



4.6. CZ – Czechia - National legal summary¹²²

4.6.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Zákon č. 40/1995 Sb., o regulaci reklamy*¹²³ (Act No. 40/1995 Coll., on the regulation of advertising – Advertising Act)
- *Zákon č. 132/2010 Sb., o audiovizuálních mediálních službách na vyžádání*¹²⁴ (Act No. 132/2010 Coll., on on-demand audiovisual media services – Act on on-demand AVMS)
- *Zákon č. 231/2001 Sb., o rozhlasovém a televizním vysílání*¹²⁵ (Act No. 231/2001 Coll., on Radio and Television Broadcasting – RTV Act)
- *Zákon o službách platforem pro sdílení videonahrávek*¹²⁶ (Act on Video-sharing Platform Services - VSP Act)
- *Zákon č. 480/2004 Sb., o některých službách informační společnosti*¹²⁷ (Act No. 480/2004 Coll., on certain information society services)
- *Zákon č. 634/1992 Sb. o ochraně spotřebitele*¹²⁸ (Consumer Protection Act No. 634/1992)

4.6.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored

¹²² The factsheet on Czechia incorporates the feedback received from the Czech Council for Radio and TV Broadcasting (RRTV).

¹²³ <https://www.zakonyprolidi.cz/cs/1995-40>.

¹²⁴ <https://www.psp.cz/sqw/sbirka.sqw?O=9&T=30>.

¹²⁵ <https://www.zakonyprolidi.cz/cs/2001-231>.

¹²⁶ <https://www.psp.cz/sqw/historie.sqw?o=9&t=30>

¹²⁷ <https://www.zakonyprolidi.cz/cs/2004-480>.

¹²⁸ <https://www.zakonyprolidi.cz/cs/1992-634>.



content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

4.6.2.1. Definitions

Table 32. Definition of the main concepts related to commercial communications

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	Yes.
Surreptitious commercial communication	Yes.
Misleading commercial communication	Yes.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	Yes.
Sponsored content	No.
Product placement	Yes.
Other:	No.

Source: Czech response to European Audiovisual Observatory standardised survey

4.6.2.1.1. Audiovisual commercial communications

Section 2 paragraph 1 (e) of the Act on on-demand AVMS defines audiovisual commercial communications as follows:

Audiovisual commercial communication means images with or without sound which are designed to promote, directly or indirectly, the goods, services or public image of a person pursuing an economic activity, and which accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes; audiovisual commercial communications may take the form, in particular, of advertising, sponsorship or product placement.

4.6.2.1.2. Television advertising

There is no definition of television advertising. However, section 2 paragraph 1 (n) of the RTV Act defines the term advertising as:

any public announcement broadcast in return for payment or a similar consideration, or broadcast for the broadcaster's self-promotion, in order to promote the supply of goods or



provision of services, including immovable property, rights and obligations in return for payment.

4.6.2.1.3. Advertiser

Section 1 paragraph (5) of the Advertising Act defines an advertiser as "a legal or natural person who has ordered advertising from another legal or natural person".

A similar definition is provided by section 48 paragraph 3 of the RTV Act which states that "[t]he party commissioning a commercial communication is a legal or natural person placing an order for commercial communication with another legal or natural person".

The VSP Act extends the scope of the Advertising Act to video-sharing platforms (VSPs), as it includes VSPs in the communication media by which advertising is transmitted and will, hence, be subject to the relevant regulation under this Act:

The communication media through which advertising is disseminated are the means by which advertising is transmitted, in particular periodicals and non-periodical publications, radio and television broadcasting, on-demand audiovisual media services, video-sharing platform services, audiovisual productions, computer networks, carriers of audiovisual works, posters and leaflets.

4.6.2.1.4. Surreptitious commercial communication

Section 2 paragraph 1 (q) of the RTV Act defines surreptitious commercial communications as follows:

Surreptitious commercial communication means the oral or visual presentation of goods, services, the name, trademark or activity of a producer of goods or provider of services, included by the broadcaster in a programme unit, if such a presentation intentionally follows an advertising objective and if it may mislead the public as to the nature of the presentation; such a presentation is considered as intentional when it is provided in return for payment or similar consideration.

