly identified as such by optical and acoustic means and shall have a minimum uninterrupted duration of 15 minutes. In the case of radio, the minimum duration is 3 minutes.

2-ter. To schedules dedicated exclusively to advertising, teleshopping, or self-promotion article 37, subparagraphs 1 to 7, article 38, subparagraph 2 and article 44 shall not apply.

---

### New Art.40bis<sup>13</sup>

#### Product placement

1. Product placement is permitted in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, excluding children's programmes. Placement may occur following payment or free of charge in exchange for certain goods and services, such as production props and prizes, with a view to their inclusion in a programme.

2. Programmes that contain product placement must meet 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) 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;

3. If the programme in which the product has been placed has been produced or commissioned by the audiovisual media services provider or by its parent company, viewers shall be clearly informed of the existence of product placement with a warning at the start and end of the programme, and when a programme resumes after an advertising break.

4. Product placement shall be prohibited in the case of tobacco products or cigarettes, or of products of undertakings whose principal activity is the manufacture or sale of tobacco products. Likewise prohibited is the product placement of medicinal products or medical treatments available only on prescription.

5. The producers, broadcasters, also analogical, advertising agencies and other interested subjects, shall adopt the provisions of the principles highlighted in the previous paragraphs, using self-regulating procedures. Procedures for self-regulation shall be communicated to the Authority who shall verify their implementation.

The provisions of this article shall only be applied to programmes produced following the date of entry into force of this decree (30/03/2010).

---

<sup>13</sup> Art. 40-bis: Inserted by Art. 15(1) LD 44/2010

URL of source: <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2005-07-31;177!vig=>