



4.2. BE (FR) – French Community of Belgium – National legal summary⁴³

4.2.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Décret du 4 février 2021 relatif aux services de médias audiovisuels et aux services de partage de vidéos⁴⁴ (Decree of 4 February 2021 on audiovisual media services and video-sharing services – the Decree)
- *Code de droit économique*⁴⁵ (Code of Economic Law – the CEL)
- Loi du 25 mars 1964 sur les médicaments⁴⁶ (Law of 25 March 1964 on medicines)
- Loi du 7 mai 1999 sur les jeux de hasard, les paris, les établissements de jeux de hasard et la protection des joueurs⁴⁷ (Law of 7 May 1999 on gambling, betting, gambling establishments and the protection of players)

Secondary legislation:

- Arrêté royal du 25 octobre 2018 relatif aux modalités d'exploitation des jeux de hasard et des paris exploités au moyen des instruments de la société de l'information⁴⁸ (Royal Decree of 25 October 2018 on the modalities of operation of gambling and bets operated by means of information society)
- Arrêté royal du 7 avril 1995 relatif à l'information et à la publicité concernant les médicaments à usage humain⁴⁹ (Royal Decree of 7 April 1995 on information and advertising concerning medicines for human use)

Self- and co-regulatory instruments:

- *Code de la publicité écologique*⁵⁰ (Jury d'éthique publicitaire - JEP) (JEP Ecological Advertising Code)

⁴³ The factsheet on Belgium (French Community) incorporates feedback received from Anahi Vila, Director of European Affairs, and Coraline Burre, Advisor for Information and Commercial Communication, at the CSA during the checking round with the national regulatory authorities.

⁴⁴ https://etaamb.openjustice.be/fr/decret-du-04-fevrier-2021_n2021020568.html.

⁴⁵ <http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel>.

⁴⁶ <https://www.ejustice.just.fgov.be/eli/loi/1964/03/25/1964032508/justel>.

⁴⁷ <http://www.ejustice.just.fgov.be/eli/loi/1999/05/07/1999010222/justel>.

⁴⁸ <https://www.ejustice.just.fgov.be/eli/arrete/2018/10/25/2018014587/justel>.

⁴⁹ <https://www.ejustice.just.fgov.be/eli/arrete/1995/04/07/1995025096/justel>.

⁵⁰ https://www.jep.be/sites/default/files/rule_recommandation/milieu_fr.pdf.



- *Conseil de la Publicité: Recommandations du Conseil de la Publicité en matière d'influenceurs en ligne*⁵¹ (Communications Centre, Recommendations from the Communications Centre on Influencer Marketing, April 2022)
- Code de publicité éthique et responsable de la Loterie Nationale⁵² (National Lottery Code for ethical advertising)

Soft law:

- *Position publique de la Commission des Jeux de Hasard relative à l'application de l'Arrêté Royal du 25 Octobre 2018*⁵³ (Public Position of the Gambling Commission on the application of the Royal Decree of 25 October 2018 on the modalities of operation of gambling and bets operated by means of information society)

4.2.2. 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.

4.2.2.1. Definitions

Table 28. Definition of the main concepts related to commercial communications

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	No.
Surreptitious commercial communication	Yes.

⁵¹ https://www.jep.be/wp-content/uploads/2022/04/influencers_FR.pdf.

⁵² https://www.jep.be/sites/default/files/rule_recommandation/code_voor_ethische_reclame_fr.pdf.

⁵³ <https://gamingcommission.paddlecms.net/sites/default/files/2021-10/Position-publique-arrete-royal-25-octobre-2018-approuvee.pdf>.



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

Source: French-speaking community of Belgium response to European Audiovisual Observatory standardised survey

4.2.2.1.1. Audiovisual commercial communications

Article 5.1-1, 1° of the Decree defines audiovisual commercial communications as being inclusive of:

any type of message designed to promote or sell, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity. Such messages are included in an audiovisual media service or video-sharing service in return for payment or for similar consideration or for self-promotional purposes. Commercial communications include, in particular, interactive commercial communications, split-screen commercial communications, targeted advertising, virtual advertising, sponsorship, teleshopping, self-promotion and product placement;

4.2.2.1.2. Television advertising

Article 5.1-1, 7° of the Decree defines television advertising as:

any form of message inserted in an audiovisual media service or video-sharing service in return for payment or for similar consideration by a public or private institution or undertaking or natural person in the course of a commercial, industrial or craft activity or in the course of a liberal profession, with the aim of promoting the supply of goods or services, including immovable property, rights and obligations, against payment;

This definition applies to television and on-demand services (Article 1.3-1, 39° of the Decree).

Also, advertising and commercial practices in general terms are found in Article I.8, 13° of the CEL, which defines advertising as:

Any communication with the direct or indirect aim of promoting the sale of products, irrespective of the place or means of communication used

and commercial practice as:

Any commercial action, omission, conduct, undertaking or communication, including advertising and marketing, on the part of an undertaking, directly related to the promotion, sale or supply of a product.



4.2.2.1.3. Advertiser

There is no definition of advertiser.

4.2.2.1.4. Surreptitious commercial communication

Article 5.1-1, 4° of the Decree defines surreptitious commercial communication as:

the verbal or visual presentation of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes or user-generated videos where such presentation is made intentionally by the service provider or video-sharing service provider for advertising or sales purposes and is likely to mislead the public as to the nature of such presentation.

A presentation shall be deemed to be intentional in particular where it is made in return for payment or other consideration.

4.2.2.1.5. Misleading commercial communication

Articles VI.94 to VI.103 of the CEL extensively regulate unfair and misleading practices and define commercial practices of undertakings towards consumers as unfair if they:

*VI.94 1° are misleading within the meaning of Articles VI.97 to VI.100, or
2° are aggressive within the meaning of Articles VI.101 to VI.103*

...

VI.97: A commercial practice is considered misleading if it contains false information and is therefore deceptive or in any way, including its general presentation, misleads or is likely to mislead the average consumer ... even if the information presented is factually correct, and in either case causes or is likely to cause the average consumer to take a transactional decision that (s)he would not have taken otherwise...

A set of requirements is provided further in the CEL, with detailed referencing as to when and under which conditions a commercial practice is deemed to be misleading, prohibiting such practices.

4.2.2.1.6. Virtual advertising

Article 5.1-1, 9° of the Decree defines virtual advertising as:

Image-embedded advertising or advertising replacing an advertisement present at the venue of an event, by means of an electronic imaging system modifying the broadcast signal.

It is not covered by duration restrictions pertaining to advertising in linear and non-linear television services (Article 5.3-3, §3 of the Decree), nor distinguishability of commercial communication from other content (Article 5.2-4, § 6 of the Decree).



Article 5.8-2 of the Decree prohibits virtual advertising, except during live or deferred transmission of sports competitions, under certain conditions (must not alter the quality of the programme, hinder the perception of the site of the sports competition, etc.)

4.2.2.1.7. Sponsorship

Article 5.1-1, 5° of the Decree provides for the definition of sponsorship as:

any contribution in the form of payment or similar consideration, from a public or private institution or company, or from a natural person not engaged in broadcasting, providing video-sharing services or producing programmes, to the financing of audiovisual media services, video-sharing services, user-generated videos or programmes with a view to promoting their name, trade mark, image, activities, output or products;

4.2.2.1.8. Sponsor

There is no definition of sponsor.

4.2.2.1.9. Sponsored content

There is no definition of sponsored content.

4.2.2.1.10. Product placement

Article 5.1-1, 6° of the Decree defines product placement as:

inclusion of or reference to a product, service or trade mark thereof within a programme or a user-generated video in return for payment or for similar consideration;

4.2.2.1.11. Other definitions

Additional concepts are defined by the Decree, such as:

- Targeted advertising: “Advertising offered to a specific recipient or group of recipients on the basis of personal data processing” (Article 5.1-1, 1° and 8°)
- Interactive commercial communication: “Any commercial communication inserted in an audiovisual media service or in a video-sharing service which, by means of a return channel, refers users – who individually request it by means of an insertion in the service of an electronic means of access – to a new advertising, promotional or commercial environment” (in Article 5.2-1, 2° of the Decree)
- Split-screen commercial communication: “Any commercial communication broadcast in parallel with the broadcast of a television programme or user-generated video by spatial division of the screen” (Article 5.2-1, 4° of the Decree)
- Teleshopping (also included offers to public in user-generated videos in Article 1.3-1, 60° of the Decree): “The broadcasting of direct offers to the public, in the form of



programmes or spots or user-generated videos, with a view to the supply of goods or services, including immovable property, or of rights and obligations, in return for payment”, Self-promotion: “Any message broadcast at the initiative of a service provider or video-sharing service provider and intended to promote its own services, programmes or related products directly derived from its own programmes.”

