



4.22. NL – Netherlands – National legal summary⁴⁵²

4.22.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Mediawet 2008, Geldend van 02/03/22*⁴⁵³ (Media Act 2008, as of 2 March 2022⁴⁵⁴ - Media Act).
- *Tabaks- en rookwarenwet*⁴⁵⁵ (Tobacco Act).

Secondary legislation:

- *Beleidsregel reclame commerciële media-instellingen 2022*⁴⁵⁶ (Dutch media authority policy rules on advertising from commercial media organisations 2022).
- *Beleidsregel van het Commissariaat voor de Media over sponsoring commerciële media-instellingen 2022*⁴⁵⁷ (Dutch media authority Policy rules on the sponsoring of commercial media organisations 2022).
- *Beleidsregel productplaatsing commerciële media-instellingen 2022*⁴⁵⁸ (Dutch media authority policy rules on product placement from commercial media organisations 2022).
- *Beleidsregel kwalificatie commerciële mediadiensten op aanvraag 2022*⁴⁵⁹ (policy rules on the classification of on-demand commercial media services 2022).

Self and co-regulatory instruments:

- Nederlandse Reclame Code, Algemene Reclamecode, de bijzondere reclamecodes en de Werkwijze Reclame Code Commissie en College van Beroep⁴⁶⁰ (Dutch Advertising Code, consisting of the General Code, the Special Advertising Codes and the Working Procedure⁴⁶¹).
- *Betrokken Nederlandse Reclame Code* (the relevant Special Advertising Codes).

⁴⁵² The factsheet on the Netherlands incorporates feedback received from Marcel Betzel, Senior International Policy Advisor at *Commissariaat voor de media*, during the checking round with the national regulatory authorities.

⁴⁵³ <https://wetten.overheid.nl/BWBR0025028/2022-03-02/0>.

⁴⁵⁴ <https://avmsd.obs.coe.int/> (NOTE: Some articles have not been included in the translation.)

⁴⁵⁵ <https://wetten.overheid.nl/BWBR0004302/2021-07-01/0>.

⁴⁵⁶ <https://zoek.officielebekendmakingen.nl/stcrt-2022-12443.html>.

⁴⁵⁷ <https://zoek.officielebekendmakingen.nl/stcrt-2022-12446.html>.

⁴⁵⁸ <https://zoek.officielebekendmakingen.nl/stcrt-2022-12448.html>.

⁴⁵⁹ <https://www.cvdm.nl/uploader>.

⁴⁶⁰ <https://www.reclamecode.nl/nrc/>.

⁴⁶¹ https://www.reclamecode.nl/nrc_taxonomy/general/?lang=en.



- *Reclamecode voor alcoholhoudende dranken RVA*⁴⁶² (Advertising Code for Alcoholic Beverages 2014⁴⁶³).
- *Reclamecode voor Alcoholvrij en Alcoholarm Bier RvAAB*⁴⁶⁴ (Advertising Code for Alcohol-Free and Low-Alcohol Beer⁴⁶⁵).
- *Reclamecode Social Media & Influencer Marketing RSM*⁴⁶⁶ (Advertising Code for Social Media & Influencer Marketing⁴⁶⁷).
- *Reclamecode Online Kansspelen (ROK) 2021*⁴⁶⁸ (Advertising Code for Online Games of Chance⁴⁶⁹).
- *Milieu Reclame Code*⁴⁷⁰ (The Code for Environmental Advertising⁴⁷¹).
- *De gedragscode voor farmaceutische reclama* (The Code of Conduct for Pharmaceutical Advertising⁴⁷²).
- *Kinderen Jeugdreclamecode KJC*⁴⁷³ (Code for Advertising Directed at Children and Young People⁴⁷⁴).

4.22.2. 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.

⁴⁶² <https://www.reclamecode.nl/nrc/reclamecode-voor-alcoholhoudende-dranken-rva/>.

⁴⁶³ <https://www.reclamecode.nl/nrc/advertising-code-for-alcoholic-beverages-2014/?lang=en>.

⁴⁶⁴ <https://www.reclamecode.nl/nrc/reclamecode-voor-alcoholvrij-en-alcoholarm-bier-rvaab/>.

