

G-Regs™

## Poland – Broadcasting Act



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<b>Full title:</b>	<b>Broadcasting Act of December 29, 1992</b> - as amended by Act of 25 <sup>th</sup> March, 2011(in force 23/05/2011) and by the Act of 12 <sup>th</sup> October 2012 (in force 28/02/2013) – both of which implemented the provisions of the Audiovisual Media Services Directive (2010/13/EU)
<b>Title of Relevant Sections:</b>	III: Radio and TV Programme Services VIa: On-demand audiovisual media services
<b>Chapter III</b>	<b>Radio and TV Programme Services</b>
<b>Article 16</b> <b>Commercial Communications</b>	<ol style="list-style-type: none"><li>1. Commercial communications shall be readily recognisable.</li><li>2. Advertising and teleshopping shall be readily distinguishable from editorial content. Advertising and teleshopping shall be kept quite distinct from other parts of the programme service by optical, acoustic or spatial means.</li><li>3. Advertising and teleshopping shall not exceed 12 minutes in any given clock hour.</li><li>4. The limit set out in paragraph 3 shall not apply to:<ol style="list-style-type: none"><li>1) Announcements made by the broadcaster containing solely information on its programmes or extracts of such programmes,</li><li>2) Announcements made by the broadcaster containing solely information on ancillary products directly derived from the programme,</li><li>3) Identification of commercial communications required by law, including identification of sponsors.</li></ol></li><li>5. The announcements referred to in paragraph 4 subparagraphs 1 and 2 shall be broadcast between programmes and shall not last more than 2 minutes within any clock hour.</li><li>6. Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes. The limit set out in paragraph 3 shall not apply to such windows.</li><li>7. The National Council<sup>1</sup> shall determine, by a regulation, the manner in which advertising and teleshopping activities may be conducted in radio and television programme services, including:<ol style="list-style-type: none"><li>1) The conditions of broadcasting, including of separation, identification and insertion, of advertising and teleshopping in programme services,</li><li>2) The requirements with respect to persons whose voice or image is used in advertising, including restrictions on their ability to host other programmes in radio and television programme services,</li></ol></li></ol>

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<sup>1</sup> Regulation of the National Broadcasting Council of 30<sup>th</sup> June 2011 concerning principles of advertising and teleshopping in radio and television programme services. [http://www.krrit.gov.pl/Data/Files/\\_public/pliki/regulations/30-june-2011-rekl.pdf](http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/30-june-2011-rekl.pdf)

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3) The extent to which a broadcaster may allot transmission time for advertising and teleshopping, including the maximum amount of time allotted per annum for one business operator or business group,

4) The manner in which the broadcaster shall keep and store a record of duration of broadcast advertising and teleshopping, and the scope of data to be recorded,

5) Detailed requirements for the broadcasters' announcements, referred to in paragraph 4 subparagraphs 1 and 2, and the manner of their identification and insertion in programme services, - guided by the need to protect the interests of recipients and independence of broadcasters and taking into consideration the development of advertising technologies.

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#### Article 16a

1. Advertising and teleshopping inserted during programmes shall not prejudice the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders.

2. During coverage of sports events containing mandated intervals and of other events containing intervals, advertising or teleshopping shall only be inserted in the intervals.

3. Films made for television, excluding series, serials and documentaries, and cinematographic works may be interrupted by advertising or teleshopping once for each scheduled period of full 45 minutes.

4. Programmes other than those specified in paragraph 2 may be interrupted by advertising or teleshopping if a period of at least 20 minutes, in a television programme service, and at least 10 minutes, in a radio programme service, has elapsed between each successive break in the programme.

5. Any advertising or teleshopping inserted during a programme shall be deemed interruption of a programme.

6. The following programmes may not be interrupted by advertising or teleshopping:

- 1) News programmes,
- 2) Programmes with a religious content,
- 3) Commentaries and documentaries, the duration of which is less than 30 minutes,
- 4) Children's programmes.

7. Programmes in a public radio and television programme service, with the exception of programmes referred to in paragraph 2, shall not be interrupted by advertising or teleshopping.

