



ADVERTISING LAW

SWISS PROVISIONS WITH REFERENCE TO THE
COUNTRY-OF-ORIGIN PRINCIPLE

July 2020

GOLDBACH

**YOUR
MESSAGE
IS OUR
PASSION**

NEXT STEPS

- 1 Definition of country-of-origin principle
- 2 Swiss/German advertising law
- 3 Brief overview of restrictions
- 4 Special restrictions
- 5 Further information

DISCLAIMER

Please note that this presentation should be regarded solely as non-binding information about the requirements of Swiss and German law.

The admissibility of a spot in the eyes of Swiss and/or German law lies entirely within the responsibility of the advertiser (see General Terms and Conditions).

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DEFINITION OF COUNTRY-OF- ORIGIN PRINCIPLE

WHAT IS THE COUNTRY-OF-ORIGIN PRINCIPLE?

Applicable law

In the context of the single market of the European Union, the country-of-origin principle determines that goods or services which are properly manufactured and brought to market according to the legal provisions of a member state may generally, with certain exceptions, be brought to market by that member state throughout the entire Union as well.

- This principle was adopted by Switzerland with the approval of the MEDIA agreement, which is currently suspended by the EU. An interim solution with the same effect has been in place since 7 March 2014. The MEDIA agreement is set to be replaced by the Creative Europe framework programme.

In relation to television, application of the country-of-origin principle essentially means that for foreign TV broadcasters, only the law **at the location of the initial broadcast** and **at the location of editorial decision-making** applies.

Exceptions to the principle

Regulations or laws that apply beyond broadcasting legislation, such as competition law, may still apply. But each case must be examined individually to assess whether or not the country-of-origin principle is applicable.

SWISS AND GERMAN ADVERTISING LAW

SWISS AND GERMAN ADVERTISING LAW

Swiss circumstances

If an advertisement from Switzerland is also broadcast in Switzerland, i.e. by a broadcaster whose editorial decision-making functions lie in Switzerland, Swiss law applies. This is because the advertising involves Swiss circumstances.