A similar definition applicable to on-demand services is found in section 2 paragraph 1 (f) of the Act on on-demand AVMS:

Surreptitious audiovisual commercial communication means the oral or visual presentation of goods, services, the name, trademark or activity of a producer of goods or provider of services, included by the on-demand audiovisual media service provider in a programme, if such a presentation intentionally follows an advertising objective and if it may mislead the public as to the nature of the presentation; such a presentation is considered as intentional when it is provided in return for payment or similar consideration.



4.6.2.1.5. Misleading commercial communication

Section 5 of the Consumer Protection Act referred to in section 2 paragraph 1 (b) of the Advertising Act, defines deceptive acts as follows:

(1) A commercial practice shall be deemed to be misleading if it contains materially incorrect information and is therefore untrue, which leads or is likely to lead the consumer to make a purchasing decision which (s)he would not otherwise have made...

Commercial practices which have truthful information, but which still mislead consumers into purchasing products or services, are also considered to be deceptive acts as they contain misleading elements, such as the nature of product or service, its price, etc.

4.6.2.1.6. Virtual advertising

There is no definition of virtual advertising.

4.6.2.1.7. Sponsorship

Section 2 paragraph 1 (s) of the RTV Act defines sponsorship as follows:

Sponsorship means any contribution from a person who does not operate a radio or television broadcasting service, provide on-demand audiovisual media services or produce audiovisual works, made for the direct or indirect financing of a radio or television programme or programme for the purpose of promoting his or her name or title, trademark, products, services, activities or public image.

A similar definition applicable to on-demand services is laid down in section 2 paragraph 1 (g) of the Act on on-demand AVMS:

Sponsorship means any contribution made by a natural or legal person not engaged in the provision of an on-demand audiovisual media service, the operation of television broadcasting, or the production of audiovisual works, to the direct or indirect financing of an on-demand audiovisual media service or programmes with a view to promoting the sponsor's personal name or business name, trademark, products, services, activities or public image.

Moreover, section 1 paragraph 4 of the Advertising Act defines sponsorship as “a contribution made to promote the production or sale of goods, services or other performances of the sponsor”.

The definition of sponsorship in section 2 paragraph 1 (s) of the RTV Act is amended to include video-sharing platforms as follows:

Sponsorship means any contribution from a person who does not operate a video-sharing platform service, radio or television broadcasting service, provide on-demand audiovisual media services or produce audiovisual works, made for the direct or indirect financing of a



radio or television programme or programme for the purpose of promoting his or her name or title, trademark, products, services, activities or public image.

Similarly, the definition laid down in section 2 paragraph 1 (g) of the Act on on-demand AVMS is as follows:

Sponsorship means any contribution made by a natural or legal person not engaged in the provision of an on-demand audiovisual media service, the operation of television broadcasting, the operation of a video-sharing platform service, or the production of audiovisual works, to the direct or indirect financing of an on-demand audiovisual media service, video-sharing platform service, user-generated videos or programmes with a view to promoting the sponsor's personal name or business name, trademark, products, services, activities or public image.

Definitions in the RTV Act and the Act on on-demand AVMS apply to radio and television broadcasting and on-demand audiovisual media services. The definition in the Advertising Act is applicable to VSPs after the adoption of the VSP Act.

4.6.2.1.8. Sponsor

Section 1 (4) of Advertising Act defines a sponsor as "a legal or natural person who makes such a contribution for this purpose".

4.6.2.1.9. Sponsored content

There is no definition of sponsored content.

4.6.2.1.10. Product placement

Section 2 paragraph 2 (b) of Act No. 231/2001 on Radio and Television Broadcasting defines product placement as follows:

Product placement means any form of the inclusion of a product, a service, or the trademark thereof, or reference to a product or service, so that it is featured within a programme unit in return for payment or for similar consideration.