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#### Article 16b

1. It shall be prohibited to broadcast commercial communications for the following goods and services:

1) Tobacco products, tobacco accessories, products imitating tobacco products or accessories and symbols related to the use of tobacco, to the extent regulated in [the Act of 9 November 1995 concerning the protection of health against the effects of tobacco and tobacco products](#) (official journal "Dz.U." of 1996, No. 10, item 55, as further amended<sup>2</sup>),

2) Alcoholic beverages, to the extent regulated in the Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism (official journal "Dz.U." of 2007, No. 70, item 473, as further amended<sup>3</sup>),

3) Health benefits as defined in regulations on medical treatments provided only on

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<sup>2</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19960100055>

Act of 9 November 1995 for the protection of health against the consequences of tobacco use and tobacco.

<sup>3</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20120001356> Act of 26 October 1982 on Upbringing in Sobriety and Counteracting Alcoholism.

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prescription<sup>4</sup>,

4) Medicinal products, to the extent regulated in the Act of 6 September, 2001 – “Pharmaceutical Law” (official journal “Dz.U.” of 2008, No. 45, item 271 as further amended<sup>5</sup>),

5) Cylindrical games, card games, dice, mutual bets, slot machines, to the extent regulated in the Gambling Act of 19 November 2009 (official journal “Dz.U.” No. 201, item 1540<sup>6</sup>; and of 2010, No. 127, item 857<sup>7</sup>),

6) Psychoactive drugs or narcotics and foods or other products, to the extent governed by the Act of 29 July, 2005 on Counteracting Drug Addiction (official journal “Dz.U.” No. 179, item 1485, as further amended<sup>8</sup>).

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,
- 5) Are of a subliminal nature.

3. Commercial communications shall not:

- 1) Prejudice respect for human dignity,
  - 2) Include any discrimination on grounds of race, sex, nationality, ethnic origin, religion or belief, disability, age or sexual orientation,
  - 3) Be offensive to religious or political beliefs,
  - 4) Prejudice the physical, mental or moral development of minors,
  - 5) Encourage behaviour prejudicial to health, safety or environmental protection
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#### Article 16c

The following shall be prohibited:

- 1) Surreptitious commercial communications,
  - 2) Product placement, subject to Article 17a,
  - 3) Thematic placement<sup>9</sup>.
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#### Article 17 Sponsorship

1. Recipients shall be clearly informed about sponsoring. Sponsored programmes or other broadcasts shall 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. Such credits may specify only the sponsor’s name, business name, trademark or contain some other identification of the business operator or its business activities, 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

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<sup>4</sup> Act of 15th April 2011 on medical activity - <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130000217>

<sup>5</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20080450271> – Act of 6<sup>th</sup> September on Pharmaceutical Law

<sup>6</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20092011540> – Act of 19<sup>th</sup> November on Gambling

<sup>7</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20101270857> – Act of 25<sup>th</sup> June 2010 on Sport

<sup>8</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20051791485> – Act of 29<sup>th</sup> July 2005 on Drug Prevention

<sup>9</sup> “thematic placement” shall mean a commercial communication consisting of a reference to a product, a service or the trade mark thereof in a script or a dialogue list of a programme in return for payment or for similar consideration,

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references to those goods or services.

2. Identification of the sponsor may not contain the name, business name, trademark or other individual identification of the business operator or its business activities, the image of a single product or service, the advertising of which is prohibited by virtue of Article 16b paragraph 1.

3. The sponsor may not influence the content of the programme or any other broadcast and their scheduling in a manner which would prejudice the autonomy and editorial independence of the broadcaster. Sponsorship shall not release the broadcaster from liability for the content of the programme.

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.

5. Subject to the reservations contained in paragraph 6, programmes or other broadcasts may not be sponsored by:

1) political parties,

2) trade unions,

3) employers' organisations,

4) Natural or legal persons whose principal activity consists in the production or sale of products or the provision of services referred to in Article 16b paragraph 1.