4.2.2.2. 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.

As a general remark, it should be noted that Article 2.3-1 of the Decree provides for a prohibition of programmes or commercial communications:

Service providers shall not transmit any programmes or commercial communications which:

- 1) are in violation of any laws, decrees, regulations or go against the general interest;*
- 2) undermine human dignity;*
- 3) contain public provocation to commit a terrorist offence as referred to in Article 137 of the Criminal Code;*
- 4) promote a line of thinking, belief or opinion which threatens democracy, fundamental rights and freedoms guaranteed by the Constitution or by the European Convention for the Protection of Human Rights and Fundamental Freedoms, or seek to abuse public credulity;*
- 5) seek to deny, downplay, justify or condone the genocide committed by the German National Socialist regime during the Second World War, or any other form of genocide;*
- 6) constitute offences concerning racism and xenophobia as referred to in the Act of 30 July 1981 on suppressing certain acts of racism or xenophobia;*
- 7) constitute offences concerning child pornography within the meaning of Article 383a of the Criminal Code.*

Article 2.3-2 adds that VSP providers “must take appropriate measures to protect the user from programs and user-generated videos in the circumstances described in Article 2.3-1.”

Further, Article 5.5-1 § 1 of the Decree stipulates rules regarding commercial communication “which is organised by the video-sharing service provider”:

it “...must be easily identifiable as such” and must comply with the provisions of the decree, details of which are presented below.

In addition to restrictions vis-à-vis audiovisual commercial communications, Article 5.2-1 of the Decree stipulates that commercial communications may not be contrary to laws, decrees, regulations and directives as well as to the regulations of the regulatory authority,



the Superior Audiovisual Council (CSA),⁵⁴ referred to in Article 9.1.2-1, § 1, 2° of the Decree, and approved by the government, which regulate advertising in general or advertising for certain products or services.

Also, Article XII.12 of the CEL stipulates that advertisements which are part of or constitute an information society service must respect the principles of mandatory identifiability, inclusive of (natural or legal) persons on whose behalf the advertising is made, promotional offers (e.g., price reductions, joint offers, etc.) and competitions or games.

Where the commercial communication is not organised by the video-sharing service provider, the latter must take appropriate measures to comply with the requirements presented below. If, following this assessment, the CSA concludes that inappropriate measures have been taken, it shall invite the video-sharing service provider to adopt appropriate corrective measures within a period of time which it shall determine. In the event of non-compliance with the decision of the CSA, the latter may impose one of the sanctions provided for in Article 9.2.2-1. of the Decree.

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

Article 5.1-2 of the Decree provides that audiovisual media service providers and video-sharing service providers may broadcast commercial communications for alcoholic beverages, with the exceptions of ads targeting minors, or presenting or providing alcoholic beverages as increasing physical performance, especially while driving, or suggesting therapeutic beneficial qualities of alcohol, while also prohibiting encouragement of immoderate, reckless or illegal consumption of alcohol, cigarettes and other tobacco products, including electronic cigarettes and their refills ...

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

Article 9 of the Law of 25 March 1964 on medicines states that:

§ 1. Any advertising relating to a medicinal product which is not registered (for which a marketing authorisation has not been granted) or which has been the subject of a suspension or prohibition measure taken pursuant to Articles 7 and 8 (7bis and 8bis) is prohibited. Any advertising intended for the public is prohibited when it relates to a medicinal product which can only be supplied on presentation of a medical prescription or to a medicinal product intended for the treatment of a disease or condition designated by the King on the advice of the Higher Council of Public Health.

⁵⁴ Conseil supérieur de l'audiovisuel, <https://www.csa.be/>.



General Rules relative to advertising, as well as the Royal Decree of 7 April 1995 on information and advertising concerning medicines for human use, in addition to the Law of 25 March 1964 on medicines, extensively regulate in general and specifically commercial communications for medicinal products and treatments.

The aforementioned provisions are applicable to VSPs as well, as the rules relate to any advertising and all commercial communications.

4.2.2.2.3. Surreptitious audiovisual commercial communications

Article 5.1-1, 4° of the Decree defines surreptitious audiovisual communications as:

the verbal or visual presentation of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes or user-generated videos where such presentation is made intentionally by the service publisher or video-sharing service provider for advertising or sales purposes and is likely to mislead the public as to the nature of such presentation.

A presentation shall be deemed to be intentional in particular where it is made in return for payment or other consideration;

Article 5.2-4, §5 of the Decree stipulates that:

Surreptitious commercial communication is forbidden.

4.2.2.2.4. Subliminal techniques in commercial communications

Article 5.5-1, §1st, 3° of the Decree prohibits the use of subliminal techniques:

Commercial communications shall comply with the provisions of Titles III and IV of Book II. In addition, they shall not:

...

3) use subliminal techniques;

4.2.2.2.5. Prejudice with regard to human dignity

In accordance with Article 5.5-1 of the Decree, any video-sharing service provider shall take appropriate measures to protect the user from programmes and user-generated videos including commercial communication offending human dignity.



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

Article 5.5-1 of the Decree states that any provider of video-sharing services must take appropriate measures to protect the user from programmes and user-generated videos including discriminatory commercial communication.

Article 2.4-1 of the Decree, applicable to VSPs, notes that the prohibition includes:

...1° undermining respect for equality between women and men or containing or promoting discrimination or incitement to discrimination, hatred or violence based on sex or assimilated criteria such as pregnancy, maternity, gender reassignment, gender expression, gender identity or containing incitement to violence against women and domestic violence; 2° containing or promoting discrimination or inciting discrimination, hatred or violence, in particular on the grounds of nationality, alleged race, colour, descent or national or ethnic origin, age, sexual orientation, religious or philosophical conviction, disability, marital status, birth, property, political conviction, language, current or future state of health, physical or genetic characteristic, social origin or trade union conviction.

- 4.2.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 5.5-1, §1st 1° of the Decree prohibits commercial communication organised by the video-sharing service provider to:

Encourage behaviour prejudicial to health or safety, in particular by highlighting violent behaviour.

- 4.2.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

As stipulated by the Article 5.5-1, §1st 2° of the Decree, commercial communications organised by the video-sharing service provider may not:

encourage behaviour prejudicial to the protection of the environment.

- 4.2.2.2.9. Causing physical, mental or moral detriment to minors

Article 5.5-1, §1st 5° prohibits commercial communication organised by the video-sharing service from: “Causing physical, mental or moral detriment to minors and it must in particular comply with the criteria of Article 5.2-3 of the Decree”.

The criteria from Article 5.2-3 include a prohibition on encouraging excessive use of food and drink products containing trans-fatty acids, salt, sodium or sugars, the regular consumption of which is inadvisable for health reasons – with regard to which the Advisory Committee of the CSA will draw up and update one or more codes of conduct allowing for the establishment of guidelines based on best practices designed to ensure compliance with this point, as well as a prohibition on directly exhorting minors to buy or rent a product



or service by exploiting their inexperience or credulity or inciting them to persuade their parents or third parties to buy the products or services concerned, etc.

Additionally, Article 2.5-2, §3 of the Decree stipulates conditions for the use of personal data of minors in relation to online commercial communications techniques, such as canvassing, profiling and advertising based on behavioural targeting:

Personal data of minors collected or generated by video-sharing service providers under measures as referred to in § 2 shall be processed in accordance with the conditions and obligations laid down in applicable European Union and Belgian law and shall not be processed for commercial purposes such as direct marketing, profiling or behaviourally targeted advertising.

4.2.2.2.10. Other

N/A.