⁴⁶⁵ <https://www.reclamecode.nl/nrc/advertising-code-for-alcohol-free-and-low-alcohol-beer-rvaab/?lang=en>.

⁴⁶⁶ <https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/>.

⁴⁶⁷ Old version of the text:

<https://www.reclamecode.nl/nrc/advertising-code-for-social-media-influencer-marketing-rsm-2019/?lang=en>.

⁴⁶⁸ <https://www.reclamecode.nl/nrc/reclamecode-online-kansspelen-rok-2021/>.

⁴⁶⁹ <https://www.reclamecode.nl/nrc/advertising-code-for-online-games-of-chance/?lang=en>.

⁴⁷⁰ <https://www.reclamecode.nl/nrc/milieu-reclame-code-mrc/>.

⁴⁷¹ <https://www.reclamecode.nl/nrc/code-for-environmental-advertising-mrc/?lang=en>.

⁴⁷² https://www.cgr.nl/CGR.nl/media/CGR.nl/Gedragscode/20190107-Dutch_CoC_Pharmaceutical_Advertising-ENG-per-20190701.pdf.

⁴⁷³ <https://www.reclamecode.nl/nrc/kinder-en-jeugdreclamecode-kjc/>.

⁴⁷⁴ <https://www.reclamecode.nl/nrc/code-for-advertising-directed-at-children-and-young-people/?lang=en>.



4.22.2.1. Definitions

Table 48. Definition of the main concepts related to commercial communications

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	No, but there is a definition of advertising spot.
Advertiser	Yes.
Surreptitious commercial communication	Yes.
Misleading commercial communication	Yes.
Virtual advertising	No.
Sponsorship	Yes.
Sponsor	No.
Sponsored content	No.
Product placement	Yes.

Source: Dutch response to European Audiovisual Observatory standardised survey

4.22.2.1.1. Audiovisual commercial communications

A definition of audiovisual commercial communications specifically adapted to VSPs is laid down in Article 3a.1 of the Media Act by transposing the revised AVMSD verbatim as follows:

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 and form a part of audiovisual media content or a user-generated video in return for payment or similar consideration or for self-promotional purposes.

4.22.2.1.2. Television advertising

There is no definition of television advertising. However, Article 1.1 of the Media Act contains a general definition of an advertising spot, which includes:

A message in any form whatsoever, other than a teleshopping spot, which is clearly intended to persuade the public to buy a particular product or use a particular service, or to promote the sale of products or the purchase of services by creating favourable public opinion towards a particular business, industry or organisation.



4.22.2.1.3. Advertiser

Article 1 of the self-regulatory portion of the Dutch Advertising Code (General Code), applicable to advertising on VSPs, defines advertising as:

Any form of public and/or systematic direct or indirect commendation of goods, services and/or ideas by an advertiser or, either wholly or partly, on behalf of him, with or without the help of a third party. The solicitation of services is also defined as advertising. The advertiser is an organisation or a person, not being a consumer.

4.22.2.1.4. Surreptitious commercial communication

Article 1.1 of the Media Act provides that surreptitious advertising is:

The referring to or displaying of names, (figurative) marks, products, services or activities of persons, businesses or institutions, other than under this Act, if it may reasonably be assumed that this is done solely or partly for the purpose of advertising, it being understood that that is in any case the intention if the reference or display is made in return for payment or similar consideration.

Article 1.1 applies to VSPs provided that they qualify as a commercial media service on demand⁴⁷⁵.

4.22.2.1.5. Misleading commercial communication

Articles 8.2, 8.3 and 8.5 of the self-regulatory portion of the Dutch Advertising Code (General Code) detail several elements, such as the nature and features of the product, the price, the characteristics of the advertiser, etc., with regard to an understanding of what constitutes misleading commercial communication:

8.2 All advertising including incorrect information, or information that is unclear or ambiguous for the average consumer in respect of one or more elements as listed in points a) to g) hereunder, and which would consequently entice or may entice the average consumer to make a decision on a transaction which he would otherwise not have made, is considered to be misleading.

4.22.2.1.6. Virtual advertising

There is no definition of virtual advertising.

However, Article 5, paragraph 5 of the Code for Advertising Directed at Children and Young People (a part of the Advertising Code) provides the definition of a virtual/online world:

Game and in-game

⁴⁷⁵ Details on the rules are available under 4.22.2.2.