Foreign circumstances

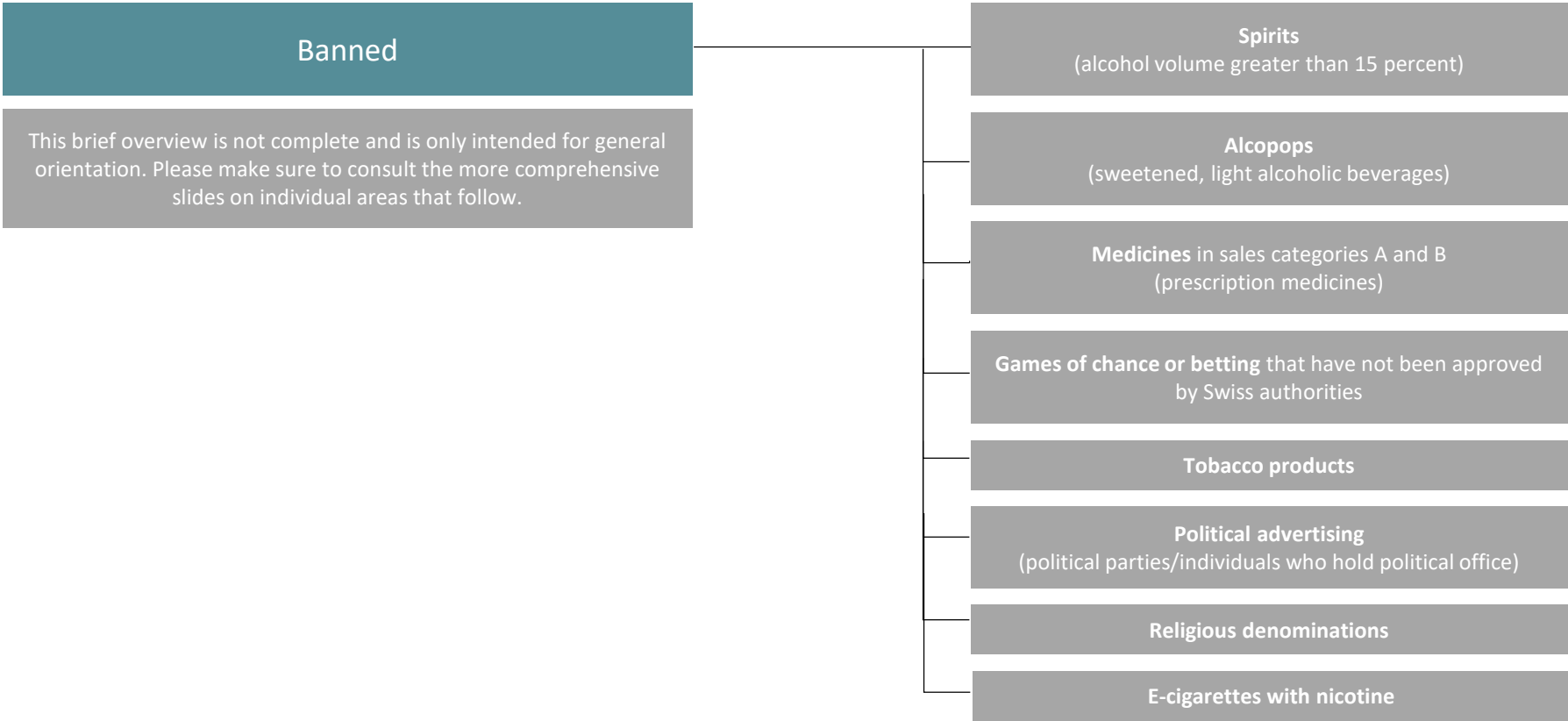
On the other hand, if the advertising is broadcast in Switzerland – i.e. in a Swiss advertising window – but originates from another country (EU) – i.e. from a broadcaster whose editorial decision-making functions lie in an EU member state (foreign circumstances) – the law of the country of origin (country-of-origin principle) should generally be observed.

- **The law of the country of origin only applies insofar as it is not superseded by mandatory provisions beyond broadcasting law.**

BRIEF OVERVIEW OF RESTRICTIONS

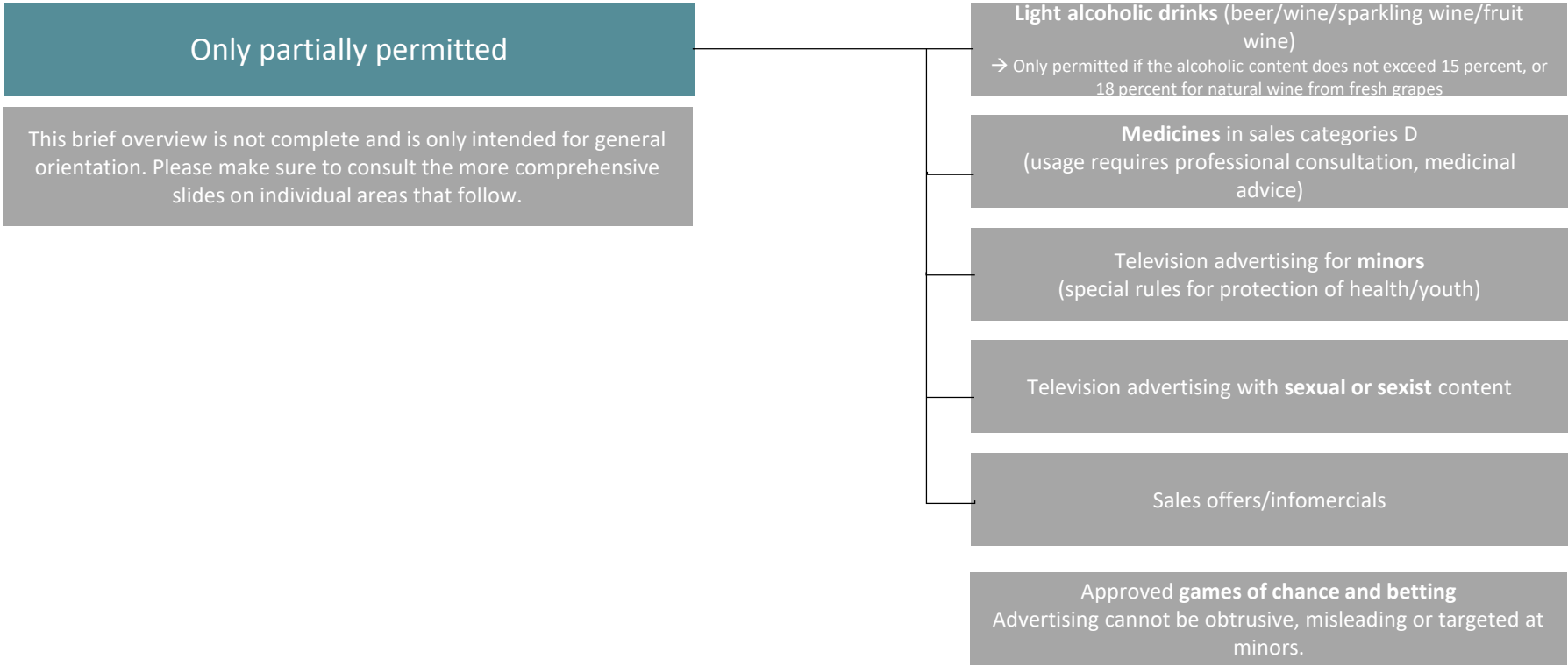
ADVERTISING FOR CERTAIN AREAS IN RADIO AND TV