4.2.3. Sponsorship and product placement

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

4.2.3.1. Sponsorship

Requirements regarding sponsorship in linear and non-linear media services are stipulated by Article 5.2-4, §6 and 5.2-5 of the Decree, exempting sponsorship from the rules regarding distinguishability of commercial communications, and the requirement that commercial communication not be restricted to goods or services from a single commercial or financial group and that it does not grant exclusivity to the advertising of a particular product or service. Article 5.6-1 of the Decree further stipulates that sponsorship of audiovisual media services, programmes and clearly identifiable sequences of a programme (except in news and children's programmes and teleshopping) is permitted under the following conditions:

1° their content and, in the case of a linear service, their scheduling may in no circumstances be influenced by the sponsor in such a way as to affect the editorial responsibility and independence of the service provider;

2° the sponsorship must be clearly identified...;

3° the sponsored services, programmes and sequences must not encourage the purchase or rental of the products or services of the sponsor or of a third party, in particular by making specific promotional references to those products or services

...



5° sponsorship by natural or legal persons or undertakings whose principal activity is the manufacture or sale of products or the provision of services the advertising of which is prohibited by Articles 5.2-1 and 5.2-2 shall be prohibited;

Article 5.6-2 of the Decree further allows occasional references to sponsorship in television services, on the occasion of live or deferred transmission of sporting events, while Article 5.6-3 of the Decree refers to usage of distinctive sound or visual signs for sponsorship. It is also provided that the government may lay down additional rules, in particular on the duration of sponsorship contracts and the sponsorship of games programmes (Article 5.6-4 of the Decree).

These rules are applicable to VSPs if the video provided meets the conditions to be considered as an audiovisual media service (communication to the public of a non-linear television programme; see Article 5.1-1,5° of the Decree).

4.2.3.2. Product placement

Articles 5.2-4, §6 and 5.3-3, §3 of the Decree exclude product placement from the duration restrictions and the rules regarding distinguishability of commercial communications and the prohibition on the restriction of commercial communication to the goods or services of a single commercial or financial group or and the granting of exclusivity to the advertising of a particular product or service. Article 5.3-4 of the Decree further prohibits product placement in news programmes, consumer information programmes, non-confessional religious and philosophical programmes and children's programmes and further provides conditions for programmes which include product placement for programmes produced after 19 December 2009:

- 1) their content and structure within a schedule in the case of linear services, or within a catalogue in the case of non-linear services, shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the broadcaster;*
- 2) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;...*

4) they shall be clearly identified as containing product placement by visual means at the start and end of their broadcast, and when they resume after an advertising break, in order to avoid any confusion on the part of the viewer. The latter condition shall only apply to programmes produced or commissioned by the service provider, by a company which is directly or indirectly a shareholder in the broadcaster, or by a company in which the broadcaster is directly or indirectly a shareholder. These rules are applicable to VSPs if the video provided meets the conditions to be considered as an audiovisual media service (communication to the public of a non-linear television programme); see Article 5.1-1,6° of the Decree.



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

A video-sharing service is, in accordance with Article 1.3-1, 54° of the Decree:

a service where the principal purpose, a dissociable section thereof, or an essential functionality is to share with the public, by means of electronic communications networks, television or audio programmes, user-generated videos, or both, for which the video-sharing service provider does not have editorial responsibility, in order to inform, entertain or educate, and the organisation of which is determined by the video-sharing service provider, including by automatic means or algorithms, in particular by displaying, tagging and sequencing;

A vlog falls within the definition of "user-created video", and while considering the elements necessary to satisfy the requirement that the service be defined as an audiovisual media service (e.g., a service under the editorial responsibility of a service provider), and also bearing in mind that the service provider is "the natural or legal person who assumes editorial responsibility for the choice of content of the audiovisual media service and who determines the manner in which it is organised" (Article 1.3-1, 13° of the Decree), vlogs can be considered an audiovisual media service. It follows that the specific rules for video-sharing services, as provided in this factsheet, also apply to cases of dissemination of commercial communication via vlogs.

In addition, and as mentioned in an ERGA Report,⁵⁵ the Government of the French community of Belgium stated in its explanatory memorandum of the decree transposing the AVMSD:

The Government of the French-speaking community of Belgium endorsed in the explanatory memorandum of its decree transposing directive 2018/1808 the interpretation according to which channels hosted on VSPs are AVMS under the responsibility of the vloggers who created and uploaded them.

It should also be noted that on 25 April 2022, recommendations in light of (disclosing/recognising) influencer advertising were published by the Communication Centre.⁵⁶

⁵⁵ See ERGA Report "Analysis and recommendations concerning the regulation of vloggers", pages 32-36: <https://erga-online.eu/wp-content/uploads/2021/12/ERGA-SG1-2021-Report-Vloggers.pdf>.

⁵⁶ I.e. the professional organisation gathering advertisers, media, communication agencies and actors from the digital sector in Belgium. The Communication Centre dedicates a large part of its resources to the JEP, which is the independent supervisory body.



4.2.5. Other relevant information

N/A.

4.2.6. 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.

4.2.6.1. 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.

4.2.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue.

However, as mentioned previously, VSPs must not directly incite minors to buy or rent a product or service by exploiting their inexperience or credulity (see under 4.1.2.2.9). For commercial communications not organised by the VSP, the latter must take appropriate measures to comply with the above requirements (see under 4.2.2.2.).

Furthermore, pursuant to Articles 5.5-1, 2.3-1 and 2.3-2 of the Decree, VSPs are required to comply with the provisions of Article 4,§2 of the Law of 7 May 1999 on gambling, betting, gambling establishments and the protection of players, which states that: “Advertising for games of chance whose operation has not been authorised is prohibited”.⁵⁷

In addition, the Royal Decree of 25 October 2018 on the modalities of operation of gambling and bets operated by means of information society instruments sets out the conditions imposed on advertising for gambling operated by means of information society instruments, while the Public Position of the Gambling Commission on the application of this law provides more details.

⁵⁷ This prohibition applies to gambling authorised abroad but unauthorised in Belgium.



Finally, a self-regulatory instrument related to gambling, in the form of the Code for ethical advertising, issued by the National Lottery,⁵⁸ regulates in detail gambling-related advertisements.

VSPs must take appropriate measures to ensure that commercial communications related to online gambling comply with the legislation in force, including the Royal Decree of 25 October 2018 (Article 5.5-1, §2 and Article 5.5-1, §1 of the Decree). Furthermore, the Gambling Commission is competent to impose a sanction on any person who commits an infringement of the Royal Decree.

4.2.6.3. Environmental or “green” claims for products

No specific provisions deal with this issue.

However, on a more general level, the Jury on Ethical Practices in Advertising JEP,⁵⁹ an independent self-regulatory body for advertising, adopted and applies the code texts, some provisions of which may apply to advertisers in relation to greenwashing, such as those from the International Chamber of Commerce Marketing Code,⁶⁰ and codes related to specific sectors, such as automobile and cosmetics.

It should also be mentioned that the JEP Ecological Advertising Code,⁶¹ a self-regulatory instrument setting out guidelines for the advertising of various products, applies to all advertising that refers to the environmental effects of a product, including packaging, or service, regardless of the medium used, during its life-cycle.

4.2.6.4. Other

N/A.

4.2.7. 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.

⁵⁸ Loterie Nationale, <https://loterie-nationale.be>.

⁵⁹ Jury d'éthique publicitaire, <https://www.jep.be/fr/>.

⁶⁰ <https://cdn.iccwbo.org/content/uploads/sites/3/2011/08/ICC-Consolidated-Code-of-Advertising-and-Marketing-2011-French.pdf>.

⁶¹ https://www.jep.be/sites/default/files/rule_recommandation/milieu_fr.pdf.



4.2.7.1. Self- and co-regulatory bodies

4.2.7.1.1. Context of establishment and legal background

The Communications Centre (previously Council of Advertising) is the professional organisation that unites and represents the various actors of the communication sector and organises the self-regulation of advertising in Belgium. It aims at improving, valorising and defending commercial communication and commercial freedom of expression. Since 1974, the Communication Centre has devoted a large part of its resources to the JEP, the independent self-regulatory organisation of the Belgian advertising industry established within the Centre. JEP was founded and is funded via the voluntary cooperation of the advertising industry and is responsible for examining whether commercial communication complies with the relevant legislation and self-regulatory codes.

On 25 April 2022, the Communication Centre published Recommendations on Influencer Marketing, which are in fact an update of the Recommendations from the Council of Advertising on Online Influencers of October 2018.

