



4.8. DK – Denmark – National legal summary¹⁶⁵

4.8.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Bekendtgørelse af lov om radio- og fjernsynsvirksomhed m.v.¹⁶⁶ (Act on Radio and Television Broadcasting).
- *Markedsføringsloven*¹⁶⁷ (Marketing Practices Act).¹⁶⁸
- *E-handelsloven*¹⁶⁹ (Act on E-Commerce).
- *Bekendtgørelse om videodelingsplatformstjenester*¹⁷⁰ (Statutory Instrument on Video-sharing Platform Services).
- Bekendtgørelse om reklamer og sponsorering m.v. af programmer i radio, fjernsyn og on demand audiovisuelle medietjenester samt indgåelse af partnerskaber¹⁷¹ (Statutory Instrument on Advertising and Sponsorship, etc. of programmes on radio, television and on-demand audiovisual services and partnerships).

4.8.2. 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 Audiovisual Media Services Directive (AVMSD). 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 content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

¹⁶⁵ The factsheet on Denmark incorporates feedback received from Søren F. Jensen, Senior Legal Advisor at the Danish Agency for Culture and Palaces during the checking round with the national regulatory authorities.

¹⁶⁶ <https://www.retsinformation.dk/eli/lta/2020/1350>.

¹⁶⁷ <https://www.retsinformation.dk/eli/lta/2022/866>.

¹⁶⁸ English version (from 2013 – the Act has been amended since then):

<https://www.consumerombudsman.dk/media/14553/markedsfoeringsloven-lbkg-2013.pdf>.

¹⁶⁹ <https://www.retsinformation.dk/eli/lta/2002/227>.

¹⁷⁰ <https://www.retsinformation.dk/eli/lta/2020/1158>.

¹⁷¹ <https://www.retsinformation.dk/eli/lta/2020/1155>.



4.8.2.1. Definitions

Table 34. Definition of the main concepts related to commercial communications

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

Source: Danish response to European Audiovisual Observatory standardised survey

4.8.2.1.1. Audiovisual commercial communications

The Statutory Instrument on Video-sharing Platform Services (VSPs) does not define audiovisual commercial communication as such. However, Article 2 paragraph 6 of the Act on E-Commerce regarding online trading defines commercial communication as:

Any kind of communication directly or indirectly aimed at advancing the sale of commodities or services or at establishing an image for a company, an organisation or a person who carries out commercial, industrial or trade activities or a profession governed by legislation.

It should be noted that Article 3 (which refers to Article 2 paragraph 1) of the Statutory Instrument on Video-sharing Platform Services excludes non-commercial activities (a term which is found in the legislation and which refers to non-financial activities) from the definition of a VSP service, as follows:

(1) The definition of a video-sharing platform service, cf. sec. 2, no. 1, does not cover non-financial activities, including offers of audiovisual content on private websites and non-commercial interest groups.

(2) When a part that can be separated from the service constitutes a video-sharing platform service as defined in Article 2, no. 1, only that part is covered by the Statutory instrument, and only in respect of programmes and user-generated videos. Video clips embedded in editorial content in electronic editions of newspapers and magazines, and animations such as GIFs, are not covered by the Statutory instrument.



4.8.2.1.2. Television advertising

There is no definition of television advertising.

4.8.2.1.3. Advertiser

There is no definition of advertiser.

4.8.2.1.4. Surreptitious commercial communication

There is no definition of surreptitious commercial communication.

The Statutory Instrument on Advertising and Sponsorship and the Statutory Instrument on Video-sharing Platform Services include rules on the fact that the advertising must be clearly identifiable as such.

4.8.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication.

The Statutory Instrument on Advertising and Sponsorship and the Marketing Practices Act include provisions on the requirement that advertisements shall respect generally observed ethical standards for advertisements and should be legal, proper, decent and truthful and be designed with a due sense of social responsibility.

4.8.2.1.6. Virtual advertising

There is no definition of virtual advertising.

