



4.24. PL – Poland – National legal summary⁵¹⁹

4.24.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Ustawa z dnia 11 sierpnia 2021 r. o zmianie ustawy o radiofonii i telewizji oraz ustawy o kinematografii⁵²⁰ (Act amending the Broadcasting Act and the Cinematography Act).
- Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji⁵²¹ (Broadcasting Act).
- Ustawa z dnia 19 listopada 2009 r. o grach hazardowych⁵²² (Gambling Act).

Self and co-regulatory instruments:

- *Kodeks etyki reklamy*⁵²³ (Code of Ethics in Advertising).

4.24.2. 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.

⁵¹⁹ The factsheet on Poland incorporates feedback from Albert Woźniak, an expert from the Department of Strategy of the National Broadcasting Council (Krajowa Rada Radiofonii i Telewizji – KRRiT) during the checking round with national regulatory authorities.

⁵²⁰ <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20210001676>.

⁵²¹ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20170001414/U/D20171414Lj.pdf>.

⁵²² <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20092011540/U/D20091540Lj.pdf>.

⁵²³ <https://radareklamy.pl/kodeks-etyki/>.

4.24.2.1. Definitions

Table 50. Definition of the main concepts related to commercial communications

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

Source: Polish response to European Audiovisual Observatory standardised survey

4.24.2.1.1. Audiovisual commercial communications

Article 4 paragraph 16 of the Broadcasting Act defines audiovisual commercial communications by transposing the revised AVMSD verbatim as follows:

...any communication, including images with or without sound, or sounds only, which is designed to promote, directly or indirectly, the goods, services or reputation of commercial or professional entity, accompanying or included in a programme or user-generated video, in return for payment or similar consideration, or for self-promotional purposes, in particular advertising, sponsorship, teleshopping and product placement;

4.24.2.1.2. Television advertising

The Broadcasting Act, Article 4 17 defines advertisement as:

advertising shall mean a commercial communication, originating from a public or private entity, in connection with its economic or professional activity, aimed at promoting the sale or use of goods or services in return for payment; self-promotion shall also be a form of advertising,



4.24.2.1.3. Advertiser

There is no definition of advertiser, as it is understood to be covered under audiovisual commercial communications (see 4.24.2.1.1.)

4.24.2.1.4. Surreptitious commercial communication

The definition in Article 4 point 20 of the Broadcasting Act covers surreptitious and misleading commercial communication:

...the representation of goods, services, the name, business name, trademark or the activities of an entrepreneur who is a producer of goods or a provider of services in programmes when the intention of the media service provider, in particular in return for payment or another benefit, is to achieve an advertising effect and the public might be misled as to the nature of the communication;

4.24.2.1.5. Misleading commercial communication

See under 4.24.2.1.4.

4.24.2.1.6. Virtual advertising

There is no definition of virtual advertising, as it is understood to be covered under audiovisual commercial communications (see 4.24.2.1.1.)

4.24.2.1.7. Sponsorship

Article 4 point 18 of the Broadcasting Act defines sponsorship, by transposing the revised AVMSD verbatim as:

sponsorship means any contribution to the financing of a media service, video-sharing platform, programme or user-generated video by an entity not engaged in providing media services, video-sharing platforms, user-generated videos or in producing programmes with a view to promoting its name, company, reputation, activity, goods, service, trademark or other specific individual designation;

4.24.2.1.8. Sponsor

There is no definition of sponsor, as it is understood to be covered under sponsorship (see 4.24.2.1.7.)



4.24.2.1.9. Sponsored content

There is no definition of sponsored content, as it is understood to be covered under sponsorship (see 4.24.2.1.7.)

4.24.2.1.10. Product placement

Article 4 point 21 of the Broadcasting Act provides for the definition of product placement by transposing the revised AVMSD verbatim to include:

product placement means a commercial communication consisting of the inclusion of, or reference to, goods, a service or the trademark thereof so that it is featured within a programme or a user-generated video in return for payment or for similar consideration, and by providing goods or a service free of charge.