6. Sports events coverage may not be sponsored by entities referred to in paragraph 5 subparagraphs 1-3 and by business operators whose principal activity consists in the production, sale or other form of supply of products or services, the advertising of which is prohibited by virtue of Article 16b paragraph 1, subparagraphs 1 and 2, subject to the stipulations of Article 13<sup>1</sup> paragraphs 5 and 6, of the Act<sup>10</sup> on Upbringing in Sobriety and Counteracting Alcoholism.

6a. Sponsorship of programmes or other broadcasts by entities that pursue business in the area of cylindrical games, card games, dice, mutual betting and slot machines shall be prohibited.

7. Sponsorship of the following programmes shall be prohibited:

1) news, with the exception of sports and weather forecasts,

2) commentaries on social and political topics,

3) consumer and practical advice programmes,

4) Electoral programmes or programmes directly related to electoral campaigns.

8. The National Council shall determine, by a regulation, the manner in which programmes or other broadcasts may be sponsored, having regard to the provisions of paragraphs 1-7, in particular the time of the broadcast, sponsor credits and manner of transmission of information about the sponsor in the opening announcement or trailer of the programme or following the end of the programme or other broadcast, as well as during the programme or other

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<sup>10</sup> Article 13<sup>1</sup>, paras 5 and 6:

5. Informing on sponsorship of sports events, music concerts and any other mass meetings by alcoholic beverage producers or distributors in any other manner than by placing the trade mark of such producer or distributor on an invitation, ticket or information poster relating to a particular event, shall be prohibited.

6. The prohibition referred to under item 1 shall also apply to any promotional and advertising publications handed out to retail customers by alcoholic beverage producers, distributors and traders.

**Item 1:** Advertising of alcoholic beverages shall be prohibited in Poland, except for beer, advertising of which shall be permitted provided that it is not targeted at youth or conducted by forming associations with: 1) sexual attractiveness, 2) relaxation or leisure, 3) sports, 4) education, work or professional success, 5) personal health or success

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broadcast<sup>11</sup>. In the said regulation, the National Council shall determine the manner in which the broadcaster shall keep and store a record of sponsored programmes or other broadcasts and the scope of information to be recorded.

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**Article 17a**  
**Product Placement**

1. Product placement shall be admissible exclusively:
  - 1) in cinematographic works, films or series made for audiovisual media services, sports programmes and light entertainment programmes, or
  - 2) 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 - with the exception of children's programmes.
2. Programmes that contain product placement shall be identified with a graphic sign in television programme services, and with an acoustic symbol in radio programme services, informing about product placement, at the start and the end of the programme, and when a programme resumes after an advertising or teleshopping break.
3. Neutral information on the producer or seller of the placed product or an entity providing the placed service as well as on the product or the service shall be inserted at the end of the programme referred to in paragraph 2, produced with the contribution of a broadcaster or on its order.
4. Product placement shall not prejudice the autonomy and editorial independence of the broadcaster through its impact on contents or scheduling and shall not release the broadcaster of the liability for contents of the programme.
5. Programmes that contain product placement shall not:
  - 1) give undue prominence to the product in question,
  - 2) Directly encourage the purchase or rental of goods or services, in particular by making promotional references to those goods or services.
6. Product placement of goods and services referred to in Article 16b paragraph 1 shall be prohibited.
7. The broadcaster shall keep and store a register of programmes that contain product placement.
8. The Chairman of the National Council may, to the extent necessary to control compliance of the broadcaster's activities with the provisions of paragraphs 1 – 7, request the broadcaster to submit documentation related to product placement. Provision of Article 10 paragraph 2 shall apply accordingly.
9. The National Council shall define by a regulation:
  - 1) the detailed conditions of identification of programmes that contain product placement by the broadcaster, including the specimen of the graphic sign and form of the acoustic symbol referred to in paragraph 2<sup>12</sup>,
  - 2) the manner of keeping and storing the register of programmes that contain product placement by the broadcaster, and the scope of data subject to registration, - taking

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<sup>11</sup> - Regulation of the National Broadcasting Council of 27<sup>th</sup> July 2011 amending the Regulation concerning sponsorship of programmes and other broadcasts.