A similar definition applicable to on-demand services is laid down in section 2 paragraph 1 (h) of Act No. 132/2010 on on-demand AVMS:

Product placement means any form of audiovisual commercial communication consisting of the inclusion of a product, a service or the trademark thereof, or reference to a product or service so that it is featured within a programme in return for payment or for similar consideration.



4.6.2.1.11. Other definitions

N/A.

4.6.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for VSPs to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

The majority of the provisions applicable to commercial communications on VSPs can be found in the VSP Act, details of which are provided below in this section. In addition, this Act also includes an amendment to the Advertising Act, extending the scope of this act to VSPs as well.

4.6.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Section 7 paragraphs 3-4 of the VSP Act provides that VSP providers shall not place on their platforms any form of commercial communication that they market, sell or negotiate concerning cigarettes and other tobacco products or electronic cigarettes and their refills.

With regard to commercial communications concerning alcoholic beverages, they must not be specifically aimed at minors and must not encourage the immoderate consumption of such beverages (section 8a, VSP Act). In addition, the provider should also take appropriate measures for commercial communications that it does not market, sell or negotiate itself, proportionate to the limited control that the VSP may exercise over such commercial communications.

Similarly, section 4 of the Advertising Act stipulates that the advertising of alcoholic beverages may not be aimed at individuals under the age of 18, in particular, may not depict such individuals¹²⁹ consuming such beverages, and may not use elements, means and actions, which appeal to such persons.

4.6.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Section 7 paragraph 5 of the VSP Act provides that VSP providers shall not place on their platforms any form of commercial communication which concerns medicinal products and medical procedures that are available in Czechia only on prescription.

¹²⁹ Including individuals which who look like individuals under 18 years of age.



In the same vein, sections 5-5c of the Advertising Act provides that commercial communications intended for the public may not include medicinal products subject to prescription, nor medicinal products containing narcotic or psychotropic substances. Any information, persuasion or inducement intended to promote the prescription, supply, sale, delivery or consumption of medicinal products is considered as advertising. In addition, the advertising of medicinal products for professionals, the advertising of human tissue and cell donation, the advertising of medical devices and in vitro diagnostic medical devices are also regulated.

4.6.2.2.3. Surreptitious audiovisual commercial communications

Commercial communications that the VSP markets, sells or negotiates itself, must be easily recognisable and must not be surreptitious, according to section 7 paragraph 2 (a) of the VSP Act.

4.6.2.2.4. Subliminal techniques in commercial communications

Section 7 paragraph 2 (b) of the VSP Act states that commercial communications that the VSP itself markets, sells or negotiates must not use subliminal techniques.

4.6.2.2.5. Prejudice with regard to human dignity

Commercial communications that the VSP itself markets, sells or negotiates must not violate human dignity according to section 7 paragraph 2 (c) of the VSP Act.

In addition, section 2 paragraph 3 of the Advertising Act specifies that advertising must not be contrary to morality, or threaten morality in a generally unacceptable manner, lower human dignity, contain elements of pornography, violence or elements using the motive of fear, or attack political convictions.

4.6.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g. sex, racial or ethnic origin, nationality, religion, etc.)

According to section 7 paragraph 2 (d) of the VSP Act, commercial communications that the VSP itself markets, sells or negotiates must not contain or promote discrimination on the grounds of sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. Furthermore, section 2 paragraph 3 of the Advertising Act specifies that advertising must not contain discrimination on the grounds of race, sex or nationality, nor attack religious or national sentiment.



4.6.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour that endangers health or safety is prohibited in commercial communications that the VSP itself markets, sells or negotiates according to section 7 paragraph 2 (e) of the VSP Act. A similar requirement is found in section 2 paragraph 3 of the Advertising Act, which states that they must also not endanger the safety of persons or property.

