



## 4.19. LU – Luxembourg – National legal summary<sup>407</sup>

### 4.19.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Loi modifiée du 27 juillet 1991 sur les médias électroniques, 2021*<sup>408</sup> (Amended law of 27 July 1991 on electronic media, 2021 consolidated text)<sup>409</sup>

Secondary legislation:

- Règlement grand-ducal modifié du 5 avril 2001 fixant les règles applicables en matière de communications commerciales dans les services de médias audiovisuels<sup>410</sup> (Amended Grand-Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications in audiovisual media services, 2021 consolidated text)<sup>411</sup>

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

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<sup>407</sup> The factsheet on Luxembourg incorporates feedback received from the Department of Media, Telecommunications and Digital Policy (Ministry of State) and the Luxembourg Independent Media Authority (ALIA) during the checking round with the national regulatory authorities.

<sup>408</sup> [https://legilux.public.lu/eli/etat/leg/recueil/presse\\_medias/20210815](https://legilux.public.lu/eli/etat/leg/recueil/presse_medias/20210815)

<sup>409</sup> [www.alia.lu/assets/upload/files/ALIA-site-Loi-sur-les-medias-electroniques-EN.pdf](http://www.alia.lu/assets/upload/files/ALIA-site-Loi-sur-les-medias-electroniques-EN.pdf)

<sup>410</sup> [https://legilux.public.lu/eli/etat/leg/recueil/presse\\_medias/20210815](https://legilux.public.lu/eli/etat/leg/recueil/presse_medias/20210815)

<sup>411</sup> [www.alia.lu/assets/upload/files/RDG-communications-commerciales-EN\\_traduction-assermentee-01-04-2021.pdf](http://www.alia.lu/assets/upload/files/RDG-communications-commerciales-EN_traduction-assermentee-01-04-2021.pdf)



#### 4.19.2.1. Definitions

**Table 45. Definition of the main concepts related to commercial communications**

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	No (indirect reference in another definition).
Surreptitious commercial communication	Yes.
Misleading commercial communication	No.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	No (indirect reference in another definition).
Sponsored content	No (indirect reference in another definition).
Product placement	Yes.

Source: Luxembourgian response to European Audiovisual Observatory standardised survey

##### 4.19.2.1.1. Audiovisual commercial communications

The law on electronic media (in article 2, 2)) 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 image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in an audiovisual programme or user-generated video in return for payment or other consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.*

##### 4.19.2.1.2. Television advertising

The law on electronic media (article 2, 12)) defines television advertising as follows:

*“television advertising” means any form of announcement broadcast whether in return for payment or for other consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.*



#### 4.19.2.1.3. Advertiser

There is no explicit definition of advertiser in the law on electronic media. However, there is an indirect reference in article 2, 12), of that same law in the definition of television advertising (see 4.19.2.1.2).

#### 4.19.2.1.4. Surreptitious commercial communication

The law on electronic media (in article 2, 3)) defines surreptitious commercial communication as follows:

*"surreptitious audiovisual commercial communication" means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall be considered as intentional, particularly if it is done in return for payment or other consideration.*

#### 4.19.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication. There is however a reference to the concept of "the verbal or visual presentation of goods, services, (...) misleading the audience" in the definition of surreptitious commercial communication.

#### 4.19.2.1.6. Virtual advertising

There is neither a definition of virtual advertising, nor are there specific rules governing virtual advertising.

#### 4.19.2.1.7. Sponsorship

The law on electronic media (article 2, 9)) defines sponsoring as follows:

*'sponsorship' means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities or products.*

The law on electronic media allows product placement in all audiovisual media services produced after 19 December 2009 (except in news and current affairs programmes, consumer programmes, religious and children's programmes), and in article 27bis, paragraph 6, states that a Grand Ducal Regulation will determine the restrictive rules with regard to sponsoring. The amended Grand Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications does lay down the rules regarding



sponsoring, however they only apply to audiovisual media services or audiovisual programmes and thus not to VSPs.

#### 4.19.2.1.8. Sponsor

There is no explicit definition of sponsor, there are however indirect references to the sponsor in the definition of sponsoring in the law on electronic media and article 5 of the amended Grand Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications.