[http://www.krrit.gov.pl/Data/Files/\\_public/Portals/0/angielska/Documents/Regulations/27-july-2011.pdf](http://www.krrit.gov.pl/Data/Files/_public/Portals/0/angielska/Documents/Regulations/27-july-2011.pdf)

- Regulation of the National Broadcasting Council of 6<sup>th</sup> July 2000 concerning sponsorship of programmes and other broadcasts.

[http://www.krrit.gov.pl/Data/Files/\\_public/pliki/regulations/7\\_december\\_2010\\_nowy.pdf](http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/7_december_2010_nowy.pdf)

<sup>12</sup> Regulation of National Broadcasting Council of 30<sup>th</sup> June 2011 concerning detailed provisions of product placement:

[http://www.krrit.gov.pl/Data/Files/\\_public/pliki/regulations/30-june-2011.pdf](http://www.krrit.gov.pl/Data/Files/_public/pliki/regulations/30-june-2011.pdf)

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into account interests of the recipients and capabilities of broadcasters to keep the register in an electronic format, without imposing excessive burdens and costs on the broadcasters.

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**Chapter IVa****On-demand Audiovisual Media Services**

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**Article 47d**

Product placement in programmes and sponsorship of programmes made available as part of on-demand audiovisual media services may not affect the autonomy and editorial independence of the provider of the on-demand audiovisual media service, in particular by affecting the content or place of programmes in the catalogue, and shall not release the provider from liability for the content of programmes.

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**Article 47h**

Programmes provided as part of on-demand audiovisual media services cannot contain contents inciting to hatred or discriminating on grounds of race, disability, sex, religion or nationality.

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**Article 47K**

The provisions of Article 16 paragraph 1, Article 16b paragraphs 1-3a, Article 16c, Article 17 paragraphs 1-2, 4, 5, 6a and 7, Article 17a paragraphs 1-3, 5 and 6 as well as regulations issued based on Article 16b paragraph 3b, Article 17 paragraph 8, except for the provisions relating to registration of sponsored programmes or other broadcasts, as well as regulations issued pursuant to Article 17a paragraph 9 on the special conditions of marking of programmes with product placement with a special graphic mark by the broadcaster shall apply to on-demand audiovisual media services.

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**Article 47E**

1. It is forbidden to provide to the general public on-demand audiovisual media services that contain, as part of the catalogue of services, programmes or other broadcasts referred to in Article 18 paragraph 4<sup>13</sup> without applying technical security measures or other appropriate measures to prevent minors from the reception thereof.
  2. Taking into account the degree of harmfulness of the programme or other broadcast to minors in different age groups, the provider of the on-demand audiovisual media service shall appropriately qualify and mark programmes and other broadcasts in such a way that the user can easily see the mark, both at the time of selecting the programme and throughout its duration.
  3. In consultation with the minister responsible for information technology the National Broadcasting Council shall determine, by regulation, the detailed conditions to be met by the technical security measures or other appropriate measures aimed at preventing minors from the reception of the programmes or other broadcasts, referred to in Article 18 paragraph 4<sup>13</sup>, driven by the need to ensure effective protection of minors against content which is harmful for them, with due consideration for technical feasibility and the degree of harmfulness of the programme or other broadcasts to minors in different age groups as well as the specific features of on-demand audiovisual media services.
  4. The National Broadcasting Council<sup>14</sup> shall determine, by regulation, the characteristic features and the specific conditions of qualifying and marking of programmes and other broadcasts as well as appropriate graphic symbols, taking into account the degree of harmfulness of the programme to minors in different age groups as well as the specific features of on-demand audiovisual media services.
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<sup>13</sup> Art. 18(4): Transmission of programmes or other broadcasts threatening the physical, mental or moral development of minors, in particular those containing pornography or exhibiting gratuitous violence, shall be prohibited.

<sup>14</sup> **Regulation of the National Broadcasting Council of 5 February 2013** concerning detailed rules of protecting minors in on-demand audiovisual media services, official journal "Dz. U." of 13 February

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