4.2.7.1.2. Stakeholders involved

The self-regulatory organisation JEP aims to ensure fair, truthful, and socially responsible advertising. It works with advertisers, advertising agencies and the media.

4.2.7.1.3. Scope and objectives

The objectives of the self-regulatory instruments include:

- Supervision of compliance with the guidelines on influencer marketing (apply to influencers insofar as they are engaged in a commercial relationship)
- Determining whether commercial communication is in conformity with legislation and relevant self-regulatory codes

Their scope includes:

- ACCs which encourage behaviours grossly prejudicial to the protection of the environment
- Inappropriate ACCs for alcoholic beverages

4.2.7.1.4. Code(s) of conduct

The JEP does not only supervise compliance with the guidelines on influencer marketing, it examines whether commercial communication is in conformity with (1) legislation (including the Media Decree and the Code of Economic Law) and (2) relevant self-regulatory codes.



The most relevant self-regulatory code is the aforementioned ICC Code as most other codes are based on this one. The other codes can be divided into sectoral (e.g. food or alcoholic drinks) and intersectoral codes (e.g. the environmental advertising code), as well as recommendations (e.g. on influencer marketing or advertising for weight-loss products). These codes are not medium-based and should also be applied to VSPs, where possible.

4.2.7.1.5. Role of the (self-)regulatory bodies

The JEP is primarily responsible for overseeing the correctness and fairness of commercial messages to the public and can serve as an out-of-court redress mechanism for consumers against advertisers.

Within its scope, the JEP can also be in charge of assessing the content of communication through the prism of applicable advertising legislation and ethical codes.

Also, recommendations of the Jury on Ethical Practices in Advertising apply to influence marketing, that is to say marketing that meets two conditions: consideration given to the influencer and control exercised by the advertiser over the commercial message delivered by the influencer. Where there is a situation of influence marketing and the commercial communication is not clearly identifiable as such, a complaint can be made to the JEP. These recommendations are self-regulatory in nature and are binding on those who have committed to them.

4.2.7.1.6. Period of activity (if limited)

N/A.

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

Both the Communication Centre and the JEP operate completely independently from the government and from political, social and religious organisations.

4.2.7.1.7.1. *Regulatory body*

N/A.

4.2.7.1.7.2. *Co-regulatory scheme*

N/A.

4.2.7.1.7.3. *Relationship and roles of stakeholders*

N/A.



4.2.7.2. Monitoring/evaluation, compliance and sanctioning powers

As provided under 4.2.2.2.1., the CSA can assess whether the obligatory VSP measures regarding commercial communications have been applied by the video-sharing service provider, and, if deemed inappropriate, can invite VSPs to adopt appropriate corrective measures, or can impose sanctions.

Also, the JEP operates on the basis of complaints and *a priori* requests for advice. It does not proactively monitor compliance with the law and self-regulatory codes. Specifically, the JEP can make three types of decisions: not formulate any comments; order the advertiser to change or stop the advertisement (in the absence of compliance, a recommendation of suspension is sent to the media); issue a recommendation of reservation, leaving the responsibility with the advertiser, the advertising agency and the media. Decisions of the JEP are non-binding and based on the voluntary commitment of advertisers, communications agencies and advertising media.

4.2.8. Cross-sector and cross-border collaboration

The JEP is a member of the European Advertising Standards Alliance (EASA).⁶² The purpose of this organisation is to promote and support the current systems of self-regulation, to coordinate the actions of the EASA members on the handling of cross-border complaints, to conduct research among members in order to draw up the European balance of compliance with certain principles in advertising and to act as an interlocutor with the European policy authorities.

In practice, complaints about commercial communication distributed in Belgium by foreign media can be handled by the competent self-regulatory body through a referral procedure established within the EASA.

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

N/A.

⁶² European association which brings together the advertising self-regulatory bodies of 25 European and some non-European countries, <https://www.easa-alliance.org/>.



4.2.10. Studies, reports and research

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

- CSA Analyse du décret du 4 février 2021 relatif aux services de medias audiovisuels et aux services de partage de vidéos (Analysis of the Decree of 4 February 2021 on audiovisual media services and video-sharing services 2021)⁶³

4.2.11. Data compilation

This factsheet is based on data compiled by Pierre-Emmanuel Mouthuy and Alexandra Moyen Attorneys-at-law at Mouthuy Avocats sprl.

⁶³ <https://www.csa.be/wp-content/uploads/2021/10/Note-danalyse-du-nouveau-decret-SMA-du-4-fevrier-2021.pdf>.



4.3. BE (VL) – Flemish Community of Belgium – National legal summary⁶⁴

4.3.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- *Decreet van 27 maart 2009 betreffende radio-omroep en televisie*⁶⁵ (Decree of 27 March 2009 on radio broadcasting and television).⁶⁶
- Decreet van 19 maart 2021 tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie, wat betreft de gedeeltelijke omzetting van richtlijn (EU) 2018/1808 van het Europees Parlement en de Raad van 14 november 2018 tot wijziging van Richtlijn 2010/13/EU betreffende de coördinatie van bepaalde wettelijke en bestuursrechtelijke bepalingen in de lidstaten inzake het aanbieden van audiovisuele mediadiensten (richtlijn audiovisuele mediadiensten) in het licht van een veranderende marktsituatie⁶⁷ (Decree of 19 March 2021 amending the decree of 27 March 2009 on radio and television broadcasting, as regards the partial transposition of Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive – AVMSD) in view of changing market realities – Media Decree).
- *Wetboek van economisch recht, BS 29 maart 2013, 19975*⁶⁸ (Code of Economic Law, Belgian Official Gazette 29 March 2013, 19975).
- Koninklijk besluit betreffende de voorwaarden voor het uitbaten van kansspelen en weddenschappen via informatiemaatschappij-instrumenten⁶⁹ (Royal Decree on the conditions for operating games of chance and betting via information society instruments).

⁶⁴ The factsheet on Belgium (Flemish Community) incorporates the feedback received from Dirk Peereman, Registrar at the Flemish Regulatory Authority for the Media (VRM) during the checking round with the national regulatory authorities.

⁶⁵ https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_27_maart_2009_18b.pdf.

⁶⁶ https://www.vlaamseregulatormedia.be/sites/default/files/mediadecreet_-_engelse_vertaling_bijgewerkt_tot_8_mei_2020.pdf.

⁶⁷ <https://codex.vlaanderen.be/PrintDocument.ashx?id=1035496&datum=&geannoteerd=false&print=false>.

⁶⁸ <https://www.ejustice.just.fgov.be/eli/wet/2013/02/28/2013A11134/justel>.

⁶⁹ https://etaamb.openjustice.be/nl/koninklijk-besluit-van-25-oktober-2018_n2018015153.html#:~:text=Het%20voorliggende%20besluit%20bevat%20diverse.met%20betrekking%20tot%20de%20reclame.



Secondary legislation:

- Memorie van toelichting bij ontwerp van decreet tot wijziging van het decreet van 27 maart 2009 betreffende radio-omroep en televisie, 12 februari 2021, 644 (2020-2021) – Nr. 1.⁷⁰ (Explanatory Memorandum to the draft decree amending the decree of 27 March 2009 on radio and television broadcasting, 12 February 2021, 644 (2020-2021) - No 1).

Self- and co-regulatory instruments:

- *Communicatie Centrum, Aanbevelingen van het Communicatie Centrum inzake Influencer Marketing, april 2022*⁷¹ (Communications Centre, Recommendations from the Communications Centre on Influencer Marketing, April 2022).
- *Convenant voor Ethische en Verantwoorde Reclame voor en marketing van Kansspelen*⁷² (Covenant on Ethical and Responsible Advertising and Marketing of Games of Chance).
- International Chamber of Commerce (ICC) Advertising and Marketing Communications Code, 2018 edition.⁷³
- European Gaming and Betting Association (EGBA), Code of Conduct on Responsible Advertising for Online Gambling.⁷⁴
- *Raad voor het Verbruik, Milieureclamecode, 1998*⁷⁵ (The Consumer Council, Environmental Advertising Code).
- Content Creator Protocol (CCP), Flemish Media Regulator (Vlaamse Regulator voor de Media), December 2021.⁷⁶

4.3.2. 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

⁷⁰ This memorandum is part of a more general document from the Flemish Parliament relating to the draft decree amending the 2009 decree on radio and TV broadcasting, available at:

<https://docs.vlaamsparlement.be/pfile?id=1659775>.

