



4.21. MT – Malta – National legal summary⁴⁴⁶

4.21.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *L-Att Dwar ix-Xandir*⁴⁴⁷ (Broadcasting Act)⁴⁴⁸
- Act No. LVI of 2020 Broadcasting (Amendment) Act⁴⁴⁹
- Subsidiary legislation 350.25 (amended in 2020): Requirements as to advertisements, methods of advertising and directions applicable to gambling advertisements⁴⁵⁰

4.21.2. 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.

4.21.2.1. Definitions

Table 47. Definition of the main concepts related to commercial communications

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.

⁴⁴⁶ The factsheet on Malta incorporates feedback received from Dr. Joanna Spiteri, Chief Executive of the Maltese Broadcasting Authority, during the checking round with the national regulatory authorities.

⁴⁴⁷ <https://legislation.mt/eli/cap/350/mlt>

⁴⁴⁸ <https://legislation.mt/eli/cap/350/eng>

⁴⁴⁹ <https://www.parlament.mt/media/109737/act-lvi-broadcasting-amendment-act.pdf>.

⁴⁵⁰ <https://ba.org.mt/file.aspx?f=532>.



Advertiser	No.
Surreptitious commercial communication	Yes.
Misleading commercial communication	No.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	No.
Sponsored content	No.
Product placement	Yes.

Source: Maltese response to European Audiovisual Observatory standardised survey

4.21.2.1.1. Audiovisual commercial communications

The Broadcasting Act, in Article 16G – Provisions Applicable to Radio and to All Audiovisual Media Services Providers, provides a definition as follows:

Audiovisual commercial communications means images with or without sound which are designed to promote directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity: such images accompany, or are included in a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.

4.21.2.1.2. Television advertising

There is no definition of television advertising but Article 16G of the Broadcasting Act defines pop-up advertising as:

All forms of audio-visual commercial communication that appear superimposed on the audiovisual media service during the television broadcast of the same service.

The Broadcasting Act 350, Article 16G, defines advertising as:

Advertising means any form of announcement broadcast whether in return for payment or for similar consideration, or broadcast for self-promotional purposes by a public or private undertaking 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.

4.21.2.1.3. Advertiser

There is no definition of advertiser.



4.21.2.1.4. Surreptitious commercial communication

The Broadcasting Act, Article 16G, provides the definition of surreptitious commercial communication as follows:

Surreptitious audiovisual commercial communication means the representation in words or pictures of goods, services, the name, the trademark, 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, in particular, be considered as intentional if it is done in return for payment or similar consideration.

4.21.2.1.5. Misleading commercial communication

There is no definition of misleading commercial communication.

4.21.2.1.6. Virtual advertising

There is no definition of virtual advertising.

4.21.2.1.7. Sponsorship

The Broadcasting Act, Article 16G, defines sponsorship as follows:

Sponsorship means any contribution, except television advertising, teleshopping and product placement made by public or private undertakings or natural persons not engaged in providing audio-visual media services or video-sharing platforms services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos and programmes with a view to promoting their name, trademark, image, activities or products.

4.21.2.1.8. Sponsor

There is no direct definition of sponsor, but Article 16L (1) (c) of the Broadcasting Act stipulates:

Viewers shall be clearly informed of the existence of a sponsored agreement. Sponsored programmes shall be clearly identified as such by the name, logo and, or any other symbol of the sponsor such as a reference to any of its products or services or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and, or the end of the programmes.

4.21.2.1.9. Sponsored content

There is no definition of sponsored content.



4.21.2.1.10. Product placement

Article 16G of the Broadcasting Act provides a definition 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 trademark thereof so that it is featured within a programme or a user-generated video, in return for payment or similar consideration.

Article 16M(4) outlines the rules governing product placement. Of particular interest are the following provisions:

In any event, programmes shall not contain product placement of:

(c) tattoo drawing as defined in the Control of Tattooing Act, which is broadcast between 6.00 a.m. and 9.00p.m.;

(d) alcoholic drinks of more than 1.2% alcohol which are broadcast between 6.00 a.m. and 9.00 p.m.;

(e) gambling products which are broadcast between 6.00a.m. and 7.00 p.m., infant formula and weapons and munitions

4.21.2.1.11. Other definitions

N/A.