#### 4.19.2.1.9. Sponsored content

There is no explicit definition of sponsored content, the amended Grand Ducal Regulation of 5 April 2001 on the applicable rules for commercial communications does however set rules on sponsoring and sponsored programmes, which must, for instance, be clearly identified as such.

#### 4.19.2.1.10. Product placement

The law on electronic media, in Article 2, (10), defines product placement as follows:

*"product placement" means any form of audiovisual commercial communication consisting of the inclusion of, or reference to a product, a service or the trade mark thereof so that it is featured within a programme or user-generated video, in return for payment or other consideration.*

Article 27bis, paragraph 7, of the law lays down a few rules on product placement, not applicable to VSPs. Product placement is authorised in any audiovisual media service produced after 19 December 2009, except in information and news programmes, consumer programmes, religious programmes and children's programmes. Article 5bis of the Grand Ducal Regulation of 5 April 2001 contains further requirements that programmes including product placement have to comply with. In any case, programmes must not include the placement of tobacco products or cigarettes, as well as of electronic cigarettes and refills or product placement from companies mainly active in the manufacturing or sale of such products and of specific medications or medical treatments only available on prescription.

#### 4.19.2.1.11. Other definitions

N/A.



#### 4.19.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platform providers 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, concerning commercial communications.

As a general note, it should be emphasised that the law on electronic media (Article 28 *septies* – rules applicable only to video sharing platform services) provides for obligations to be met by VSP providers, in line with the text of the revised AVMSD. In this context, appropriate measures are to be taken by providers of video-sharing platforms, for instance, to protect the general public and minors from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group, and content the dissemination of which constitutes a criminal offence.

Article 27*bis* of the Law on electronic media lays down general rules regarding audiovisual commercial communications: it relates to the topics discussed further below (alcohol and tobacco, medicinal products and medical treatment, surreptitious and subliminal ads, dignity, discrimination, health and safety, environment, protection of minors) and to product placement. Finally, it refers to the Grand Ducal Regulation dealing with sponsoring and product placement.

The more explicit restrictions relating to certain audiovisual commercial communications can be found below.

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

The law on electronic media, article 27*bis*, paragraph 3 restricts the audiovisual commercial communications for alcoholic beverages as follows:

*Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.*

Article 27*bis*, paragraph 2, prohibits audiovisual commercial communication for cigarettes/other tobacco products/ electronic cigarettes and refills:

*Any form of audio-visual commercial communication for cigarettes or other tobacco products as well as for electronic cigarettes and shall be prohibited.*



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

The law on electronic media provides in article 27bis, paragraph 4: “Audiovisual commercial communication for medicinal products and medical treatments available only on prescription shall be prohibited”.

#### 4.19.2.2.3. Surreptitious audiovisual commercial communications

The law on electronic media provides in article 27bis, paragraph 1, letter a): “Surreptitious audiovisual commercial communications shall be prohibited”.

#### 4.19.2.2.4. Subliminal techniques in commercial communications

Article 27bis, paragraph 1, letter b), of the law on electronic media provides that audiovisual commercial communications “shall not use subliminal techniques”.

#### 4.19.2.2.5. Prejudice with regard to human dignity

The law on electronic media provides in article 27bis, paragraph 1, letter c, that audiovisual commercial communications “shall not prejudice respect for human dignity”.

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

According to Article 27bis, paragraph 1, letter d), audiovisual commercial communications:

*Shall not include or promote any discrimination based on on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.*

Article 28 septies, paragraph 1, letter b), refers to incitement to violence and hatred based on any of the motives presented in article 21 of the Charter of Fundamental Rights of the European Union: 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 nationality:

*(...) video sharing platform providers (...) take appropriate measures to protect the general public from programmes, videos created by users and audiovisual commercial communications including incitement to violence or hatred targeting a group of individuals based on the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union.*



#### 4.19.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 27bis, article 1, letter e) of the law on electronic media states that audiovisual commercial communications “shall not encourage behaviour prejudicial to health or safety”.

#### 4.19.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Article 27bis, paragraph 1, letter f) of the law on electronic media provides that audiovisual commercial communications “shall not encourage behaviour grossly prejudicial to the protection of the environment”.

#### 4.19.2.2.9. Causing physical, mental or moral detriment to minors

The new article 28 septies of the law on electronic media on VSPs calls for measures to be taken by video-sharing platform providers to protect minors from commercial communications likely to harm their development in accordance with article 27ter which deals with the protection of minors in general from harmful content in the AVMSD, and Article 27bis relating to audiovisual commercial communications.