⁷¹ https://www.jep.be/wp-content/uploads/2022/04/influencers_NL.pdf.

⁷² https://bago.be/wp-content/uploads/2020/08/Final_Convenant-Advertising-NL.pdf.

⁷³ <https://iccwbo.org/content/uploads/sites/3/2018/09/icc-advertising-and-marketing-communications-code-int.pdf>.

⁷⁴ <https://www.egba.eu/uploads/2020/04/200625-EGBA-Code-of-Conduct-on-Responsible-Advertising-for-Online-Gambling.pdf>.

⁷⁵ https://www.jep.be/sites/default/files/rule_recommendation/milieu_nl.pdf.

⁷⁶ <https://www.vlaamseregulatormedia.be/nl/content-creator-protocol>.



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.

4.3.2.1. Definitions

Table 29. Definition of the main concepts related to commercial communications

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

Source: Flemish community of Belgium's response to European Audiovisual Observatory standardised survey

4.3.2.1.1. Audiovisual commercial communications

Article 2, 5° of the amended Media Decree defines audiovisual commercial communications by transposing the text of the revised AVMSD verbatim, as follows:

Commercial communication: Images, whether or not accompanied by sound, or sounds 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 or sounds accompany or are included in a programme or in user-generated content in return for payment or for similar compensation or for self-promotional purposes. Types of commercial communication include, inter alia, advertising, sponsoring, teleshopping and product placement.

4.3.2.1.2. Television advertising

While there is no definition of television advertising, Article 2, 35° of the amended Media Decree defines advertising as follows:



Advertising: the audiovisual or audio message transmitted by a public or private company or natural person – in any form – related to the exercise of a commercial, industrial, or trading activity or of a profession to promote the supply of goods or services in return for payment, including immovable goods, rights and duties, which are then broadcast in the frame of a linear broadcasting service, in return for payment or similar compensation or for self-promotional purposes in a linear broadcasting service.

4.3.2.1.3. Advertiser

There is no definition of advertiser.

4.3.2.1.4. Surreptitious commercial communication

The second paragraph of Article 54 of the amended Media Decree defines surreptitious commercial communications as follows:

Surreptitious advertising, as referred to in the first section, should be taken to mean any form of commercial communication which consists of mentioning or representing goods, services, the name, trademark or activities of a manufacturer of goods or a service provider in programmes, when such representation is intended by the broadcaster to serve as advertising and the general public can be misled as regards the nature of the representation. This intention is, in particular, deemed to be present if the mentioning or representation occurs in return for payment or other compensation.

4.3.2.1.5. Misleading commercial communication

Article 60, paragraph 2 of the Media Decree used to define misleading commercial communications as follows:

Misleading commercial communication should be taken to mean any type of advertising which misleads or may mislead the people that it targets or reaches, in any manner, including by its layout, and which can influence their economic behaviour due to its misleading character, or which harms or may harm a competitor for the above reasons.

However, this article was deleted by the amending Decree and there is currently no longer a definition of misleading commercial communication included in the amended Media Decree because Article 60 of the Media Decree was considered to already be covered by Articles 4 and 5 of ICC Advertising and Marketing Communication Practice Code (hereinafter: the ICC Code), while Article 61 of the Media Decree has been covered by Article 9 of the ICC Code. However, Article. VI.97-VI.100 of the Belgian Code of Economic Law provide for a definition of “misleading commercial practices:



A commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct...

In addition, some Articles of the ICC Code, referred to in the Explanatory to the draft decree amending the decree of 27 March 2009 on radio and television broadcasting, provide further clarification by listing recommendations on how marketing communication should be formulated so as not to mislead the public:

Article 4 – Honesty

Marketing communications should be so framed as not to abuse the trust of consumers or exploit their lack of experience or knowledge.

Relevant factors likely to affect consumers' decisions should be communicated in such a way and at such a time that consumers can take them into account.

Article 5 – Truthfulness

Marketing communications should be truthful and not misleading.

Marketing communications should not contain any statement, claim or audio or visual treatment which, directly or by implication, omission, ambiguity or exaggeration, is likely to mislead the consumer, in particular, but not exclusively, with regard to:

- characteristics of the product which are material, i.e. likely to influence the consumer's choice, such as: the nature, composition, method and date of manufacture, range of use, efficiency and performance, quantity, commercial or geographical origin or environmental impact*
- the value of the product and the total price to be paid by the consumer*
- terms for the delivery, provision, exchange, return, repair and maintenance*
- terms of guarantee*

Article 9 – Use of technical/scientific data and marketing communications should not:

- misuse technical data, e.g. research results or quotations from technical and scientific publications*
- present statistics in such a way as to exaggerate the validity of a product claim*
- use scientific terminology or vocabulary in such a way as to falsely suggest that a product claim has scientific validity.*

4.3.2.1.6. Virtual advertising

There is no definition of virtual advertising.

4.3.2.1.7. Sponsorship

Sponsorship is defined in Article 2, 41° of the amended Media Decree:



Sponsorship: every contribution by a public or private company or a natural person not engaged in providing broadcasting services or video-sharing platform services, or producing audiovisual or audio works, to the financing of broadcasting services, video-sharing platform services, user-generated content or programmes, with the aim of raising awareness of its name, trademark, image, activities or products.

4.3.2.1.8. Sponsor

There is no definition of sponsor.

4.3.2.1.9. Sponsored content

There is no definition of sponsored content.

4.3.2.1.10. Product placement

Article 2, 30° of the amended Media Decree defines product placement by transposing the text of the revised AVMSD verbatim, as follows:

Product placement: any form of audiovisual commercial communication, which consists of integrating or referring to a product or service or related trademark within the frame of a programme or user-generated content, in return for payment or similar consideration.

4.3.2.1.11. Other definitions

N/A.

4.3.2.2. 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.

In this respect, it should be stressed that Article 176/5 of the Media Decree determines that VSP providers shall, for commercial communications marketed, sold or arranged by themselves, comply with the requirements set out in Articles 52-55 (relating to the obligatory identifiability of commercial communications, the prohibition of surreptitious advertising and commercial communications that are in conflict with legal provisions, or that violate human dignity, incite violent or discriminatory behaviour or contain or promote any form of discrimination). Furthermore, the same applies to provisions from Article 62 (relating to behaviour that is detrimental to health or safety or that is highly



harmful to the environment), Articles 65-69 (prohibition of: cigarettes and other tobacco products; medicinal products for human use and medical treatments for human use only available as prescription treatments; arms, as well as restrictions vis-à-vis commercial communication regarding alcoholic beverages and candy which contains sugar). Finally, VSPs are also obliged to respect provisions relating to the protection of minors (Articles 71-77) and sponsorship (Articles 90-97).

Article 176/5 of the Media Decree:

Providers of video platform services are free to market, sell or organise commercial communications, with the exception of the restrictions and obligations set forth in this Decree.

For commercial communications which the providers of video platform services market, sell or organise, they shall comply with the provisions set out in Articles 52-55, Article 62, Articles 65-69, Articles 71-77 and Articles 90-97.

For commercial communications that are not marketed, sold or arranged by themselves, Article 176/6, paragraph 1 of the amended Media Decree requires them to take appropriate measures to comply with the requirements of Articles 52-55, Article 62, Articles 65-69, Articles 71-77 and Articles 90-101:

Article 176/6

The providers of video platform services shall take the following appropriate measures to comply with the requirements referred to in Articles 52-55, Article 62, Articles 65-69, Articles 71-77, and Articles 90-101.

In addition, certain provisions of other legislative acts, such as the Belgian Code of Economic Law, apply, in addition to the ICC Code, which provides guidelines as to how to comply with the Media Decree.

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

VSPs must comply with the requirements of Article 65, which prohibits: “Commercial communications about cigarettes, electronic cigarettes and refill containers and other tobacco products”. Furthermore, they must also comply with Article 68 which lays down the requirements for the advertising of alcoholic beverages, as follows:

Commercial communications regarding alcoholic beverages shall comply with the following criteria: 1° they shall not be aimed specifically at minors or, in particular, depict minors consuming these beverages; 2° they shall not link the consumption of alcohol to enhanced physical performance or to motorised driving; 3° they shall not create the impression that the consumption of alcohol contributes to social or sexual success; 4° they shall not claim that alcohol has therapeutic qualities or that it has stimulating, sedative or stress-reducing effects; 5° they shall not encourage immoderate alcohol consumption or present abstinence or moderate alcohol consumption in a



negative light; 6° they shall not place emphasis on the high alcohol percentage of beverages as being a positive characteristic.

