



## RESTRICTIONS ON ADVERTISING AIMED AT MINORS OF DETERMINED FOODSTUFFS AND BEVERAGES

### I. AMENDMENT OF THE ADVERTISING CODE

The Portuguese Parliament approved Law n° 30/2019, of April 23rd, introducing restrictions on advertising aimed at minors of foodstuffs and beverages containing high energy, salt content, sugar, saturated fatty acids and processed fatty acids.

### II. CONTEXT OF THE LEGISLATIVE AMENDMENT

The amendment of the Advertising Code is framed in a State's policy to combat **overweight and childhood obesity**, which will seek to prevent risk behaviors and reduce the occurrence of diseases: increased breathing difficulties, diabetes, hypertension, cardiovascular diseases, oncological diseases, among other pathologies.

This subject, although not subordinated to legal stipulation, was contemplated in self-regulatory codes. This new legislation provides that economic operators may be bound by more stringent restrictions than those stipulated in this head office by concluding self-regulation and co-regulation, accession and free untying agreements.

### III. PRODUCTS CONTAINING HIGH ENERGY VALUE, SALT CONTENT, SUGAR, SATURATED FATTY ACIDS AND PROCESSED FATTY ACIDS

This law regards as *foodstuffs and beverages of high energy value, salt, sugar, saturated fatty acids* and processed fatty acids those that **contain a quantity of such elements which compromises**, according to the available scientific knowledge, a **varied, balanced and healthy diet**.

However, we will have to wait for the concrete definition of this concept, which will be set in a dispatch of the Portuguese Directorate-General for Health, to be published after the entry into force of the law, based on recommendations from the **World Health Organization and the European Union**.

### IV. LIMITATIONS ON ADVERTISING MESSAGES

Advertising to all foodstuffs and beverages containing **high energy, salt content, sugar, saturated fatty acids** and processed fatty acids is now submitted to restrictions as provided by law.

Unfortunately, although the legislative procedure has been long, the legislator has chosen to use **vague and indeterminate concepts** with regard to **the recipient of the advertisement**. This vagueness is evident in the discrepancy in the summary attributed to the diploma by the Portuguese Parliament (“*Introduces restrictions on advertising aimed at minors under 16 years of age ...*”) and the purpose thereof defined in article 1 and in the wording of paragraph (1) of the new Article 20<sup>o</sup>-A of the Advertising Code, which do not mention the age (16 years) of the addressee of the advertisement (contrary to the redaction of the other paragraphs of that article).

Thus the legislator maintained the vagueness about what are “**children’s programs**”; applies a ban on television or radio programs which have at least **25% of the audience under the age of 16**, that might be considered as an impossible fact because the audience is set after the broadcast; or omits instructions to identify that **recipients** of the content available on the **Internet** or in mobile applications are **under 16 years**, when those are not submitted to age rating, among others. Undoubtedly, these will be a serious challenge for the interpreter of this legal regulations and a focus of the legal uncertainty.

## RESTRICTIONS RELATING TO PHYSICAL AREA

Advertising in these foodstuffs and beverages shall be **prohibited**:

- a. In **pre-school, primary and secondary schools**;
- b. In public **playgrounds** and open to the public;
- c. Within a radius of **100 meters of access to the locations referred to** in the preceding paragraphs (with the exception of advertising features affixed to commercial establishments, in particular by placing marks on terrace furniture, awnings or signs forming part of the establishment);
- d. In **sports, cultural and recreational activities** organized by pre-school, primary and secondary schools.

## RESTRICTIONS RELATING TO DIFFUSION ON PLATFORMS / SUPPORTS (television, radio, cinema, publications and the internet)

Advertising in these foodstuffs and beverages shall be **prohibited**:

- a. **Within 30 minutes before and after** children's programs and television programs with a **minimum of 25% audience below the age of 16 years**, as well as the insertion of advertising into their **interruptions, television program services and audiovisual media services on demand and on the radio**;
- b. In films with an age rating of less than 16 years, screened in cinemas;
- c. In **publications** intended for children **under 16 years of age**;
- d. On the **Internet**, through **websites, pages or social networks**, as well as in **mobile apps** destined for devices that use the Internet, when their contents are intended for those under 16 years of age.

## RESTRICTIONS RELATING TO THE CONTENT OF THE ADVERTISING MESSAGES

The legislative amendment seeks to **reinforce the objectivity** of the messages propagated by prohibiting them from:

- I. **Encourage** excessive consumption;
- II. **Neglect** non-consumers;
- III. Create a **sense of urgency or pressing need** in the consumption of the advertised product;
- IV. Transmit the idea of **facilitating its acquisition**, minimizing your costs;
- V. Transmit the idea of **benefit** in its exclusive or exaggerated consumption, compromising the valorization of a varied and balanced diet and a healthy lifestyle;
- VI. Associate the consumption of the product with the **achievement of status, social success, special skills, popularity, success or intelligence**;
- VII. Use in advertising **advertisements figures, drawings, personalities and mascots**, among others, that are related to programs aimed at children;
- VIII. Communicate characteristics of **foodstuffs and beverages of high energy value, salt content, sugar, saturated fatty acids and processed fatty acids as beneficial to health**, omitting the harmful effects of said high levels.

## V. PENALTIES

The minimum and maximum limits of the fines - **€ 1,750.00 to € 3,750.00 or € 3,500.00 to € 45,000.00, for a natural or legal person**, respectively - were not changed, only updated from escudos (former Portuguese coin) to euros.

## VI. ENTITY RESPONSIBLE FOR THE INSPECTION

The competence to **instruct the processes of mismanagement and to impose fines competes to the *Direção-Geral do Consumidor***, a body of the Ministry of Economy which mission is to contribute to the definition and execution of consumer protection policy in Portugal.

## VII. IMPACT ASSESSMENT

The law stipulates that it must be subject to a periodic successive impact assessment, every five years, on the food consumption patterns of children under 16 years and the weighting of the implementation of the changes considered adequate to promote the improvement of the health and eating habits of minors.

## VIII. IMPLEMENTATION

The law will enter into force 60 days after its publication in the official Portuguese Journal, *Diário da República*.

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