*Article 28septies, paragraph 1, letter a):*

*(...) video-sharing platform providers (...) take appropriate measures to protect (...) minors from (...) audiovisual commercial communications likely to harm their physical, mental or moral development in accordance with article 27ter, paragraphs 1 and 2.*

*Article 27ter:*

*(1) Programmes offered by an audiovisual media service provider likely to harm the physical, mental or moral development of minors may only be made available to the public under conditions normally preventing minors from hearing or seeing them.*

*(2) A Grand Ducal Regulation will determine the measures to be taken by audiovisual media service providers to prevent minors from seeing or hearing such programmes. These measures include the choice of the airtime of the programme, the use of a tool to check the age or other technical tools.*

*Article 27bis (5):*

*Audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall 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 unreasonably show minors in dangerous situations.*

Article 28septies, paragraph 2, sub-paragraph 2, refers to the fact that VSP providers must comply with part of article 27bis, including paragraph 5. This paragraph deals with the prohibition on exploiting the inexperience of minors through advertising.



Article 28<sup>septies</sup> of the law on electronic media deals exclusively with video-sharing platforms (VSPs). The article forbids the use of data of minors collected during an age verification check [letter f)] or via a parental control system [letter h)] for direct marketing, commercial profiling and behaviourally targeted advertising.

*Article 28<sup>septies</sup>, paragraph 4:*

*Personal data of minors collected or generated in another way by video-sharing platform providers in accordance with paragraph 3, letters f) and h), may not be processed for marketing purposes as solicitation, profiling and advertisements based on behavioural targeting.*

#### 4.19.2.2.10. Other

Article 28 <sup>septies</sup>, paragraph 1, letter c) of the Law on electronic media requires VSP providers to make sure the general public is protected from commercial communications containing a public provocation to commit a terrorist offence, a child pornography offence or an offence related to racism or xenophobia.

*Article 28<sup>septies</sup>, paragraph 1, letter c):*

*(...) video-sharing platform providers (...) take appropriate measures to protect:*

*c) the general public from (...) audiovisual commercial communications including content the broadcasting of which is a criminal offence, i.e., public provocation to commit acts of terrorism as provided in article 135-11, paragraphs 1 and 2 of the Criminal Code, violations related to child pornography as listed in article 379, point 2° of the Criminal Code and violations relating to racism and xenophobia as listed in articles 457-1 and 457-3 of the Criminal Code.*

Article 2 of the Grand Ducal Regulation lays down a few rules on television ads and teleshopping:

*(1) The insertion of television advertisements or tele-shopping in programmes may not harm the integrity of the programmes considering their natural interruptions, their duration and type, or the rights of the beneficiaries.*

*(2) Films produced for television (with the exclusion of series, feuilletons and documentaries), cinematographic works and television news may be interrupted by television advertisements and/or tele-shopping once per airtime of thirty minutes. Children's programmes can be interrupted by television advertisements once per airtime of thirty minutes, provided that the scheduled duration of the programme exceeds thirty minutes. Television advertisement or tele-shopping spots may not be inserted during the broadcasting of religious services.*

*Tele-shopping sequences are forbidden in children's programmes.*

Article 27<sup>quinquies</sup> (2) f) pertains to overlay banners for commercial purposes. An explicit agreement of the AVMS provider is not needed in order to use commercial communication banners:





(...) are authorised, without the prior agreement of the audiovisual media service providers:  
(...) marketing banners provided by the media service provider.

### 4.19.3. Sponsorship and product placement

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

#### 4.19.3.1. Sponsorship

There are no specific rules for VSPs with regard to sponsoring in article 28*septies* in the law.

The Law on electronic media in Article 27*bis*, paragraph 6, refers to the Grand Ducal Regulation laying down the rules on sponsorship, which are, however, not applicable to VSP providers. Article 5 of the Grand Ducal Regulation provides restrictions.

#### 4.19.3.2. Product placement

There are no specific rules in article 28*septies* for VSP providers relating to product placement.

Article 27*bis*, paragraph 7, of the law lays down a few rules on product placement, allowing it except in news, consumer, religious and children's programmes. Article 5*bis* of the Grand Ducal Regulation deals with further restrictions on product placement. These rules are however not applicable to VSPs.