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

Article 66 of the amended Media Decree provides that “commercial communication about medicinal products for human use and medical treatments for human use, which are only available on prescription, is prohibited”. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2. Article 66 is applicable to commercial communication on VSPs.

4.3.2.2.3. Surreptitious audiovisual commercial communications

Surreptitious advertising is prohibited according to Article 54 of the amended Media Decree. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Article 54 is applicable to commercial communication on VSPs.

4.3.2.2.4. Subliminal techniques in commercial communications

Article 54/1 of the amended Media Decree sets out a prohibition against the use of subliminal techniques in commercial communications and public service announcements. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Article 54/1 is applicable to commercial communication on VSPs. The Explanatory Memorandum (p. 34) defines subliminal techniques as techniques that hide a commercial message or signal in a programme or a broadcasting service without the viewer consciously noticing it.

4.3.2.2.5. Prejudice with regard to human dignity

According to Article 55, 1° of the amended Media Decree: “Commercial communications may not be set up in such a way that they: 1° prejudice human dignity”. When it comes to commercial communications for children⁷⁷ and young people,⁷⁸ Article 74, paragraph 1 specifies that these commercial communications must “respect the dignity of children and young people and may not portray children and young people in such a way that their physical or moral integrity is prejudiced or endangered”. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Articles 55 and 74, paragraph 1 are applicable to commercial communication on VSPs.

⁷⁷ As per Article 2, 18° of the amended Media Decree, a child means “any person under the age of twelve”.

⁷⁸ As per Article 2, 15/1° of the amended Media Decree young people means: “any person between twelve and sixteen years of age”.



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

Article 55, 2° of the amended Media Decree prohibits commercial communications to be set up in such a way that they contain or promote any form of discrimination on the following grounds: “a) gender; b) race or ethnic origin; c) nationality; d) religion or philosophy of life; e) disability; (f) age; (g) sexual orientation”. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Article 55 is applicable to commercial communication on video-sharing platforms.

In addition to this prohibition, Article 176/4 goes further by requiring VSPs to take appropriate measures to:

protect the general public from programmes, user-generated content and commercial communications which incite violence or hatred towards a group of persons or member of a group based on: a) gender; b) race; c) colour; d) ethnic or social origin; e) genetic features; f) language; g) religion or belief; h) political or other opinion; i) membership of a national minority; j) property; k) birth; l) disability; m) age; n) sexual orientation.

4.3.2.2.7. Encouragement of behaviour prejudicial to health or safety

Encouraging behaviour prejudicial to health or safety is strictly prohibited in commercial communications by Article 62 of the amended Media Decree, which also encompasses behaviour that is “highly harmful to the environment”. Further restrictions are introduced for commercial communications aimed at children and young people by Article 74, paragraph 3 and paragraph 4 which also prevents such communications from discouraging compliance with safety rules in certain areas such as traffic safety, domestic situations, or medicinal products. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Articles 62 and 74 are applicable to commercial communication on VSPs.

Article 38 of the Media Decree determines the same for the broad category of broadcasting activities (*omroepactiviteiten*) – which also covers VSPs by stating that broadcasting activities may not incite violence or hatred against a group of persons or a member of a group of persons on the same grounds as mentioned above, nor publicly incite the commission of a terrorist offence as referred to in Articles 137 and 140bis of the Penal Code.

In addition to these restrictions, as per Article 176/4, paragraph 1, 3°, VSPs are required to take appropriate measures to protect the general public from commercial communications the dissemination of which constitutes a criminal offence.

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

As mentioned in the previous section, the prohibition in Article 62 of the amended Media Decree on commercial communication likely to encourage behaviour prejudicial to health or safety also includes behaviour that is “*highly harmful to the environment*”. Furthermore,



the former Article 62, paragraph 2 of the Media Decree stated that commercial communications and public service announcements could not contain elements that could mislead the viewer or listener as to environmental impact. This article was deleted by the amending decree as the legislator considered this issue to be covered by Articles 17 and 22 (Explanatory Memorandum, pp. 37-38) of the ICC Code, which states the following:

Article 17

Marketing communications should not, without justification on educational or social grounds, contain any visual portrayal or any description of potentially dangerous practices, or situations which show a disregard for safety or health, as defined by local national standards.

...

Article 22

Marketing communications should not appear to condone or encourage actions which contravene the law, self-regulatory codes or generally accepted standards of environmentally responsible behaviour. They should respect the principles set out in chapter D, Environmental Claims in Marketing Communications.

4.3.2.2.9. Causing physical, mental or moral detriment to minors

Article 74, paragraphs 3 and 4 of the amended Media Decree prohibit commercial communications aimed at children and young people that encourage behaviour prejudicial to health or safety or discourage them from compliance with safety rules. In addition, a series of requirements and restrictions that must be observed by commercial communications aimed at children and young people is set out in Article 72, which substantially implements the requirements in Article 9 (1) g. of the AVMS Directive, and in Article 73, which goes further by requiring the adoption of a certain sense of social responsibility when creating commercial communications. Such social responsibility can include, for instance, a requirement “not to undermine positive social behaviour, lifestyles and attitudes” or “not to undermine the authority, the responsibility or the judgement of parents and educators”. As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2, Articles 72, 73 and 74 are applicable to commercial communication on VSPs.

In addition, a general obligation in line with the requirement of Article 28b of the AVMS Directive requires VSPs to take appropriate measures to “protect minors from programmes, user-generated content and commercial communications that could impair the physical, mental or moral development of minors as referred to in Article 42 of this Decree” as per Article 176/4, paragraph 1 of the amended Media Decree. Such appropriate measures may include age verification or parental control systems, as mentioned under 5° and 7° of Article 176/4, paragraph 2 and 176/6, paragraph 1.

The amended Media Decree and in particular the Explanatory Memorandum include certain references to direct marketing, profiling and behaviourally targeted advertising in relation to the rules on the protection of minors. In the context of the prohibition of the

processing for commercial purposes of personal data of minors obtained for the purpose of protecting minors from potentially harmful content,⁷⁹ the Explanatory Memorandum (pp. 30, 52-53, 55 and 58) clarifies that direct marketing, profiling and behavioural advertising constitute examples of such commercial purposes, but without providing a definition of these advertising techniques. Article 176/4, paragraph 2 and Article 176/6, paragraph 1 of the Media Decree prohibit VSP providers from processing the personal data of minors that they collect in the context of age verification and parental control.

4.3.2.2.10. Other

As mentioned at the beginning of section 4.3.2.2., the amended Media Decree refers to a number of other articles which must be complied with (in the case of Article 176/5) and in the light of which appropriate measures for such compliance must be taken (in the case of Article 176/6). This includes a prohibition against commercial communications concerning arms (Article 67). Articles 53 and 71 also provide that commercial communications, including those aimed at children and young people (Article 71), must be easily identifiable or recognisable as such. More generally, VSPs have to clearly inform users about the presence of commercial communications in programmes or user-generated content when they are aware of this as per Article 176/7.

Other restrictions have also been established to protect minors from commercial communications aimed at them, in addition to the restrictions already established to prevent those that may cause physical, mental or moral harm (see section 4.3.2.2.9. above). Article 76, for example, sets out rules to protect children from advertising that exploits their naivety and vulnerability by preventing commercial communications from pretending “that the ownership or use of a given product will give them a benefit compared to other children, or that the fact that they do not own a given product will result in the opposite effect”.

With regard to such communications concerning foods or beverages, Article 77 prohibits them from “encourag[ing] or trivialis[ing] the excessive intake of food and beverages containing nutrients of which immoderate use is not recommended, such as fats, trans-fatty acids, salt or sodium or sugars” while Article 69 adds some specific requirements for communications pertaining to candy which have to “show a stylised image of a toothbrush in a clear and contrasting manner for the duration of the commercial communication, respecting a size limitation of one tenth of the height of the film image, as shown below”.