Game and in-game advertising: advertising made in or by means of a game (digital game and/or contest) in which either an advertising communication appears in the game or the game itself is the advertising communication.

Article 5 pertains specifically to gaming, not to VSPs.

4.22.2.1.7. Sponsorship

The definition of sponsorship adapted to VSPs is included in Article 3a.1 Chapter 3a – video platform services of the Media Act:

Sponsorship: the provision of financial or other contributions by an undertaking or a natural person not normally involved in the provision of media services or video-sharing platform services, or in the production of audiovisual works, for the production or purchase of media provision or user-generated videos, in order to promote or enable their distribution to all or part of the general public.

4.22.2.1.8. Sponsor

There is no definition of sponsor.

However, the explanatory note on Article 7, paragraph 3, of the policy on sponsoring commercial media organisations from 2022 of the Dutch Media Authority (CvdM),⁴⁷⁶ applicable to commercial media services on demand, which provide further explanations to the applicable rules, interprets “sponsoring” by indicating the criteria for a ‘sponsor’.

Accordingly, a government institution, e.g. municipalities, does not operate an enterprise and, therefore, does not qualify as a sponsor. In addition, the CvdM maintains the premise that organisations in the following categories are not enterprises in the sense of the definition of sponsoring: administrative bodies (according to civil law):

charitable foundations/funds (with CBF label, CBF certificate or CBF non-objection statement);

charitable foundations/funds (without CBF label, CBF certificate or CBF non-objection statement), if the statutes show that it is a foundation that is independent of commercial third parties, with independent decision-making processes, defined in regulations, particularly with respect to the attribution of contributions;

the permanent national charitable lottery, including the “sporttotalisator”, which has licenses based on the Gambling and Lottery Act;

further non-commercial foundations where the contribution to the programme is funded by government subsidies or other governmental budgets, for a socially relevant, non-commercial objective.

⁴⁷⁶ Commissariaat voor de Media, <http://www.cvdM.nl/>



4.22.2.1.9. Sponsored content

There is no definition of sponsored content.

4.22.2.1.10. Product placement

A definition of product placement adapted to VSPs is included in Article 3a.1 Chapter 3a – video platform services of the Media Act 2008 by transposing the revised AVMSD verbatim:

Product placement: the inclusion of, or reference to, a product, service or trademark within a programme, part of the media provision corresponding to a programme, or a user-generated video in return for payment or for similar consideration.

4.22.2.1.11. Other definitions

Article 2 the Dutch media authority policy rules on advertising from commercial media organisations 2022 defines “split screen advertising” as: “The simultaneous and parallel placement in one image of editorial content and of advertising or teleshopping announcements.”

While Article 4, paragraph 1 of the policy rules points out that a clear distinction between editorial and commercial content is crucial, Article 4, paragraph 2 of the said rules states that split-screen advertising and teleshopping, within a frame on a teletext page, are to be clearly distinguished from the other program offerings, specifying the allowed take-up of the screen/teletext, that they must be identifiable and that the editorial part of the program offering must remain fully visible.

Article 4, paragraph 3, further stipulates that split-screen advertising and teleshopping announcements are only permitted during live coverage of an event or of the report/reproduction of a sporting event. Paragraph 4 of the same article underlines that: “The share of advertising and teleshopping announcements in the form of a split screen is included in the calculation of the maximum amount of advertising determined by or pursuant to the law.”

There are no specific definitions of the techniques of online commercial communications, such as: direct marketing, commercial profiling, behaviourally targeted advertising, banners and display advertising, search engine optimisation, and overlay ads, but the definition of advertising (see 4.22.2.1.2.) covers all these terms.

4.22.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (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.