4.21.2.2. 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 information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

Article 16 S (2) and (3) of the Broadcasting Act stipulates that video-sharing platform providers under the jurisdiction of Malta must comply with the requirements set out in Article 16K with respect to audiovisual commercial communications that are marketed, sold or arranged for video-sharing platform providers.

(2) Video-sharing platform providers under the jurisdiction of Malta shall comply with the requirements set out in article 16K with respect to audiovisual commercial communications that are marketed, sold or arranged from the video-sharing platform providers.

(3) Video-sharing platform providers under the jurisdiction of Malta shall take the appropriate measures to comply with the requirements set out in article 16K with respect to audiovisual commercial communications that are not marketed, sold or arranged by those video-sharing platform providers, taking into account the limited control exercised by those video-sharing platforms over those audiovisual commercial communications.



Article 16K provides a list of requirements the commercial communications must comply with and is further detailed below.

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

While audiovisual commercial communications for cigarettes and other tobacco products are prohibited (16K(2)), alcohol advertisements are permitted but must not be aimed at minors (16K(3)).

All forms of audiovisual commercial communications for cigarettes and other tobacco products, as well as for electronic cigarettes and refill containers, shall be prohibited. Audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.

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

Article 16K(4) prohibits audiovisual commercial communications for medicinal products available only on prescription.

Audiovisual commercial communications for medicinal products and medical treatment available only on prescription shall be prohibited.

4.21.2.2.3. Surreptitious audiovisual commercial communications

According to Article 16K(1)(a), surreptitious audiovisual commercial communications are prohibited.

4.21.2.2.4. Subliminal techniques in commercial communications

According to Article 16K(1)(b), audiovisual commercial communications must not use subliminal techniques.

4.21.2.2.5. Prejudice with regard to human dignity

According to Article 16K(1)(c)(i), audiovisual commercial communications must not prejudice respect for human dignity.



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

According to Article 16K(1)(c)(ii), audiovisual commercial communications must not include or promote any discrimination.

4.21.2.2.7. Encouragement of behaviour prejudicial to health or safety

According to Article 16K(1)(c)(iii), audiovisual commercial communications must not encourage behaviour prejudicial to health or safety.

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

According to Article 16K(1)(c)(iv), audiovisual commercial communications must not encourage behaviour grossly prejudicial to the protection of the environment.

4.21.2.2.9. Causing physical, mental or moral detriment to minors

According to Articles 16K(5), (6) and (7), audiovisual commercial communications must not cause detriment to minors, nor encourage them to consume products that are high in fat, sugar, and salt, nor encourage them to buy products that are not intended for them:

(5) Audiovisual commercial communications shall not cause physical, mental 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.

(6) Broadcasting of all forms of audiovisual commercial communications on food and beverage brands and products containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, the type of products known as 'high in fat sugar and salt (HFSS)', is prohibited immediately before or during or immediately after children's programmes. For the purpose of classifying these products, audiovisual media service providers should follow regulations on the marketing of products that may have adverse effects on healthy lifestyles, that may be adopted in accordance with article 6 of the Healthy Lifestyle Promotion and Care of Non-Communicable Diseases Act.

(7) The broadcasting of all forms of audiovisual commercial communications regarding products which are not suitable for children or which children in general cannot reasonably be expected to buy or attempt to buy, is prohibited immediately before, during and immediately after children's programmes.



In addition, Article 16S(1)(a) requires VSPs to take the necessary measures to protect minors.

4.21.2.2.10. Other

There are requirements pertaining to teleshopping in the third schedule of the Broadcasting Act: Paragraph 4 states that advertising and teleshopping must be readily recognisable and distinguishable from editorial content.

Paragraph 5 states:

Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and, or acoustic and/or spatial means.

4.21.3. Sponsorship and product placement

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

4.21.3.1. Sponsorship

There are no direct rules pertaining to product placement for video-sharing platforms in Malta. However, the definition of audiovisual commercial communication outlined in Article 16 G of the Broadcasting Act states that:

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 person pursuing an economic activity; such images accompany, or are included in a programme or user-generated video in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement

Requirements pertaining to sponsorship and product placement are to be found in Articles 16L (sponsorship) and 16M (product placement) of the Broadcasting Act. Nevertheless, as stated under 4.21.2.2., video-sharing platform providers under the jurisdiction of Malta must comply with the requirements set out in Article 16K with respect to audiovisual commercial communications. At present, there is no direct reference in domestic law to product placement and VSPs.