4.24.2.1.11. Other definitions

The references to the online techniques of commercial communications of direct marketing, commercial profiling and behaviourally targeted advertising can be found in the media law legislation. In particular, Article 47e paragraph 5 of the Broadcasting Act contains reference to direct marketing, commercial profiling or behaviourally targeted advertising in the context of the protection of personal data of minors collected or otherwise generated by video-sharing platform providers thanks to the use of parental control or age verification systems.

There is no direct reference to display advertising or overlay ads, but indirectly the legal status of such ads is dealt with by provisions on the protection of the integrity of media services (Article 44b of the Broadcasting Act), vis-à-vis the obligation to obtain the consent of media service providers to disseminate such ads together with the providers' programme by the distributors of such programmes.

4.24.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect requirements notions 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.

It should first be emphasised that Article 47l. of the Broadcasting Act provides for a general application of the legislation:

Video-sharing platform providers shall only be required to or prohibited from uploading specific programmes, user-generated videos or other communications to a video-sharing platform on the basis of this Act.



Article 47q paragraph 1, provides that the provisions of Article 16(1), Article 16b(1) to (3), Article 16c(1), Article 17 and Article 17a, which are further elaborated below, apply to commercial broadcasts promoted or sold by VSPs:

Articles 16(1), 16b(1) to (3), 16c(1), 17 and 17a shall apply mutatis mutandis to commercial communications uploaded to video-sharing platforms by their providers and commercial communications promoted or sold by those providers.

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

Article 16b paragraph 1 subparagraphs 1 and 2 of the Broadcasting Act refer to the prohibition of tobacco, electronic cigarettes and alcoholic beverages, applicable to VSPs as well:

It shall be prohibited to transmit commercial communication for following goods and services:

- 1) tobacco products, tobacco props, products imitating tobacco products or props and symbols associated with the use of tobacco, electronic cigarettes and refill containers, to the extent regulated by the Act of 9 November 1995 on the protection of health against the consequences of tobacco use and tobacco products (Journal of Laws of 1995 No. U. of 2021, item. 276);*
- 2) alcoholic beverages, to the extent regulated in the Act of 26 October, 1982 on Upbringing in Sobriety and Counteracting Alcoholism (Official Journal of 2019, item 2277).*

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

Article 16b paragraph 1 subparagraphs 3 – 4 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs, with the application of these provisions to VSPs contained in Article 47q paragraph 1 of the Broadcasting Act:

1. It shall be prohibited to broadcast commercial communications for following goods and services:

[...]

- 3) health benefits as defined in regulations on medical treatments provided only on prescription;*
- 4) medicinal products, to the extent regulated in the Act of 6 September, 2001 - "Pharmaceutical Law" (Journal of Laws 2019, item 499, as amended)*



4.24.2.2.3. Surreptitious audiovisual commercial communications

Article 16c. subparagraph 1 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

The following shall be prohibited:

[...]

1) *surreptitious commercial communications.*

4.24.2.2.4. Subliminal techniques in commercial communications

Article 16b paragraph 2 subparagraph 5 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

2. *It shall be prohibited to broadcast commercial communications that:*

...

5) *are of subliminal nature.*

4.24.2.2.5. Prejudice with regard to human dignity

Article 16 paragraph 3 subparagraph 1 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

3. *Commercial communications shall not:*

1) *prejudice respect for human dignity.*

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

Article 16b paragraph 3 subparagraph 2 of the Broadcasting Act prohibits such commercial communications for all media services, applicable to VSPs as well:

3. *Commercial communications shall not: ...*

2) *include any discrimination on grounds of race, sex, nationality, ethnic origin, religion or belief, disability, age or sexual orientation*

4.24.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 16b paragraph 3 subparagraph 5 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

3. *Commercial communications shall not: ...*

5) *encourage behaviour prejudicial to health, safety or environmental protection.*



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

Article 16b. paragraph 3 subparagraph 5 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

- 3. Commercial communications shall not: ...*
- 5) encourage behaviour prejudicial to health, safety or environmental protection.*

4.24.2.2.9. Causing physical, mental or moral detriment to minors

Article 16b paragraph 3 subparagraph 4 of the Broadcasting Act prohibits such commercial communications for all media services, including VSPs:

- 3. Commercial communications shall not: ...*
- 4) cause physical, mental or moral detriment to minors.*

Article 16b paragraph 2 (subparagraphs 1 to 4) states the following:

- 2. It shall be prohibited to broadcast commercial communications that:*
 - 1) directly exhort minors to purchase products or services,*
 - 2) encourage minors to exert pressure upon their parents or other persons to persuade them to purchase the products or services being advertised,*
 - 3) exploit the trust minors place in parents, teachers or other persons,*
 - 4) unreasonably show minors in dangerous situations.*

4.24.2.2.10. Other

N/A.