4.6.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

According to section 7 paragraph 2 (e) of the VSP Act, encouraging behaviour that is grossly prejudicial to the protection of the environment is prohibited in commercial communications that the VSP itself markets, sells or negotiates. A similar requirement is found in section 2 paragraph 4 of the Advertising Act, which prescribes that advertising must not promote conduct detrimental to environmental interests.

4.6.2.2.9. Causing physical, mental or moral detriment to minors

Requirements pertaining to the protection of minors in relation to commercial communication are laid down in sections 1 and 6 of the VSP Act. They provide that VSP service providers must take measures to protect minors from programmes, video messages produced by users of the platform and commercial communications which may harm their physical, mental or moral development. These measures shall include age verification tools or other technical measures and shall ensure that such video messages, programmes and audiovisual commercial communications are not accessible in such a way that minors could normally see or hear them.

With regard to commercial communications marketed, sold or negotiated by the service provider of the VSP itself, they should not endanger minors physically, psychologically or morally by directly encouraging them to buy or rent a product or service and by taking advantage of their inexperience or credulity, directly encouraging minors to persuade their parents or others to purchase the advertised product or service, taking advantage of the special trust minors place in their parents, teachers or other persons, or unreasonably depicting minors in dangerous situations.

4.6.2.2.10. Other

N/A.



4.6.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and this part aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

4.6.3.1. Sponsorship

Sections 1 paragraph 4, 3 paragraph 1, 3a paragraph 2, 5 paragraph 1 and 5m paragraph 3 of the Advertising Act prohibit the sponsorship of tobacco advertising and the sponsorship of events or activities to promote electronic cigarettes and regulate the sponsorship of pharmaceutical products and medical congresses.

4.6.3.2. Product placement

There are no specific rules pertaining to product placement for VSPs in Czechia.

4.6.4. Obligations regarding (v)blogs and (v)blogging

There are no specific rules concerning (v)blogs. However, they may be subject to the Advertising Act, as the (v)blogger will often be in the position of a processor or distributor of advertising, which entails respect for legal obligations. The most important of these is the labelling of advertising, as well as the need to respect the legal limits of prohibited advertising.

4.6.5. Other relevant information

N/A.

4.6.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.



4.6.6.1. Advertising of, or on behalf of associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

4.6.6.2. Gambling, betting, betting tipsters, etc.

The relevant legal regulation of gambling advertising is contained in Section 5j of the Advertising Act. The following restrictions apply to gambling advertising, including advertising directed at minors:

- it must not contain a message which gives the impression that participation in a game of chance can be a source of funds similar to the receipt of income from a dependent, self-employed, or other similar activity;
- it shall not be directed at minors, in particular by depicting such persons or by using elements, devices or actions which primarily attract such persons;
- it should always contain a statement prohibiting participation in gambling by persons under the age of 18 and a clear and prominent warning as follows: "The Ministry of Finance warns: Participation in gambling may lead to addiction!".

4.6.6.3. Environmental or "green" claims for products

No specific provisions deal with this issue.

4.6.6.4. 1.1.6.4. Other

N/A.

4.6.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs



4.6.7.1. Self- and co-regulatory bodies

4.6.7.1.1. Context of establishment and legal background

The VSP Act aims to support self-regulation. To this end, self-regulatory bodies will be established to adopt self-regulatory codes of conduct. The self-regulatory bodies will be able to request an opinion from the Council for Radio and Television Broadcasting (RRTV)¹³⁰. RRTV will also maintain a list of self-regulatory bodies.

4.6.7.1.2. Stakeholders involved

The stakeholders involved will be representatives of AVMS providers, on-demand AVMS providers, self-regulatory bodies – including the Czech Advertising Standards Council (RPR) – and RRTV.