While VSPs are obliged to adopt and apply codes of conduct (Article 3a.3, paragraph 1, 2 and 3 of the Media Act⁴⁷⁷), Article 3a.4 of the Media Act provides the obligation of VSP providers to respect the obligations stemming from the self-regulatory Advertising Code, which is technically neutral and platform-neutral, pertaining not only to media content offline and online but also to outdoor advertising:

Article 3a.4

- 1. Video-sharing platform providers marketing, selling or organising audiovisual commercial communications shall be affiliated to the Dutch advertising code or a similar scheme established by the Advertising Code Foundation and shall be subject to monitoring by the Foundation.*
- 2. Affiliation shall be demonstrated by submitting a written statement from the Foundation to the Authority.*

Article 3a.5 sets out the obligations of VSPs with regard to audiovisual commercial communications, details of which are provided below. Also, Article 33 of the Advertising Code for Alcoholic Beverages of 2014 refers to “Communications on an Internet Platform Controlled by the Advertiser” and introduces the obligation of “advertising placed on an Internet platform controlled to some extent by the advertiser” to respect the self-regulatory Advertising Code irrespective of the party placing it. It stipulates the obligations to ensure that persons placing advertisements on platforms are at least 18 years of age.

CvdM has updated its policy rules with regard to commercial media services on demand. On the basis of these policy rules, content creators that are active through VSPs are able to establish whether the service they provide will qualify as a commercial media service on demand that falls under the supervision of the CvdM. Under the new policy rules, a service qualifies as a commercial media service on demand when:

- 1) it is distributed through a VSP and in the past 12 months 24 or more videos have been published*
- 2) the company is registered at the Chamber of Commerce and an economic advantage is gained with the publication of the videos and*
- 3) the videos generate more than 500 000 followers.*

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

Article 24, “Active Internet Marketing”, of the Advertising Code for Alcoholic Beverages of 2014 contains the obligation, with regard to “advertising originating with the advertiser that is wholly or partially compiled of still or moving images and that is intended for distribution via the Internet”, to display the educational slogan referred to in Article 33 (2) of the Code that every advertisement for alcoholic beverages must display an educational

⁴⁷⁷ For more details, see section 4.22.7.1.4.



slogan: “No alcohol under 18” (*Geen 18, geen alcohol*). This slogan may be used in combination with (“Enjoy, but drink with moderation” (*Geniet, maar drink met mate*)).

Advertising or sponsoring for tobacco products, electronic cigarettes or any smoking implements, whether or not they contain tobacco, is prohibited on the basis of Articles 5 (1) and (2) of the Tobacco and Smoking Products Act:

- 1. Any form of advertising or sponsorship shall be prohibited.*
- 2. That prohibition shall also include advertising and teleshopping spots, sponsorship and product placement for tobacco products or related products within the scope of the 2008 Media Act, including the use of names, (figurative) marks or other distinctive signs which, because they appear very similar, might reasonably lead the public to believe that sponsorship has been provided by a manufacturer or seller of tobacco products or related products.*

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

Articles 2.94 2a, 3.7 2a and 3.19b 3a of the Media Act prohibit audiovisual commercial communications for medical treatment. Article 85 of the Medicines Act prohibits audiovisual commercial communications for medicinal products available only on prescription.

Article 3 of the Dutch media authority policy on advertising from commercial media organisations 2022 states that:

- 1. The media offering must not contain advertising and teleshopping announcements for medical treatments (Article 3.7, second paragraph, under a, and 3.29d of the Act).*
- 2. Medical treatments are here understood to mean: treatments that are only available with a doctor's prescription.*

Article 3.1 h of the Code of Conduct for Pharmaceutical Advertising lays down rules for pharmaceutical advertising which find their legal basis in the Medicines Act:

Any form of public and/or systematic, direct or indirect commendation of medicinal products and any services or images connected therewith, including offering or solicitation of goods or services in the interactions between authorisation holders and healthcare professionals.

4.22.2.2.3. Surreptitious audiovisual commercial communications

Article 3a.5 of the Media Act stipulates restrictions regarding surreptitious audiovisual commercial communications on VSPs:

- 1. Audiovisual commercial communications on a video-sharing platform service shall be recognisable as such.*
- 2. Audiovisual commercial communications shall not use any subliminal techniques.*
- 3. No surreptitious audiovisual commercial communications shall be provided.*



4. Where audiovisual media provision or user-generated videos contain audiovisual commercial communications and the video-sharing platform provider is aware of this fact, the provider shall inform the user of the video-sharing platform service thereof in a manner that is clear to the user.

4.22.2.2.4. Subliminal techniques in commercial communications

See under 4.22.2.2.3.

4.22.2.2.5. Prejudice with regard to human dignity

The Advertising Code, in Article 2 provides that:

Advertising must be in accordance with the law, the truth, good taste and decency.