⁷⁹ Broadcasters, video-sharing platform providers and services providers shall protect minors from potentially harmful content, as envisaged by the amended Media Decree (see Article 42 for broadcasters, Articles 176/4, paragraph 2 and Article 176/6, paragraph 1 i) for video-sharing platform providers and Article 183/1 for service providers).



4.3.3. Sponsorship and product placement

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

4.3.3.1. Sponsorship

The general requirements for sponsored services or programmes are set out in Article 91 of the Media Decree, which stipulates the following:

- 1° the content, and in the case of linear broadcasts, the programming shall never be influenced in such a manner by the sponsor that the responsibility and the editorial independence of the broadcaster are affected;*
- 2° they shall not directly encourage the purchase or rental of goods or services, in particular by specifically promoting these goods or services;*
- 3° viewers and listeners shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes or teletext pages shall be clearly identified as such by mentioning the name and/or logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way at the beginning, during and/or at the end of the programme or the programme segment or teletext pages.*

In addition, several restrictions related to the sponsor's activity are laid down in the decree: their principal activity cannot be linked to the "manufacture or sale of cigarettes and other tobacco products, electronic cigarettes and refill containers" (Article 93) or to the "manufacture or sale of alcoholic beverages" in the case of children's programmes (Article 94). And when the sponsor's activities include the manufacture or sale of medicinal products and medical treatments, Article 95 specifies that the sponsorship "may promote the name or image of the company, but may not promote specific medicinal products or medical treatments which are available only on prescription in Belgium".

Other restrictions also pertain to the type of programme or service sponsored: news and political affairs programmes may not be sponsored, for example (Article 96), while children's programmes may be sponsored, but the mention or display of a sponsor's logo during the programme is prohibited (Article 97). As per Article 176/5 *in fine* and 176/6 mentioned at the beginning of section 4.3.2.2., Articles 91 and 93 to 97 are applicable to commercial communications on VSPs.

4.3.3.2. Product placement

In Article 100, the amended Media Decree sets out certain general requirements with which product placements must comply. They are as follows:



1° the content, and in the case of linear broadcasts the organisation within a schedule, or the inclusion in a catalogue in the case of non-linear television broadcasts, will never be influenced in such a way that the responsibility and the editorial independence of the broadcaster are affected;

2° they shall not directly encourage the viewer to purchase or rent goods or services, in particular by specifically recommending these products or services;

3° the product or the service in question is not given undue prominence;

4° if the programme in question is produced or ordered by the broadcaster itself or by an undertaking associated with it, viewers shall be clearly informed of the existence of product placement. The programme in question shall be identified appropriately at the start and at the end of the programme, and when a programme resumes after an advertising break, in order to avoid confusion on the part of the viewers. The Flemish Government can lay down further rules in this regard.

In addition, two other restrictions concerning the type of products are established, with a ban on product placement for: “cigarettes and other tobacco products, electronic cigarettes and refill containers or undertakings of which the principal activity consists of the manufacture or sale of such products” and for “specific medicinal products or medical treatments, which are only available on prescription in Belgium” (Article 101). These restrictions can also concern the type of programme, with a ban on product placement in: “1° news and political affairs programmes; 2° consumer affairs programmes; 3° religious programmes; 4° children’s programmes” (Article 99). As per Article 176/6 mentioned at the beginning of section 4.3.2.2., Articles 99-101 are applicable to commercial communications on VSPs.

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

(V)bloggers have been included in the scope of the amended Media Decree, under the condition that they qualify as providers of a “broadcasting service” in the sense of Article 2, 26°. ⁸⁰ This inclusion is explicitly recognised in the Explanatory Memorandum (pp. 25 and 44-45), which stipulates that channels or other audiovisual or audio services under the editorial responsibility of a broadcaster may constitute broadcasting services in their own right, even if they are offered on a VSP service which does not enjoy editorial responsibility. This inclusion was not explicitly mentioned in the amended Media Decree as such but was made possible by certain changes introduced by the amending decree, such as the introduction of the words “irrespective of its duration” in the definition of programmes in

⁸⁰ Article 2, 26°: broadcasting service: a) a service as mentioned in Articles 56 and 57 of the Treaty on the Functioning of the European Union, which is under the editorial responsibility of a broadcaster and of which the principal purpose of the service or a dissociable section thereof consists of providing audiovisual or audio programmes to the general public, in order to inform, entertain, educate or of a cultural nature, by means of electronic communication networks. Broadcasting services are radio services or television services; b) commercial communication.



Article 2, 31°, which explicitly enabled “video clips” and other forms of user-generated content to qualify as programmes:

Programme” means a sequence of moving images, with or without sound, or a sequence of sounds or noises, which irrespective of its duration, constitutes a separate element of a schedule drawn up by a broadcaster or of a broadcaster or a catalogue prepared by a broadcaster, including cinematographic films, video clips, sports events, comedy series, documentaries, children’s programmes and original drama;

Moreover, in order to provide more clarity on the legal framework applicable to this type of service, the Flemish Media Regulator (*Vlaamse Regulator voor de Media*) published the CCP⁸¹ in December 2021, which clarifies the relevant rules from the amended Media Decree that are applicable to content creators, (v)bloggers and influencers established in Flanders around three main themes: commercial communication on social media; commercial communication and content aimed at minors; and the prohibition of hate speech and incitement to violence. Additionally, on 25 April 2022, recommendations concerning influencer advertising were published by the Communications Centre⁸². On that same day, the Federal Public Service (FPS) Economy (Ministry of Economic Affairs) also published best practices⁸³ with regard to advertising by content creators or influencers. Finally, the Flemish Government is facilitating a self-regulatory influencer code, which will serve as a general source point of information for influencers.⁸⁴

4.3.5. Other relevant information

N/A.

4.3.6. 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

⁸¹ <https://www.vlaamseregulatormedia.be/nl/content-creator-protocol>.

The CCP will also be available in English, in the relevant part of the VRM-website, in due course.

⁸² i.e. the professional organisation gathering together advertisers, media, communication agencies and actors from the digital sector in Belgium. The Communications Centre dedicates a large part of its resources to the Jury on Ethical Practices in Advertising (JEP), which is the independent supervisory body.

⁸³ <https://economie.fgov.be/nl/themas/verkoop/reclame/u-bent-contentcreator>.

⁸⁴ At the time of preparing this factsheet, the code was expected by mid-2022.



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

4.3.6.1. 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.

4.3.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue. However, Article 52 of the amended Media Decree states that “[p]roviders of broadcasting services may not broadcast any commercial communications and public service announcements that are in conflict with legal provisions”.

As per Article 176/5 *in fine* and 176/6, paragraph 1 of the amended Media Decree mentioned at the beginning of section 4.3.2.2., Article 52 is applicable to commercial communication on VSPs. This implies that the Flemish Media Regulator is able to act against violations of national gambling laws in videos on VSPs, such as the requirements of Articles 2 to 5 of the Royal Decree on the conditions for the operation of gambling and betting via information society instruments,⁸⁵ which set out the requirements for advertising for gambling and betting via information society instruments.

Additionally, self-regulatory instruments also apply in this area, such as the Covenant on Ethical and Responsible Advertising and Marketing of Games of Chance signed by the Belgian Association of Gaming Operators (BAGO)⁸⁶ which contains rules for a responsible gambling policy that informs players, prevents excessive gambling and protects minors. These rules include, for example, the requirement “not to exaggerate the chances of winning”, “not to cause or maintain an addiction to gaming” or “take advantage of the vulnerability of persons with financial difficulties”. BAGO has also adopted the European Code of Conduct on Responsible Advertising for Online Gambling⁸⁷ by the EGBA⁸⁸ which includes certain specific rules concerning gambling advertising on social media such as the rule that requires that “[g]ambling operators’ profiles and pages on social media should clearly state the legal age limit for gambling”.

⁸⁵

https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2018102503&table_name=wet

⁸⁶ BAGO brings together five leading companies in the gambling sector, together representing approximately 70% of the Belgian online and offline private gambling market. <https://bago.be/>

⁸⁷ Ibid.