BRIEF OVERVIEW – BANNED



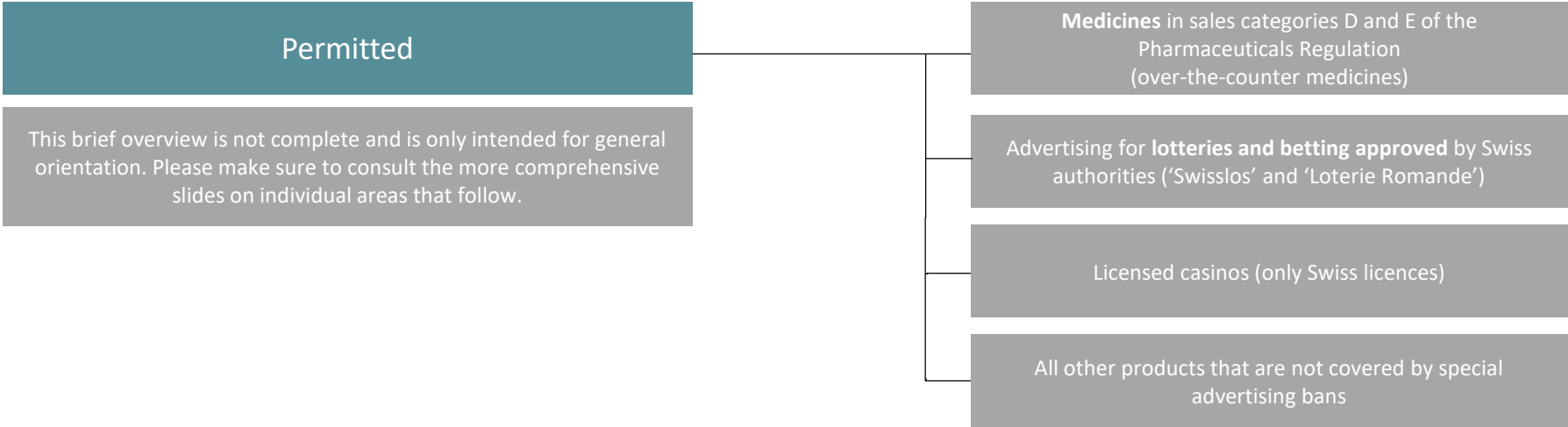
ADVERTISING FOR CERTAIN AREAS IN RADIO AND TV

