

LUXEMBOURG

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Is there case law or any statutory regulation governing advertising and promotion incentives? Are there any special consumer protection laws? What role do free gifts, tie-in offers, sweepstakes, rebates and other benefits, play in this context?

The law relating to commercial practices, unfair competition and comparative advertising dated 30 July 2002 regulates certain persuasive commercial practices such as sale at a loss, bargain sales, clearance sales as well as misleading advertising, comparative advertising, commercial sweepstakes and promotional games. Chain selling such as snowball selling or tie-in selling is prohibited. Free gifts and cross-merchandising are permitted unless misleading consumers. Furthermore, door-to-door sales, street trading and order solicitation are, as a rule, prohibited by the amended law concerning door-to-door sales dated 16 July 1987.

In your jurisdiction, are there any industry sectors which are subject to special regulations for advertising and promotion incentives (for instance the health products and pharmaceutical industries in some countries)? Please name applicable statutes and self-regulatory codes.

The law against tobacco of 11 August 2006 forbids advertising in favour of tobacco. Advertising concerning alcohol is permitted in Luxembourg without restrictions, except as for TV advertising which is subject to additional requirements (such as not aiming specifically at minors or not linking the consumption of alcohol to enhanced physical performance or to driving for instance). Advertising to the public of prescription only medical products is prohibited. The advertising of other medical products is regulated by the amended Luxembourg Regulation relating to the placing on the market of medical product of 15 December 1992 and also by the Luxembourg Regulation concerning TV advertising dated 5 April 2001. Advertising in favour of food is regulated by the Regulation concerning food labelling and advertising of 14 December 2000. The amended law of 5 April 1993 relating to the financial sector prohibits the Luxembourg bank to advertise the modalities of functioning of their compensation system. The deontological Code of the Association of Luxembourg Banks and Bankers (ABBL) contains additional rules such as the obligation not to use the Luxembourg taxation rules and the banking secrecy as a commercial argument for instance.

Does industry self-regulation replace or supplement government and legislative regulation of advertising and promotion incentives? Is self-regulation an effective tool?

Industry self-regulation does not replace national regulation of advertising and promotion but supplement it. Self-regulation cannot be considered as an effective tool in Luxembourg, except may be as for the financial sector.

To what extent do promotional incentives extended to staff in public institutions pose legal issues in your jurisdiction (i.e., paying for travel and accommodation costs on the occasion of conferences, personal entertainment, hidden education sponsoring, sponsoring of school snacks for promotional purposes)?

Promotional incentives to staff in public institutions are not recommended in Luxembourg. They may be considered as active and/or passive corruption which is criminally sanctioned by articles 246 to 249 of the Luxembourg Criminal Code. By the law of 23 May 2005, Luxembourg has also introduced the prohibition of corruption in the private sector (articles 310 and 310-1 of the Luxembourg Criminal Code). Restrictive rules relating to donations and gifts in favour of health practitioners laid down by the amended Luxembourg Regulation relating to the placing on the market of medical product of 15 December 1992 the should also apply to doctors working in public institutions.

Are there any formal disclosure requirements for promotional incentives (i.e., rule of separation of procurement from personal dealings, rules of employer consent requirements, written form requirements, adequacy of consideration granted for a service)?

There is no legal whitewash procedure for promotional incentives to staff in public institutions or in the private sector. The deontological code of the Association of the Luxembourg Banks and Bankers (ABBL) states that banks should implement rules concerning promotional incentives in order to maintain the independence and the integrity of their employees but this cannot be really considered as formal disclosure requirements.