⁸⁸ EGBA is the Brussels-based trade association representing the leading online gaming and betting operators established, licensed and regulated within the EU. <https://www.egba.eu/>



4.3.6.3. Environmental or “green” claims for products

The issue of environmental claims for a product in the context of misleading advertising is addressed by the Explanatory Memorandum (pp. 36-37) that refers to Article 5 of the ICC Code,⁸⁹ which provides, *inter alia*, that commercial communications should not mislead the consumer in particular, but not exclusively, with regard to: characteristics of the product which are material, i.e. likely to influence the consumer’s choice, such as “the geographical origin or environmental impact”. Other relevant self-regulatory tools exist in Belgium in this respect, including certain provisions of the Environmental Advertising Code of the Consumer Council, which explicitly addresses the issue of misleading advertising through false environmental claims in Articles 1, 3, 7 and 14.

In particular, Article 3 provides that:

Advertisements may not contain a claim, designation, image or representation that could directly or indirectly mislead as to the characteristics and features of a product or service with regard to its environmental impact.

Articles 7 and 14 further stipulate as follows:

Article 7:

Expressions, claims or absolute slogans, such as “environmentally friendly” or “ecologically safe”, etc., which implicitly indicate that a product or service has no impact on the environment at any stage of its life cycle, are prohibited unless evidence is provided in conformity with Article 14 of this code.

Article 14:

The advertiser must be able to justify with certainty and without delay any claim, indication, image or representation referring to environmental effects. To the extent considered necessary by the body that will enforce the Code, to be valid, the evidence must be accepted by an organisation or person recognised by all parties involved.

4.3.6.4. Other

N/A.

4.3.7. 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

⁸⁹ The full article is quoted in section 4.3.2.1.5. of this factsheet.



powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs.

4.3.7.1. Self- and co-regulatory bodies

4.3.7.1.1. Context of establishment and legal background

The Communications Centre (formerly the Council of Advertising) is the professional organisation that unites and represents the various actors of the communication sector and organises the self-regulation of advertising in Belgium. It aims at improving, valorising and defending commercial communication and commercial freedom of expression. Since 1974, the Communications Centre has devoted a large part of its resources to the Jury on Ethical Practices in Advertising (JEP)⁹⁰, the independent self-regulatory organisation of the Belgian advertising industry established within the Centre. JEP is founded and funded by the voluntary cooperation of the advertising industry and is responsible for examining whether commercial communication complies with the relevant legislation and self-regulatory codes.

On 25 April 2022, the Communications Centre published the Recommendations on Influencer Marketing, which are in fact an update of the Recommendations from the Council of Advertising on Online Influencers of October 2018.

4.3.7.1.2. Stakeholders involved

The Recommendations on Influencer Marketing have been produced with the support of the members of the Communications Centre, especially the industry/professional associations of the UBA (association of advertisers United Brands Association),⁹¹ the Association of Communication Companies ACC,⁹² the association of Belgian AVMS providers VIA,⁹³ the news media alliance LA PRESSE.be,⁹⁴ the association of Flemish News Media VNM,⁹⁵ the Belgian magazine, free press and newspaper publishers association WE MEDIA⁹⁶ and the Association of Hearing Aid Professionals (AEA),⁹⁷ and in collaboration with FeWeb⁹⁸. These recommendations are supported by the different actors of the communications sector who strongly encourage influencers, agencies, media and platforms to respect them.

⁹⁰ Jury voor Ethische Praktijken inzake Reclame <https://www.jep.be/>

⁹¹ <https://www.ubabelgium.be/>.

⁹² <https://www.acc.be/>.

⁹³ <https://thinkvia.be/en/>.

⁹⁴ <https://www.lapresse.be/>.

⁹⁵ <https://www.vlaamsnieuwsmedia.be/>.

⁹⁶ <https://wemedia.be/>.

⁹⁷ <https://www.aea-audio.org/portal/index.php/member-countries/item/151-belgium>.

⁹⁸ FeWeb is the professional association of digital companies: Federatie van Webbedrijven – FeWeb, <https://www.feweb.be/nl/>.



4.3.7.1.3. Scope and objectives

The aim of these recommendations is to help influencers, advertisers, agencies, media and platforms to protect consumers and ensure legal certainty. With regard to their scope, these recommendations apply to influencers insofar as they are engaged in a commercial relationship. As per these recommendations, a commercial relationship starts to exist when the influencer receives or has the opportunity to receive remuneration in kind or in money from the advertiser or the agency acting on her/his behalf in return for communicating about a brand, product, service or organisation. Any such commercial relationship should be immediately clear to the viewer.

The scope of the recommendations includes:

- ACCs which encourage behaviours grossly prejudicial to the protection of the environment
- Inappropriate ACCs for alcoholic beverages

4.3.7.1.4. Code(s) of conduct

The JEP does not only supervise compliance with the guidelines on influencer marketing, it also examines whether commercial communication is in conformity with (1) legislation (including the Media Decree and the Code of Economic Law) and (2) relevant self-regulatory codes.

The most relevant self-regulatory code is the aforementioned ICC Code as most other codes are based on this one. The other codes can be divided into sectoral (e.g. relating to food or alcoholic drinks) and intersectoral codes (e.g. the environmental advertising code), as well as recommendations (e.g. on influencer marketing or advertising for weight loss products). These codes are not medium-based and should also be applied on VSPs, where possible.

4.3.7.1.5. Role of the (self-)regulatory bodies

The JEP is primarily responsible for overseeing the correctness and fairness of commercial messages to the public and can serve as an out-of-court redress mechanism for consumers against advertisers.

Within its scope, the JEP can also be in charge of assessing the content of communications through the prism of applicable advertising legislation and ethical codes.

4.3.7.1.6. Period of activity (if limited)

N/A.



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

Both the Communications Centre and the JEP operate completely independently from the government and from political, social and religious organisations.

4.3.7.1.7.1. *Regulatory body*

N/A.

4.3.7.1.7.2. *Co-regulatory scheme*

N/A.

4.3.7.1.7.3. *Relationship and roles of stakeholders*

N/A.

4.3.7.2. Monitoring/evaluation, compliance and sanctioning powers

The JEP operates on the basis of complaints and a priori requests for advice. It does not proactively monitor compliance with the law and self-regulatory codes. Specifically, the JEP can make three types of decisions: a decision not to formulate any comments; a decision for the advertiser to change or stop the advertisement (in the absence of compliance, a recommendation of suspension is sent to the media); and a decision to reserve a recommendation, leaving the responsibility with the advertiser, the advertising agency and the media. Decisions of the JEP are non-binding and based on the voluntary commitment of advertisers, communications agencies and advertising media.

4.3.8. Cross-sector and cross-border collaboration

The JEP is a member of the European Advertising Standards Alliance (EASA).⁹⁹ The purpose of this organisation is to promote and support the current systems of self-regulation, to coordinate the actions of EASA members for the handling of cross-border complaints, to conduct research among its members in order to assess the level of compliance within Europe with certain principles in advertising and to act as an interlocutor with the European policy authorities.

In practice, complaints about commercial communications distributed in Belgium by foreign media can be handled by the competent self-regulatory body through a referral procedure established within the EASA.

⁹⁹ European association which brings together the advertising self-regulatory bodies of 25 European and some non-European countries, <https://www.easa-alliance.org/>.



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

Articles 176/4, paragraph 4 and 176/6, paragraph 3 of the amended Media Decree state that the Flemish Government will lay down further rules in relation to the obligations of VSPs. No initiatives to this end have yet been taken at the time of preparing this factsheet.

4.3.10. Studies, reports and research

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

- The impact of influencers on advertising and consumer protection in the Single Market,¹⁰⁰ the European Parliament's Committee on Internal Market and Consumer Protection (IMCO), February 2022
- Research report "Towards a code of ethics for social media influencers",¹⁰¹ University of Ghent (research group CEPEC) and Artevelde Hogeschool, 11 May 2021
- SMI Barometer. How do Belgian youngsters experience branding and influencer marketing via social media?,¹⁰² Artevelde Hogeschool, May 2021

4.3.11. Data compilation

This factsheet is based on data compiled by Nadia Feci, doctoral researcher at both KU Leuven (CITIP) and Ghent University (Law & Technology).

¹⁰⁰ [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU\(2022\)703350_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf).

¹⁰¹ <https://www.ugent.be/ps/communicatiewetenschappen/cepec/en/news-events/news/influencercode>.

¹⁰² https://smib.be/wp-content/uploads/2021/05/SMI-barometer_2021-4.pdf.