4.8.2.1.7. Sponsorship

Article 79 paragraph 1 of the Act on Radio and Television Broadcasting defines sponsorship by transposing the text of the revised AVMSD verbatim, as follows:

Sponsorship of programmes means any kind of contribution of direct or indirect subsidies to the financing of programmes on radio, television, including tele-text pages, and on-demand audiovisual media services by a natural person or legal entity not themselves broadcasting, offering or producing programmes on radio, television or on-demand audiovisual media services, films, phonograms, etc., with a view to promoting their name, logo, image, activities or products.



A similar definition of sponsorship of programmes can be found in Article 24 paragraph 1 of the Statutory Instrument on Advertising and Sponsorship and in Article 2 paragraph 5 of the Statutory Instrument on Video-sharing Platform Services.

4.8.2.1.8. Sponsor

There is no definition of sponsor.

4.8.2.1.9. Sponsored content

There is no definition of sponsored content.

4.8.2.1.10. Product placement

Article 85a paragraph 2 of the Radio and Televisions Act defines product placement as follows:

In this Act product placement means display or mention of a commodity, a service or a trademark as part of a programme against payment or other consideration.

A similar definition of product placement can be found in Article 2 paragraph 8 of the Statutory Instrument on Video-sharing Platform Services:

a display of or reference to a good, service or trade mark in the context of an image programme or user-generated video in return for payment or for similar consideration.

4.8.2.1.11. Other definitions

With regard to direct marketing techniques, Article 10 paragraph 1 of the Marketing Practices Act makes a reference to these techniques by prescribing that:

A trader must not approach anyone by means of electronic mail, an automated calling system or a facsimile machine (fax) for the purposes of direct marketing unless the party concerned has given his prior consent. The trader must allow free and easy revocation of consent.

This implies that unsolicited marketing by means of e.g., electronic mail is prohibited, except in situations covered by exemptions mentioned in paragraphs 2 or 3 of Article 10, and that direct marketing towards natural persons by other means of remote communication must be made in such a way that the recipients can easily decline it.



4.8.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms 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 the VSP providers related to commercial communications.

As a general note, it should be stressed that the obligations of the VSPs in relation to commercial communications can be found in Article 13 of the Statutory Instrument on Video-sharing Platform Services, in respect of advertising, sponsorship and product placement marketed, sold or organised by the providers, the details of which and the applicable restrictions can be found further down in this section. Under Article 14 paragraph 1 of the Statutory Instrument on Video-sharing Platform Services, video-sharing platforms must take appropriate measures to comply with the requirements set out in Article 13 paragraphs (2)-(8) as to commercials, sponsoring and product placement that is not marketed, sold or organised by the platforms.

Besides, the scope of application of the two Statutory instruments is the following:

- The Statutory Instrument on Video-sharing Platform Services applies to providers of VSP services that fall under Danish authority.
- The Statutory Instrument on Advertising and Sponsorship, etc., of programmes on radio, television and on-demand audiovisual services and partnerships applies to advertising and sponsorship, etc., of programmes on radio, television and on-demand audiovisual media services as well as product placement in programmes on television and on-demand audiovisual media services.

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

VSPs must comply with the requirement set out in Article 13 paragraph 5 of the Statutory Instrument on Video-sharing Platform Services which prohibits “all kinds of advertising, sponsorship and product placement of cigarettes and other tobacco products and of electronic cigarettes and refill containers”, and the requirements in Article 13 paragraph 6 which prescribes that:

Advertising, sponsorship and product placement aimed at promoting the sale of alcoholic beverages may not be directed specifically at minors and may not encourage excessive consumption of such beverages.



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

Article 13 paragraph 7 of the Statutory Instrument on Video-sharing Platform Services prohibits advertising, sponsorship and product placement for medicinal products and medical treatment available only on prescription.

4.8.2.2.3. Surreptitious audiovisual commercial communications

Article 13 paragraph 2 of the Statutory Instrument on Video-sharing Platform Services requires advertising, sponsorship and product placement to be clearly identifiable as such and prohibits covert advertising, sponsorship and product placement.

4.8.2.2.4. Subliminal techniques in commercial communications

The use of subliminal techniques in advertising, sponsorship and product placement is prohibited under Article 13 paragraph 3 of the Statutory Instrument on Video-sharing Platform Services.

4.8.2.2.5. Prejudice with regard to human dignity

Advertising, sponsorship and product placement must not damage respect for human dignity according to Article 13 paragraph 4, subparagraph 1, of the Statutory Instrument on Video-sharing Platform Services.