BRIEF OVERVIEW – ONLY PARTIALLY PERMITTED



ADVERTISING FOR CERTAIN AREAS IN RADIO AND TV

BRIEF OVERVIEW – PERMITTED



SPECIAL RESTRICTIONS

ALCOHOL

PERMITTED FOR TV ADVERTISING



- **light alcoholic beverages** such as beer, wine, fruit wine (must) and sparkling wine (champagne); only alcoholic products created through fermentation that do not exceed an alcoholic content of 15 percent, 18 percent for natural wine from fresh grapes
- Price reductions for alcoholic drinks may also be advertised in consideration of the Price Indication Ordinance
- Advertising for non-alcoholic drinks without clear labelling

ALCOHOL

NOT PERMITTED FOR TV ADVERTISING



- Alcohol advertising or sponsorship for **spirits**
(alcohol content in excess of 15 percent, 18 percent for natural wine from fresh grapes)
- Alcohol advertising for **alcopops** (sweetened, light alcoholic beverages)
- Advertising for alcoholic beverages before, during or after programmes that are targeted at children or youths
- Advertising for alcoholic beverages specifically targeted at minors, or which encourages excessive consumption of alcohol
- Alcoholic drinks presented in advertising by children or youths
- Sales promotion notices on goods or services in the sponsorship spot
- Direct sales offers for alcoholic beverages with direct ordering options
- Advertising for alcoholic products that imply social or sexual success or enhanced performance

MEDICINES & MEDICAL TREATMENTS

PRINCIPLE

Sales offers advertising the sale of medical products and medical treatments **on television and radio are illegal**. Medical treatments include all treatments carried out by qualified medical professionals such as doctors, dentists, veterinarians, chiropractors, pharmacists, psychotherapists, particularly those where a specialist medical title can be acquired.

Definition of a sales offer

Advertisements contain all essential elements that can lead to the direct completion of a legal transaction:

- A specific product (e.g. cough medicine, cosmetic surgery, etc.)
- A clear price
- Direct reference to the possibility of ordering/making an appointment (e.g. You can make an appointment by contacting.... You can order at... Available at..., etc.)
- Part of an electronic address (e.g. website address, phone number, email address, etc.)

If one of the above elements is missing, the advertisement is not considered to be a sales offer and the general advertising regulations apply.



MEDICINES

PERMITTED FOR TV ADVERTISING

- Medicines in sales categories D* and E of the Pharmaceuticals Regulation (over-the-counter medicine)
- Only indications or applications approved by swissmedic
- Medicines in sales categories D* only when clearly presented as medicines and containing at least the below. This notice must be readily legible against a neutral background and in a block of text that occupies at least one third of the entire screen, and read out as comprehensible voice-over at the same time. For advertising without sound, the notice is sufficient.
 - **Preparation name (brand) and the name of the authorisation holder**
 - **At least one indication or application**
 - **Medicine notice, i.e. standard text:**
 - For medicines with packaging insert: 'Dies ist ein zugelassenes Arzneimittel. Lassen Sie sich von einer Fachperson beraten und lesen Sie die Packungsbeilage.' (This is an authorised medicine. Consult a specialist and read the packaging insert.)
 - For medicines without packaging insert: 'Dies ist ein zugelassenes Arzneimittel. Lassen Sie sich von einer Fachperson beraten und lesen Sie die Angaben auf der Packung.' [This is an authorised medicine. Consult a specialist and read the instructions on the packaging.]