4.24.3. 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.

4.24.3.1. Sponsorship

Article 17 (and reference to it vis-à-vis VSPs in Article 47q paragraph 1) of the Broadcasting Act provides for the same rules on sponsorship for all media service providers, including VSPs. Besides the prohibition of sponsorship of news (except sports and weather forecasts), commentaries on social and political topics, consumer and practical advice programmes,



electoral programmes or programmes directly related to electoral campaigns, as well as a prohibition of content to be sponsored by political parties, trade unions, employers' organisations and individuals or legal entities whose principal operations consist in the production or sale of products or the provision of services for which advertising is prohibited, the rules stipulate:

- 1. Recipients must be clearly informed about sponsoring. Sponsored programmes or other broadcasts must be identified as such by sponsor credits at the start and the end of the programme, and when a programme resumes after an advertising or teleshopping break. Sponsor credits may specify only the sponsor's name, business name, trademark or contain some other identification of the business operator or its business operations, a reference to its products, services or their trademark.*
- 1a. The identification of the sponsor or any component part thereof may not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.*
- 2. In addition, sponsor credits, or any component part thereof, may not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services.*
- 3. Sponsor credits may not contain the name, business name, trademark or other individual identification of the business operator or its business operations, the image of a product or service, the advertising of which is prohibited.*
- 4. Sponsored programmes or other broadcasts may not encourage the purchase or other use of the products or services of the sponsor or a third party.*

4.24.3.2. Product placement

Article 17a (and reference to it vis-à-vis VSPs in Article 47q paragraph 1) of the Broadcasting Act provides for the same rules for product placement for all media service providers, including VSPs. In addition to obligatory identification of product placement and the provision of neutral information on the producer or seller of the placed product in the programmes, product placement is allowed in all programs, except in news (excluding sports and weather forecasts), journalistic programs with socio-political content, consumer-related broadcasts, religious and children programmes. Besides, product placement must respect the service provider's autonomy and editorial responsibility as well as different criteria (e.g. not giving undue prominence, not encouraging the purchase or rental of goods or services).

It should be noted that the Chairman of the Broadcasting Council of KRRiT may request the submitting of documentation on product placement from the relevant broadcaster and KRRiT may further adopt secondary legislation pertaining to product placement (Article 17a paragraph 8).



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

The provisions concerning commercial communications should be applied to (v)blogs that fall under the definition of audiovisual media services. (V)blogs are treated as VoD providers under the condition that vloggers act within the scope of their business activity and present their content in the catalogue comparably to other VoD providers.

The responsibility for the enforcement of the rules on commercial communications on the platforms via which (v)blogs are made available is on VSPs themselves. Currently, the Office of Competition and Consumer Protection is conducting several proceedings against videobloggers that disseminate surreptitious and misleading advertising, but on the basis of provisions protecting consumers and not media law.

4.24.5. Other relevant information

N/A.

4.24.6. 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.

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

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

4.24.6.2. Gambling, betting, betting tipsters, etc.

According to Article 16b paragraph 1 subparagraph 5 of the Broadcasting Act, products that should not be subject to advertising in commercial communications include those related to gambling and hazardous games. Commercial communications of this kind are prohibited in all types of media services and VSPs.