4.21.3.2. Product placement

See under 4.21.2.1.10.

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

There are no legal references to (v)blogs and (v)blogging. Future interpretation of the legal concepts by the Broadcasting Authority could later include vlogs.

4.21.5. Other relevant information

N/A.

4.21.6. 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.

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

There are no rules applicable to VSPs for advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems.

4.21.6.2. Gambling, betting, betting tipsters, etc.

Article 16S (2) of the Broadcasting Act makes reference to Article 16K which includes *inter alia* reference to Article 16K (5): Audiovisual commercial communication must not cause physical, mental or moral detriment to minors; therefore, it 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 unreasonably shows minors in dangerous situations.



The subsidiary legislation 350.25 Requirements as to Advertisements, Methods of Advertising and Directions applicable to Gambling Advertisements, dealing with gambling advertising, in Article 16M (4)(e) prohibits the product placement of gambling products between 06:00 and 19:00 hrs.

4.21.6.3. Environmental or “green” claims for products

There are no rules applicable to VSPs about making environmental or “green” claims in relation to the manner in which products are produced, packaged, distributed, used, consumed and/or disposed of.

4.21.6.4. Other

N/A.

4.21.7. 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.

4.21.7.1. Self- and co-regulatory bodies

4.21.7.1.1. Context of establishment and legal background

There is a reference in Article 16S(5) that encourages co-regulation by referencing the Malta Broadcasting Authority:⁴⁵¹

The Authority shall encourage the use of co-regulation and the fostering of self-regulation through codes of conduct as provided for in article 16Q aiming at effectively reducing the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended. Those codes shall aim to provide that such audiovisual commercial communications do not emphasise the positive quality of the nutritional aspects of such foods and beverages.

⁴⁵¹ <http://www.ba-malta.org/>.



4.21.7.1.2. Stakeholders involved

Article 16Q of the Broadcasting Act identifies the stakeholders:

The 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 are encouraged to embrace the use of co-regulation and the fostering of self-regulation through codes of conduct adopted on a national level in the fields coordinated by the Council Directive up to its limit (...)

4.21.7.1.3. Scope and objectives

At the present time, the self- and co-regulation aim at reducing the exposure of children to audiovisual commercial communications with regard to products that are “high in fat, sugar and salt”.

4.21.7.1.4. Code(s) of conduct

Article 16Q of the Broadcasting Act lays out, in general terms, the main requirements:

(...) These codes shall:

- (a) be such that they are broadly accepted by the main stakeholders;*
- (b) clearly and unambiguously set out their objectives;*
- (c) provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at; and*
- (d) provide for effective enforcement including effective and proportionate sanctions.*

Currently, there are no such codes already published.

4.21.7.1.5. Role of the (self-)regulatory bodies

N/A.

4.21.7.1.6. Period of activity (if limited)

N/A.

4.21.7.1.7. Role of the regulatory authority in a co-regulatory system:

The Malta Broadcasting Authority is to encourage self and co-regulatory mechanisms. So far, no tangible measures have been introduced.



4.21.7.1.7.1. Regulatory body

N/A.

4.21.7.1.7.2. Co-regulatory scheme

N/A.

4.21.7.1.7.3. Relationship and roles of stakeholders

N/A

4.21.7.2. Monitoring/evaluation, compliance and sanctioning powers

Article 16S of the Broadcasting Act stipulates that the Broadcasting Authority must assess the appropriateness of the measures taken by VSPs and has the right to issue all directives which it considers necessary or expedient for the proper execution of the obligations set for VSPs.

4.21.8. Cross-sector and cross-border collaboration

N/A.

4.21.9. Update on plans and practices relative to new obligations of VSPs

N/A.

4.21.10. Studies, reports and research

N/A.

4.21.11. Data compilation

This factsheet is based on data compiled by Pierre Cassar, Director of Marketing and Communications at the University of Malta, and a lecturer at the Faculty of Media and Knowledge Sciences.