MEDICINES

NOT PERMITTED FOR TV ADVERTISING



- Medicines in sales categories A and B*
- Companies in the field of natural therapeutics may act as sponsors, but no sponsorship when medicines in sales category A, B* or D* are shown or mentioned in the spot
- Pure brand advertising, i.e. advertising intended solely for brand awareness
- Advertising of indications or preparations for which medical or veterinary diagnosis or treatment is required
- Staging of competitions in which medicines serve as promotional items or prizes, or where participation is dependent on their purchase
- Advertising that might give the impression that it is part of normal programming
- Direct distribution of medicines for sales promotion purposes or distribution of vouchers for medicines. Direct contact, e.g. a telephone number or website



SEXUAL CONTENT AND SEXISM PERMITTED FOR TV ADVERTISING

Advertising with sexual or sexist content is generally permissible as long as it adheres to certain general provisions:

- **Broadcast after 11:00 pm.**
- **Programmes that may be harmful to minors fitted with an acoustic or visual marker (e.g. red bar)**

It can be extremely difficult to define the sexual nature of advertising, and the boundary between permissible non-sexual and impermissible sexual or even pornographic advertising is blurred. It is therefore worth consulting your legal department or other experts in case of even the slightest doubt.

SEXUAL CONTENT AND SEXISM

NOT PERMITTED FOR TV ADVERTISING



Advertising that discriminates against a sex by violating the dignity of women or men. Advertising is qualified as sexually discriminatory if it:

- ascribes stereotypical characteristics to men or women that calls the equality of the sexes into question
- does not respect children and youths with increased restraint
- does not show a natural link between the sex of the person and the product being advertised
- portrays the person [the model] in a purely decorative function for attracting attention
- depicts sexuality in an inappropriate way

PROTECTION OF MINORS

NOT PERMITTED FOR TV ADVERTISING



- Television advertising that causes harm to minors, either physical (e.g. tobacco or alcohol) or mental (e.g. sexual content)
- Direct purchase appeals to minors that exploit their lack of experience or their credulity
- Minors being directly called upon to motivate their parents or third parties to purchase the advertised goods or services
- Exploiting the particular trust that minors place in their parents, teachers or other trusted figures
- Minors shown in dangerous situations without good reason
- Television advertising for alcoholic beverages targeted at minors, and in particular depicting minors enjoying alcohol

SALES OFFERS AND INFOMERCIALS PERMITTED FOR TV ADVERTISING



Advertisements and longer forms of advertising on television that are longer than 60 seconds, provided they:

- **have an additional, continual acoustic or visual marker and bear a readily identifiable label of 'advertising'**

BETTING AND GAMES

PERMITTED FOR TV ADVERTISING



Lotteries and commercial betting

- Only lotteries approved by Swiss authorities (currently 'Swisslos' and 'Loterie Romande') can be advertised in Switzerland

Casinos and games of chance

- Advertising from casinos authorised by Swiss authorities
- Games of chance authorised by Swiss authorities

BETTING AND GAMES

NOT PERMITTED FOR TV ADVERTISING



Lotteries and commercial betting, casinos and games of chance which

- do not have a licence or approval from Swiss authorities for staging cash games (e.g. foreign casinos and sports betting),
- are advertised in a way that is obtrusive and/or misleading,
- are targeted at minors.

Moreover, Goldbach does not advertise ‘free’ or ‘demo’ versions of cash games which, although not played for cash, have a clear link to variants that are played for cash.

FURTHER INFORMATION

RELEVANT LINKS

Swiss Fairness Commission

www.lauterkeit.ch

Federal Office of Communications

<https://www.bakom.admin.ch/bakom/de/home/elektronische-medien/werbung-und-sponsoring/werbe-und-sponsoringrichtlinien.html>

Ordinance on Radio and Television

<https://www.admin.ch/opc/en/classified-compilation/20063007/index.html>

Price Indication Ordinance

<https://www.admin.ch/opc/de/classified-compilation/19780313/index.html>

Personal and Consumer Protection

Civil Code, Code of Obligations, competition law

A woman with long blonde hair is sitting on a couch in a cozy living room. She is holding a white computer keyboard in her right hand and drinking from a purple mug with her left hand. The room is warmly lit by sunlight coming through a window in the background, which shows some foliage. A lamp is visible on a side table behind her. The overall mood is relaxed and comfortable.

**THANK YOU
WITH
PASSION**

GOLDBACH