Explanation of Article 2

The provisions subject to this article include those in the Audiovisual Media Services Directive, which provide that advertising must not offend human dignity ...

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

The Advertising Code, in Article 2 provides that:

Advertising must be in accordance with the law, the truth, good taste and decency.

Explanation of Article 2

The provisions subject to this article include those in the Audiovisual Media Services Directive, which provide that advertising ... may not contain or promote any type of discrimination on the basis of gender, race or ethnic descent, nationality, religion or philosophy, handicap, age or sexual orientation.

4.22.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 4 of the Dutch Advertising Code states that: “An advertisement shall not be gratuitously offensive or constitute a threat to mental and/or physical public health.”

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

Article 11 of the Code for Environmental Advertising states that: “Advertising messages shall not set as an example environmentally unfriendly behaviour that is avoidable, nor shall such behaviour be encouraged.”



4.22.2.2.9. Causing physical, mental or moral detriment to minors

Article 3a.3, paragraphs 1 and 2, of the Media Act 2008 imposes a general obligation on VSPs to adopt a code of conduct on the measures laid down in article 28b, paragraphs 1 and 2, second and fourth subparagraphs, of the AVMS Directive and to apply this code of conduct and these measures to the VSP. In addition, the protection of minors in relation to commercial communications on VSPs is subject to an extensive self-regulatory system: the Code for Advertising Directed at Children and Young People and the Advertising Code for Social Media & Influencer Marketing.

The Code for Advertising Directed at Children and Young People stipulates that when making advertising directed at children and minors/youths, the recognisability of the advertising communication is important. In addition to the Dutch Advertising Code (General Code), the Code for Advertising Directed at Children and Young People expands on the manner of the recognisability of the advertising communication directed at children and minors. This Code applies to all sorts of media (platforms).

The Advertising Code for Social Media & Influencer Marketing applies to all social media platforms and is also part of the Dutch Advertising Code.

4.22.2.2.10. Other

N/A.

4.22.3. 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.

4.22.3.1. Sponsorship

Sponsoring is defined in relation to VSPs, but no specific measures apply. A service, disseminated through a VSP, that qualifies as a commercial media service on demand falls under the supervision of the CvdM and must comply with the current sponsor rules laid down in the Media Act and policy rules of the CvdM.

Articles 3.15. to 3.17. of the Media Act, which apply to VSPs in so far as they qualify as commercial media services, establish the rules vis-a-vis sponsorship, including a prohibition on influencing of programme content, the obligatory provision of information on programme sponsorship and its identification, watershed restrictions as to the sponsorships of those engaged in the production or sale of alcoholic beverages by means of neutral indication or display of their name or (figurative) mark between the hours of 6.00 and 21.00, which also applies in other cases, with a prohibition on direct encouragement, by means of special promotional references, of the audience to buy or hire products or



services from the sponsors. It finally provides the possibility for the CvdM to: “lay down detailed rules on the indication or display in the title, which rules shall require the approval of Our Minister”.

4.22.3.2. Product placement

Product placement is defined in relation to VSPs, but no specific measures apply. A service, disseminated through a VSP, that qualifies as a commercial media service on demand falls under the supervision of the CvdM and must comply with the product placement rules laid down in the Media Act, including an obligation to identify and inform the public of the existence of product placement, a prohibition on the influencing of programme content or direct encouragement, by means of special promotional references, of the audience to buy or hire products or services, including a prohibition on undue prominence of products/services, in addition to a prohibition on product placement for medical treatments and alcoholic beverages, between the hours of 6.00 and 21.00. Also, the CvdM can establish more detailed rules on the application of product placement in programme content, subject to the approval of a relevant ministry (Article 3.19b). The Media Act also stipulates:

Article 3.19a, paragraph 1:

1. Product placement shall be allowed in programmes other than news and current affairs programmes, consumer affairs programmes, programmes of a religious or spiritual nature and programmes intended for children under 12 years of age.

Article 3.19b, paragraph 4:

Programme content including product placement shall clearly indicate, for public information purposes, that the programme content features product placement. The indication shall be made in an appropriate manner at the beginning and end of the programme and also at the beginning or end of the advertising spot or spots included in the programme.”