Article 29b, paragraphs 1-3, of the Gambling Act provides for certain exceptions:



1. *Not prohibited are commercial communications of sports mutual bets which were authorised by the competent authority within the territory of Poland provided that:*
 - 1) *communications are not addressed to minors, there are no minors in the commercial and it does not present sports bets with the participation of minors;*
 - 2) *communication does not connect the success of the bet with physical and intellectual fitness or present the bet as a chance to obtain an easy win;*
 - 3) *communication does not present gambling as an activity with a relaxing effect or that may easily solve social or financial problems;*
 - 4) *communication does not present the reluctance to take part in gambling in a negative way;*
 - 5) *communication does not encourage higher stakes payments as a factor that may increase the chances of winning;*
 - 6) *communication does not evoke associations with:*
 - a) *sexual attractiveness;*
 - b) *relaxation or rest;*
 - c) *study or work;*
 - d) *professional, life or financial success*
2. *Commercials should not be presented:*
 - 1) *on television or radio, or in cinemas and theatres, between 6:00 and 22:00 except during commercial breaks in the transmission of the sports events where entrepreneurs that organize gambling activity are a sponsor of the transmission or sponsor of the team or players that take part in that sports event.*
- [...]3. *Commercial communications must include a message about:*
 - 1) *the consequences of participating in illegal gambling;*
 - 2) *risks related to gambling;*
 - 3) *having authorization to arrange gambling services*

These rules apply to commercial communications disseminated via audiovisual media services and on VSP platforms.

4.24.6.3. Environmental or “green” claims related to products

There are no specific rules pertaining to environmental or “green” claims related to products in legislative acts in Poland. Entrepreneurs may voluntarily contain such information in their commercial communications.

The Code of Ethics in Advertising in paragraphs 33-39 states that commercial communications referring to environmental protection may not be misleading or suggest falsely that products or services are environmentally friendly:

Article 33

Commercial communications may not undermine public confidence in properly implemented activities in the field of environmental protection.

Article 34

Commercial communications cannot take advantage of the audience lack of knowledge in the field of environmental protection.



The Advertising Council⁵²⁴, which adopted this self-regulatory mechanism, has launched an initiative to prepare a self-regulatory code specifically addressing the issue of ethical communication and advertising in the field of environmental responsibility and sustainable development (the so-called Green Project)⁵²⁵.

4.24.6.4. Other

N/A.

4.24.7. 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/ies 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.

4.24.7.1. Self- and co-regulatory bodies

Self- or co-regulatory measures regarding specifically commercial communications on VSPs have not been introduced yet.

4.24.7.1.1. Context of establishment and legal background

Article 3a paragraph 1 of the Broadcasting Act stipulates adoption of the codes of conduct vis-à-vis unfair market practices, as follows:

1. Media service providers, with a view to fulfilling the obligations set out in the Act, in particular in Article 14a, Article 16b (3a), Article 18a, Art. 47e and Article 47g, may create and adhere to codes of good practice within the meaning of the Act of 23 August 2007 on counteracting unfair market practices (Dz. U. of 2017, item 2070.

1a. In order to meet the obligations laid down in this Act, in particular Articles 47p(1), 47q(1), 47t(1) to (3) and 47u(1), video-sharing platform providers may draw up and accede to codes of good practice within the meaning of Article 2(5) of the Unfair Commercial Practices Act of 23 August 2007.

⁵²⁴ Rada reklamy, <https://radareklamy.pl>.

⁵²⁵ More information is available at: <https://radareklamy.pl/green-project-new/>.



The aforementioned provisions also stipulate that KRRiT, in cooperation with the relevant minister “...initiates, supports and promotes the creation of codes of conduct referred to in paragraph 1 and 1a”.

Also, the Code of Ethics in Advertising, adopted by the Advertising Council, which operates for the media industry, will now expand to VSPs as well, as VSPs were invited to take part in this self-regulatory mechanism.

4.24.7.1.2. Stakeholders involved

The Advertising Council is a non-governmental, non-profit organisation. It was established in 2006 as the initiative of the stakeholders active in the advertising and marketing market. It comprises entities active in the advertising market (i.e., entrepreneurs in the sector where rules on commercial communications are specific, such as beer producers, producers of cosmetics, producers of foods high in fat and sugar etc., media associations, advertising agencies and entities producing commercials). It has created and manages a self-regulation system in the field of advertising. The organisation consists of industry associations as ordinary members and companies as supporting members.

Until now, VSP providers were not widely represented in the Advertising Council. Nevertheless, following implementation of the revised AVMSD, the Code of Ethics in Advertising now refers to commercial communications made available on VSP platforms. Therefore, more and more VSP providers will be invited to take part in the Council's activities.