### 4.19.4. Obligations regarding (v)blogs and (v)blogging

(V)blogs and (v)bloggers are not explicitly mentioned in the legal texts, nor encompassed, as of yet, within self-regulatory mechanisms.

### 4.19.5. Other relevant information

N/A.



#### 4.19.6. 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.

##### 4.19.6.1. 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.

##### 4.19.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions of the law on electronic media deal with this issue.

##### 4.19.6.3. Environmental or “green” claims for products

Article 27*bis*, paragraph 1, letter f, of the law on electronic media provides that audiovisual commercial communications “don’t encourage behaviours that are seriously damageable to the environment”.

##### 4.19.6.4. Other

N/A.

#### 4.19.7. 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 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.



#### 4.19.7.1. Self- and co-regulatory bodies

##### 4.19.7.1.1. Context of establishment and legal background

Article 35, paragraph 2, letter i) of the Law on Electronic Media lays down that one of the missions of the national regulatory authority, the Luxembourg Independent Authority for Audiovisual Media (*Autorité luxembourgeoise indépendante de l'audiovisuel* – ALIA,<sup>412</sup> referred to in relevant legislation as the Authority) is to encourage co-regulation and self-regulation, without further details as to the areas in which these codes should be developed. At this point there exists no such code.

*Article 35 (2) i):*

*The mission of the Authority is: (...)*

*i) to encourage the use of coregulation and the fostering of self-regulation through codes of conduct drawn up by audiovisual media service providers, video-sharing platform service providers or organisations representing them, in cooperation, as necessary, with other sectors such as industry, trade, professional and consumer associations or organisations.*

*These codes shall be such that they are broadly accepted by the main stakeholders; clearly and unambiguously set out their objectives; provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and provide for effective enforcement including effective and proportionate sanctions.*

For now, there are no VSPs falling under the jurisdiction of Luxembourg.

##### 4.19.7.1.2. Stakeholders involved

The Luxembourg Commission for Ethics in Advertising (CLEP) is the self-regulatory organisation in charge of enforcing the Code of Ethics. It deals with all commercial communications, including online, on VSPs, or by influencers.

##### 4.19.7.1.3. Scope and objectives

The scope of CLEP's Code of Ethics includes rules regarding inappropriate ACCs for alcoholic beverages and ACCs which encourage behaviours grossly prejudicial to the protection of the environment.

##### 4.19.7.1.4. Code(s) of conduct

The scope of CLEP's codes covers commercial communications on VSPs. Besides, ALIA should encourage the adoption of codes of conduct (Article 35 (2) i) of the Law on electronic media).

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<sup>412</sup> <http://www.alia.lu/>.



#### 4.19.7.1.5. Role of the (self-)regulatory bodies

Not identified yet.

#### 4.19.7.1.6. Period of activity (if limited)

Not identified yet.

#### 4.19.7.1.7. Role of the regulatory authority in a co-regulatory system

Not identified yet.

##### *4.19.7.1.7.1. Regulatory body*

ALIA is the national independent regulatory authority in charge of monitoring the application of the regulatory framework related to electronic media. Its supervising missions cover linear television programmes, on-demand services, video-sharing platforms, and national, regional and local radio stations.

##### *4.19.7.1.7.2. Co-regulatory scheme*

Not identified yet.

##### *4.19.7.1.7.3. Relationship and roles of stakeholders*

Not identified yet.

#### 4.19.7.2. Monitoring/evaluation, compliance and sanctioning powers

One of the missions of ALIA is to evaluate the measures taken by a VSP provider.

*Article 35, paragraph 2, letter k):*

*The mission of the Authority is: (...)*

*k) to establish mechanisms to assess the appropriateness of the measures taken by video-sharing platform providers in accordance with Article 28 septies, paragraph 3.*

Measures provided for in Article 28 septies, paragraph 3, letters a) to j) of the law on electronic media, include, *inter alia*, having a functionality for users who upload videos to indicate whether these videos contain ads, a functionality to flag objectionable content, age verification and a parental control system.

#### 4.19.8. Cross-sector and cross-border collaboration

N/A.



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

N/A.

#### 4.19.10. Studies, reports and research

N/A.

#### 4.19.11. Data compilation

This factsheet is based on data compiled by Romain Kohn, a media expert.