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

Article 11 paragraph 2 of the Statutory Instrument on Video-sharing Platform Services requires video-sharing platforms to:

take appropriate measures to protect the general public from programmes, user-generated videos, advertising, sponsorship and product placement inciting violence or hatred directed against a group of persons or a member of a group on any of the grounds referred to in Article 21 of the EU Charter of Fundamental Rights.

¹⁷²

In addition, Article 13 paragraph 4, subparagraph 2 prescribes that advertising, sponsorship and product placement must not “contain or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;”.

¹⁷² Which includes discrimination on the following grounds: “sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation” and on nationality.



4.8.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour that is detrimental to health or safety is prohibited in advertising, sponsorship and product placement under Article 13 paragraph 4, subparagraph 3 of the Statutory Instrument on Video-sharing Platform Services.

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

Encouraging behaviour that is highly detrimental to environmental protection is prohibited in advertising, sponsorship and product placement under Article 13 paragraph 4, subparagraph 4 of the Statutory Instrument on Video-sharing Platform Services.

4.8.2.2.9. Causing physical, mental or moral detriment to minors

Article 11 paragraph 1 of the Statutory Instrument on Video-sharing Platform Services requires video-sharing platforms to: “take appropriate measures to protect minors from programmes, user-generated videos, advertisements, sponsorship and product placement that may harm their physical, mental or moral development.” In addition, specific requirements pertaining to the protection of minors in advertising, sponsorship and product placement are set out in Article 13 paragraph 8 which prescribes:

Advertising, sponsorship and product placement must not cause physical, mental or moral detriment to minors. Advertising, sponsorship and product placement must not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons or show minors in dangerous situations without due reason.

In relation to the protection of personal data of minors, Article 12 paragraph 3 of the Statutory Instrument on Video-sharing Platform Services makes a reference to direct marketing, profiling and behaviourally targeted advertising, as follows:

Personal data of minors collected or otherwise generated by video-sharing platform service providers under the age control and parental control systems referred to in paragraph (1), points (4) and (6), must not be processed for commercial purposes such as direct marketing, profiling or behavioural advertising.

Article 11 paragraph 3 of the Marketing Practices Act places restrictions on trading practices directed at minors, as follows:

Trading practices directed at children and young people under the age of 18 must not take place on or via social media profiles belonging to or appearing to belong to children and young people under the age of 15. Also, trading practices directed at children and young people under the age of 18 on social media must not in other ways use children and young



people under the age of 15, unless such use is a natural feature in the illustration or display of a product.

4.8.2.2.10. Other

N/A.

4.8.3. 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.

4.8.3.1. Sponsorship

All the restrictions set out by Article 13 of the Statutory Instrument on Video-sharing Platform Services which are mentioned in section 4.8.2.2. of this factsheet are applicable to sponsorship as well.

4.8.3.2. Product placement

All the restrictions set out by Article 13 of the Statutory Instrument on Video-sharing Platform Services which are mentioned in section 4.8.2.2. of this factsheet are applicable to product placement as well.

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

Vlogs or blogs are not considered to be audiovisual media services. The determining factor is whether the blog or vlog itself is hosted on an audiovisual media service.

However, advertising on (v)blogs and (v)bloggers on social media are regulated under the Marketing Practices Act and must comply with the requirements of that Act, including Articles 5 and 6 on misleading actions and surreptitious commercial communications.

4.8.5. Other relevant information

N/A.



4.8.6. 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.

4.8.6.1. 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.

4.8.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue.

4.8.6.3. Environmental or “green” claims for products

The Marketing Practices Act applies to advertisers and does not specifically concern VSPs. However, it should be noted that Articles 5 and 6 on misleading actions in commercial communication also apply to environmental and “green” claims relating to the way products are produced, packaged, distributed, used, consumed and/or disposed of. More specifically, an advertiser’s commercial practices must not:

- contain false information or in any other way, including general presentation, deceive or be likely to deceive the average consumer, even if the information is factually correct (Article 5)
- be misleading by omitting or concealing material information or by providing material information in an unclear, incomprehensible or untimely manner (Article 6).