Article 3.19c:

Article 3.19b(4) shall not apply to programmes with product placement that have not been produced or commissioned by or on behalf of the commercial media institution or by or on behalf of its affiliates.

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

The key element in the self-regulatory Advertising Code for Social Media & Influencer Marketing is “relevant relationship”. Once a relevant relationship can be established, this Code is applicable. Article 2d defines a relevant relationship as:

The relationship between the Advertiser and the Distributor directed at (causing the) distribution of advertising through social media, in return for payment or any benefit, that might affect the credibility of advertising through social media.



If a relevant relationship ensues from an agreement, the advertiser must require the distributor to comply with this Code, for example by including a provision in the contract, employment agreement or the terms and conditions of the promotion. If there is no agreement, the advertiser must explicitly draw the attention of distributors to this Code when inviting them to provide their opinion on his products (explanatory note on Article 6 of the Code).

The advertiser and distributor each bear their own responsibility for compliance with Articles 3 (disclosure and recognisability of a relevant relationship), 4 (ban on manipulation) and 5 (ban on encouraging children aged 12 or under to advertise for products or services on social media) of this Code.

On 18 May 2022 the revised policy rules of the CvdM on advertising, sponsorship and product placement came into force. CvdM's policy rules on the classification of on-demand commercial media services 2022 define when a vlog qualifies as a commercial media service on demand that falls under the supervision of the CvdM (see under 4.22.2.2.)

The Advertising Code Foundation SRC⁴⁷⁸ has brought the Code for Social Media & Influencer Marketing in line with the aforementioned revised policy rules on the classification of on-demand commercial media services of the CvdM, with 1 July as its entry into force, as well. It will contain, for information purposes, the criteria set out in the revised policy rules of the CvdM with regard to commercial media services on demand on the basis of which can be assessed if and when a service qualifies as a commercial media service on demand. Also, its terminology has been adjusted to align with the revised policy rules of the CvdM (e.g., with the options of including an accompanying text that can be used when advertising on a VSP, such as 'advertisement', 'advertorial', 'paid promotion' and 'paid partnership').

Furthermore, the platform Tik Tok has been added as an example of a social media platform.

4.22.5. Other relevant information

N/A.

4.22.6. 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

⁴⁷⁸ See more details under section 4.22.7. of this factsheet.



explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.

4.22.6.1. 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.

4.22.6.2. Gambling, betting, betting tipsters, etc.

The Advertising Code for Online Games of Chance, adopted by the Advertising Code Foundation SRC, applies to advertising by the operators of online games of chance and to advertising for specific other games of chance, if such advertising is also targeted at the Netherlands. The Code stipulates that advertisements must not use phrases such as: “take your chance, you only live once” or “hurry up and start gambling now!”, that they must not be dishonest and must not promote behaviour which might result in financial loss, criminal behaviour, etc.

4.22.6.3. Environmental or “green” claims with regard to products

The Code for Environmental Advertising applies to all environmental claims and stipulates, *inter alia*, that advertising does not set as an example environmentally unfriendly behaviour, does not mislead consumers vis-à-vis the environmental aspects of products, does not use environmental designations and symbols: “unless the origin of the designation or symbol is clear and no confusion can arise on the meaning of the designation or symbol”.

4.22.6.4. Other

N/A.

4.22.7. 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.



4.22.7.1. Self- and co-regulatory bodies

4.22.7.1.1. Context of establishment and legal background

The Advertising Code Foundation⁴⁷⁹ deals with the self-regulation system of advertising in the Netherlands. Further, the advertising rules can be found in the Advertising Code, applicable to all types of advertising offline, online and outdoor advertising (see under 4.22.2.2.).

4.22.7.1.2. Stakeholders involved

The Advertising Code Foundation is a member of the European Advertising Standards Alliance (EASA⁴⁸⁰), a network of 41 organisations representing 27 advertising standards from Europe and 14 organisations representing the advertising ecosystem, and its role is to set out high operational standards for advertising self-regulatory systems.

The Advertising Code Foundation and EASA are part of the International Council on Ad Self-Regulation (ICAS⁴⁸¹) – an international platform to promote effective advertising self-regulation worldwide.

The advertising industry (advertisers, advertising agencies and the media) formulates the rules with which advertising must comply. Both the advertising industry and consumers are represented in the SRC and in the Advertising Code Committee and the Board of Appeal.