4.6.7.1.3. Scope and objectives

Section 5(w) of the RTV Act provides for RRTV's obligation to promote the development of self-regulation and to cooperate, within the scope of its competence, with self-regulatory bodies. In the explanatory report to the adoption of this amended law, the reference to reliance on self-regulatory instruments, as stipulated by the revised AVMSD is provided and further explained:

It is therefore clear that the State, through its authorities, cannot in any way impose or call on the relevant institutions to adopt any self-regulatory activities – these are entirely within the competence of the entities concerned by self-regulation. The Bill attempts to reflect this by amending section 5(w) by introducing the power of the Council (RRTV – op.ed.) to facilitate (as it cannot do more in relation to self-regulation) the development of self-regulation in its area of competence, with the addition of video-sharing platforms, which are now covered by the Bill...

Specific references to self-regulatory instruments can be seen in sections 5 paragraph (1)(w) and (x) and section 52 paragraphs 2 and 3 of the VSP Act. The aim of the relevant codes should be to effectively restrict the exposure of minors to audiovisual commercial communications about alcoholic beverages, as well as to commercial communications accompanying or contained in children's programmes about foods and beverages containing nutrients and substances with a nutritional or physiological effect, the excessive consumption of which in the total diet is not recommended.

¹³⁰ Rada pro rozhlasové a televizní vysílání, <https://www.rrtv.cz/en/>.



4.6.7.1.4. Code(s) of conduct

The Czech Advertising Council had produced a code of conduct¹³¹, the aim of which is to help advertising to be truthful, decent, and honest and to respect the principles of advertising practice developed by the International Chamber of Commerce in its International Code of Advertising Practice.¹³²

4.6.7.1.5. Role of the (self-)regulatory bodies

As per section 5 paragraph 1 (w) and (x) and section 52 paragraphs 2 and 3 of the VSP Act, self-regulatory bodies, through self-regulation and in their own interest, are responsible for the cultivation of the services they provide in a form conducive to their development and, to this end, undertake in writing to comply with the rules set out in the code of conduct which they publish.

4.6.7.1.6. Period of activity (if limited)

N/A.

4.6.7.1.7. Role of the regulatory authority in a co-regulatory system

4.6.7.1.7.1. *Regulatory body*

RRTV shall be responsible for facilitating the development of self-regulation and, upon request, cooperating with a self-regulatory body, in particular in the establishment of effective self-regulatory systems; it shall maintain and publish a list of self-regulatory bodies. At the request of self-regulatory bodies, it shall adopt positions and make recommendations on their internal rules and codes of conduct.

4.6.7.1.7.2. *Co-regulatory scheme*

N/A.

4.6.7.1.7.3. *Relationship and roles of stakeholders*

N/A.

4.6.7.2. Monitoring/evaluation, compliance and sanctioning powers

As per section 5 paragraph 1 (w) and (x) and section 52 paragraphs 2 and 3 of the VSP Act, supervisory powers are exercised by RRTV within the framework of the tasks entrusted to it. RRTV cannot impose or require the self-regulatory bodies concerned to undertake self-

¹³¹ https://www.rpr.cz/cz/dokumenty_rpr.php.

¹³² <https://iccwbo.org/content/uploads/sites/3/2018/09/icc-advertising-and-marketing-communications-code-int.pdf>



regulatory activities – these are entirely the responsibility of those entities concerned with self-regulation.

[RRTV:] (w) facilitate[s] the development of self-regulation in its area of competence and cooperate[s] with a self-regulatory body, if the Council's cooperation with a self-regulatory body is requested in writing, in particular in the establishment of effective self-regulatory systems and in the introduction of measures to promote media literacy; it shall publish a list of self-regulatory bodies on its website,

(x) at the request of the self-regulatory bodies, adopt[s] opinions and make[s] recommendations on their internal rules in so far as they lay down the obligations of broadcasters, providers of on-demand audiovisual media services or providers of video-sharing platforms, in particular in the field of the protection of minors against programmes which may impair their physical, mental or moral development, by means of a code of ethics.

4.6.8. Cross-sector and cross-border collaboration

N/A.

4.6.9. Update on plans and practices related to new obligations of VSPs

N/A.

4.6.10. Studies, reports and research

N/A.

4.6.11. Data compilation

This factsheet is based on data compiled by Jaroslav Tajbr, Lawyer at Squire Patton Boggs.