In addition, under Article 13, the advertiser must be able to provide evidence of the accuracy of his/her factual claims.

4.8.6.4. Other

N/A.



4.8.7. 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.

4.8.7.1. Self- and co-regulatory bodies

4.8.7.1.1. Context of establishment and legal background

N/A.

4.8.7.1.2. Stakeholders involved

N/A.

4.8.7.1.3. Scope and objectives

N/A.

4.8.7.1.4. Code(s) of conduct

N/A.

4.8.7.1.5. Role of the (self-)regulatory bodies

N/A.

4.8.7.1.6. Period of activity (if limited)

N/A.

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

N/A.

4.8.7.1.7.1. *Regulatory body*

N/A.



4.8.7.1.7.2. Co-regulatory scheme

N/A.

4.8.7.1.7.3. Relationship and roles of stakeholders

N/A.

4.8.7.2. Monitoring/evaluation, compliance and sanctioning powers

The Radio and Television Board¹⁷³ alone administers the Act on Radio and Television Broadcasting, the Statutory Instrument on Video-sharing Platform Services and the Statutory Instrument on Advertising and Sponsorship, etc., of programmes on radio, television and on-demand audiovisual services and partnerships.

The Danish legal framework does not include self- or co-regulatory measures regarding commercial communications on video-sharing platforms. It is envisaged that the Radio and Television Board is the competent regulatory body vis-à-vis VSPs, in terms of their registration and enforcement of legal obligations. The Radio and Television Board is the competent regulatory body vis-à-vis VSPs, according to Article 42a. of the Radio and Television Act:

The Radio and Television Board shall have the following duties in relation to video-sharing platform services:

- 1) to register providers of video-sharing platform services and to supervise the undertaking, cf. Article 51 a.*
- 2) to issue notices of infringements of the Act and regulations made under the Act.*
- 3) to decide on measures for the protection of minors and the public from content inciting to violence or hatred or to commit acts of terrorism, or from content containing child pornography, racism or xenophobia, pursuant to Article 51 b (2) and (3).*
- 4) to decide on measures and regulations concerning the identification and content of advertisements, sponsorship and product placement on video-sharing platform services, pursuant to Article 51 b, paragraph 4.*
- 5) to decide on the suspension of the undertaking pursuant to Article 51c(1).*

Similarly, Article 16 of the Statutory Instrument on Video-sharing Platform Services provides that:

- (1) The Radio and Television Board shall verify that video-sharing platform service providers, cf. Section 8(1), take appropriate measures under the provisions of Sections 11, 12, 14 and 15 and comply with the provisions of Sections 8, 9 and 13.*
- (2) The Board shall prosecute infringements of the provisions referred to in paragraph (1).*

¹⁷³ Radio- og tv-nævnet, <https://slks.dk/omraader/medier/naevn-og-udvalg/radio-og-tv-naevnet>.



(3) *The Board shall adopt decisions on the appropriate measures providers are obliged to take under the provisions of Sections 11, 12, 14 and 15 and on whether providers comply with the provisions of Sections 8, 9 and 13.*

According to the Radio and Television Act Article 51 a(1), VSPs must register for services which fall under the Danish authority.

4.8.8. Cross-sector and cross-border collaboration

N/A.

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

There are no plans to update plans and practices regarding the tools and mechanisms in place in relation to the new VSPs' obligations.

4.8.10. Studies, reports and research

The following reports have been prepared in relation to audiovisual commercial communications:

- The Danish Ministry of Culture, *Mediernes udvikling i Danmark 2021*¹⁷⁴
- *Juristen, Skjult reklame*, 2020 Research paper on surreptitious advertising by Professor, Dr. jur., PhD., Caroline Heide-Jørgensen
- *Festskrift til Palle Bo Madsen, Markedsføring i medier*, 2021, Research paper on commercial communications in media by Professor, PhD., Søren Sandfeld Jakobsen

4.8.11. Data compilation

This factsheet is based on data compiled by Terese Foged, Attorney and Partner of Lassen Ricard law firm.

¹⁷⁴https://mediernesudvikling.kum.dk/fileadmin/user_upload/dokumenter/medier/Mediernes_udvikling/2021/Branche/Annonceomsaetning/Annonceomsaetning_2021_ny.pdf.