In addition to this, the Polish broadcasting regulator KRRiT, in cooperation with the relevant minister, promotes the adoption of, and abidance by, codes of conduct by VSPs.

4.24.7.1.3. Scope and objectives

The Advertising Council was established to create, promote and protect the principles that should be followed by entrepreneurs engaged in advertising activities in the territory of the Republic of Poland and Polish entrepreneurs advertising abroad. These principles are regulated in the Code of Ethics in Advertising.

The scope of the self-regulatory instruments includes HFSS foods and beverages, inappropriate ACCs for alcoholic beverages and ACCs which encourage behaviours grossly prejudicial to the protection of the environment.

4.24.7.1.4. Code(s) of conduct

The self-regulatory Code of Ethics in Advertising, which is widely accepted by the Advertising Council, refers broadly to all commercial communications, inclusive of the communications disseminated on VSPs. It was adopted and promulgated by the Advertising Council, as a self-regulatory instrument.



4.24.7.1.5. Role of (self-)regulatory bodies

Even if the role of the self-regulatory bodies is, in general, recognised in the legislation amending the Broadcasting Act (Article 3a paragraph 1b), the Act does not directly refer to any particular self-regulatory bodies:

1b. The codes referred to in paragraph 1. and 1a:

- 1) shall clearly and unambiguously set out objectives and provide for regular, transparent and independent methods of evaluating their achievement;*
- 2) shall lay down arrangements for the effective enforcement of their provisions, including effective and proportionate sanctions for non-compliance;*
- 3) shall be accepted by the majority of stakeholders implementing the requirements laid down in the codes, including major media service providers or video-sharing platform providers based in Poland.*

While the Code of Ethics in Advertising contains ethical provisions related to advertising practices, the Ethical Advertising Committee acts upon complaints to deliberate the potential non-abidance by the aforementioned code of conduct, and adopt resolutions in such cases.⁵²⁶

4.24.7.1.6. Period of activity (if limited)

N/A.

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

See under 4.24.7.1.1.

4.24.7.1.7.1. Regulatory body

N/A.

4.24.7.1.7.2. Co-regulatory scheme

N/A.

4.24.7.1.7.3. Relationship and roles of stakeholders

N/A.

⁵²⁶ For more details, please refer to: <https://radareklamy.pl/en/complaints-handling-rules/>.



4.24.7.2. Monitoring/evaluation, compliance and sanctioning powers

KRRiT is, according to Article 6 paragraph 2 of the Broadcasting Act, endowed with the following competencies vis-à-vis VSP services:

- 2) determining, within the limits of statutory powers, the operating conditions of media service providers and video-sharing platform providers; ...*
- 4) supervising, within the limits laid down by this Act, the activities of media service providers and video-sharing platform providers; ...*
- 5a) keeping updated the registers of VoD and VSP providers*

According to these provisions, KRRiT is entitled to: issue secondary acts (ordinances) in this respect; control the compliance of activity of VSP providers with provisions of law, in particular also concerning commercial communications disseminated on VSP platforms; impose sanctions on the providers in case of irregularities (administrative fines and in extreme circumstances – in case of notorious and grave irregularities – delete the provider from the register, resulting in a cessation of the legal conduct of business by a VSP provider). The sanctioning of VSPs can be appealed to administrative courts.

4.24.8. Cross-sector and cross-border collaboration

N/A.

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

KRRiT opened public consultations, in April 2022, regarding the regulation of classification of content available on VSPs that may be harmful for minors. On 13 April 2022, KRRiT adopted a secondary act⁵²⁷ on this matter.

KRRiT has not prepared the proposal of secondary legislation concerning commercial communications on VSPs. In the scope of commercial communications on VSPs, self-regulation is planned as the first step.

4.24.10. Studies, reports and research

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

⁵²⁷ <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20220001019/O/D20221019.pdf>.



- Strategic Report of IAB Poland, “Internet 2021/2022”⁵²⁸, 2021

4.24.11. Data compilation

This factsheet is based on data compiled by Karol Kościński, Attorney at Law, Karol Kościński Legal Office.

⁵²⁸ <https://raportstrategiczny.iab.org.pl>