VSPs do not affiliate formally with the SRC, but the main VSPs have stated that they will respect the decisions of the Advertising Code Committee.⁴⁸²

4.22.7.1.3. Scope and objectives

The Advertising Code Foundation, based on self-regulation, upholds the Advertising Codes that contain rules for the content of advertisements, explaining the basis and origin of self-regulation and stipulating the complaint procedure for possible violations of the Code (see under 4.22.7.1.7).

Rules for the content of advertisements, applicable to all types of advertising (including HFSS foods and beverages, inappropriate ACCs for alcoholic beverages and ACCs which encourage behaviours grossly prejudicial to the protection of the environment) offline, online and outdoor advertising.

⁴⁷⁹ Stichting Reclame Code, <https://www.reclamecode.nl>

⁴⁸⁰ <https://www.easa-alliance.org/>.

⁴⁸¹ <https://icas.global/>.

⁴⁸² Facebook and the Dutch Advertising Committee made such a statement on 29 April, 2021, available at: <https://www.reclamecode.nl/news/facebook-sluit-zich-aan-bij-de-stichting-reclame-code/>.



4.22.7.1.4. Code(s) of conduct

Article 3a.3, paragraphs 1 and 2, of the Media Act imposes a general obligation on VSPs to adopt a code of conduct on the measures laid down in the revised AVMSD and to apply this code of conduct and these measures to the VSP.

Article 3a.4 and 3a.5. of the Media Act provides the obligation of VSP providers to respect the obligations stemming from the self-regulatory Advertising Code (see under 4.22.2.2.)

Also, the applicable self-regulatory instruments include the Advertising Code Foundation and the Dutch Advertising Code. These rules incorporate the national and European legal framework, e.g., the rules set out in the revised AVMSD with regard to the contents of advertising.

4.22.7.1.5. Role of the (self-)regulatory bodies

The Advertising Code Foundation, besides upholding the applicable self-regulatory instruments, has also established the Advertising Code Committee, an independent body that decides after a transparent and swift procedure whether an advertisement conflicts with the Advertising Code.

4.22.7.1.6. Period of activity (if limited)

There is no limit, as the Advertising Code Foundation was founded by the advertising industry and has been active since 1963.

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

4.22.7.1.7.1. Regulatory body

Following Article 7.11 of the Media Act, the Dutch Media Authority CvdM supervises compliance with the obligation on the part of VSPs vis-à-vis commercial communications (set out in Article 3a.5 of the Media Act), on the basis of Article 2.92, paragraph 2 (for public media service providers) and Article 3.6, paragraph 2 (for commercial media service providers).

4.22.7.1.7.2. Co-regulatory scheme

On 23 November 2017, the Dutch Media authority CvdM concluded a cooperation agreement with the Advertising Code Foundation. Apart from this protocol, which governs information exchange and coordination issues, no further co-regulatory schemes are provided.



4.22.7.1.7.3. Relationship and roles of stakeholders

The stakeholders that fall under the scope of the Media Act have to provide a written statement from the Dutch Advertising Foundation about their affiliation to the CvdM (see under 4.22.7.1.7.1.).

4.22.7.2. Monitoring/evaluation, compliance and sanctioning powers

In addition to the CvdM's role in supervising the affiliation of media service providers with the Dutch Advertising Foundation, the advertising industry is committed to compliance with the decisions of the Advertising Code Committee (see under 4.22.7.1.5.). The procedure for submitting a complaint, objection or appeal is set out in detail in the working procedure⁴⁸³. Anyone who feels that an advertisement violates the Dutch Advertising Code may submit a complaint to the Advertising Code Committee. This independent body decides after a transparent and swift procedure whether an advertisement conflicts with the Dutch Advertising Code.

4.22.8. Cross-sector and cross-border collaboration

N/A.

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

To date, there are no VSPs that fall directly under the scope of Dutch jurisdiction and the supervision of the CvdM.

4.22.10. Studies, reports and research

N/A.

4.22.11. Data compilation

This factsheet is based on data compiled by Louise Doorman, an independent legal advisor.

⁴⁸³ <https://www.reclamecode.nl/nrc/6-the-charges-for-submitting-a-complaint-objection-or-appeal/?lang=en>.