

# **STUDY: ASSESSMENT OF THE LEGAL FRAMEWORK REGULATING ADVERTISING IN THE REPUBLIC OF MOLDOVA AND RECOMMENDATIONS FOR ITS OPTIMIZATION**

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## **I. INTRODUCTION**

The object of this study is the national legal framework regulating advertising and its effects on media development. The ultimate aim is to contribute to the creation of a proper climate for media and advertising development.

Intermediate aims:

- to identify relevant European/international documents to study in order to form standards for analysis and benchmarks to assess the national legal framework regulating advertising and its interaction with the media;
- to highlight gaps in the national regulatory legal framework;
- to describe the current state of advertising in the Republic of Moldova, including that disseminated by the media outlets;
- to review international practices worth adopting relating to regulated and self-regulated advertising in order to ensure appropriate interaction with the media;
- to make recommendations to improve both the regulatory legal framework and advertising management practices thus enabling interaction with the media for the benefit of all stakeholders.

This study relies on widely accepted and used legal terminology to define terms existing or missing in national legislation including in (i) messages of public interest; (ii) laws regulating advertising in general and certain types of advertising in particular suitable for media interaction and (iii) international regulatory and self-regulatory practices in the field. The study ends with a number of recommendations that if implemented, according to the authors, would help to resolve the issues highlighted and would encourage media development through interaction with advertising based on principles that in advanced democracies have proven their efficiency and durability.

## **II. ANALYSIS STANDARDS**

In developing this study, the authors considered the following European/international tools as standards for analysis to ensure both a regulatory legal framework and a self-regulatory framework in advertising that would facilitate a beneficial and productive interaction with media:

- European Convention on Human Rights, in particular Article 10, as well as relevant decisions of the European Court of Human Rights (ECHR);
- International Code of Advertising Practice published by the International Chamber of Commerce (Paris, 1987);
- Charter of Fundamental Rights of the European Union (EU);
- European Convention on Transfrontier Television (1989);
- Recommendation 23 (2000) of the Committee of Ministers to Member States on the independence and functions of regulatory authorities for the broadcasting sector;
- Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the community code relating to medicinal products for human use;
- Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of Member States relating to the advertising and sponsorship of tobacco products;
- Declaration of the Committee of Ministers on the guarantee of the independence of public service broadcasting in Member States adopted on 27 September 2006;
- Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising;
- Recommendation 2 (2007) of the Committee of Ministers to Member States on media pluralism and

- diversity of media content;
- Declaration of the Committee of Ministers on protecting the role of the media in democracies in the context of media concentration adopted on 31 January 2007;
- Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector adopted on 26 March 2008;
- Parliamentary Assembly of the Council of Europe Resolution No. 1636 (2008) on indicators for media in a democracy;
- European Parliament Resolution of 25 September 2008 on concentration and pluralism in the media in the EU;
- Declaration of the Committee of Ministers on the role of community media in promoting social cohesion and intercultural dialogue adopted on 11 February 2009;
- Recommendation 5 (2009) of the Committee of Ministers to Member States on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment;
- Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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);
- European Parliament Resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU;
- Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC.

### **III. STANDARDS/RECOMMENDATIONS/GOOD PRACTICES**

This analysis assesses the extent to which legal provisions and actual advertising in the Republic of Moldova comply with the following standards/recommendations/good practices necessary for appropriate interaction with the media.

- Advertising providers must recognise their responsibility to advertising consumers and to society.
- Advertisers must create a fair balance between the interests of commercial institutions and of consumers.
- The functioning of self-regulatory advertising bodies that where appropriate are able to provide advice and expertise to all stakeholders including courts must be established.
- There is a need to unify standards of practice in advertising.
- Both the basics and the spirit the regulatory framework and the self-regulatory framework must be respected.
- Advertisements must be legally impeccable, decent, honest and truthful.
- Advertisements must not abuse the trust of consumers or exploit their lack of experience or knowledge.
- Advertisements must be presented in a clear and understandable way.
- Advertisements must avoid any statement or representation that may mislead consumers.
- Advertising must not be hidden or subliminal.
- Advertisers must be able to prove the veracity of data.
- Advertising must avoid any form of discrimination or offense based on race, nationality, sex, age or religion.
- Advertisements must respect all aspects of human dignity.
- Advertisements must avoid any messages that could be considered violent, indecent, vulgar or repulsive in terms of consumers' common sense and sensitivity.
- Advertisements must not offend citizens' moral or civic responsibility.
- Advertisements must not exploit fears—unless there is a justifiable reason—or superstitions.
- Advertisements must not incite, support or encourage unlawful or reprehensible behaviour.
- Superstitions must not impair public confidence in advertising.
- Advertisements must conform to the principles of fair competition as generally accepted in business.
- Advertisements must not distort the results of scientific research and must not distort scientific terminology or use scientific terms to exaggerate the validity of advertising claims supported by scientific arguments that in reality are lacking.

- Comparative advertising must not be misleading: It must comply with the principles of fair competition in which the comparison must be fair and based on factual evidence.
- Advertisements must not discredit any company, goods, profession or service through direct or indirect derogatory or mocking statements.
- Advertisements must not portray any persons whether in a private or a public capacity unless prior permission has been obtained.
- Advertisements must not illicitly use names or abbreviations of institutions and organisations.
- Advertisements must not imitate text, slogans, visual presentation, music or sound effects of other advertisements in a way that is likely to mislead or confuse the consumer.
- When an advertising provider conducts a campaign in one or more countries, other providers must not conduct similar campaigns within a reasonable period in order to avoid imitation or to impede the initial campaign.
- Advertisements must not without reason contain any visual presentation of dangerous situations that show a disregard for safety or health.
- Advertisements must not exploit the credulity and inexperience of children.
- Price indication must not be such as to create in children an unreal perception of the true value of the product.
- Advertisements must not contain any statement that could have the effect of harming children physically, mentally or morally.
- Advertisements must not suggest that possession of a product will give a child a physical or social advantage over other children of his/her age or that the lack of that product will have the opposite effect.
- Comparison is allowed to illustrate objective economic and technical differences and the relevant and verifiable benefits of goods and services advertised in compliance with existing legal provisions.
- Descrediting companies, products, services, marketing elements, professions or other identifiable elements, even though not explicitly mentioned, is prohibited.
- Advertisements must not encourage actions that contravene the law or generally accepted standards of environmentally responsible behaviour.
- If the period of a price offer is not specified, then the price must be maintained for the duration of the advertising campaign.
- Irrespective of whether payment for an offer is made in full or in instalments, the price and payment terms must be clearly specified in the offer indicating any additional fees and, where appropriate, the amount of those fees.
- When the availability of some or all advertised products is limited, this must be mentioned in the advertisement.
- Advertisements on credit sales must clearly and in good faith indicate credit terms and conditions.
- Advertisements for products sold at a distance must clearly contain the full name and address of the advertiser.
- Advertisements for products sold at a distance that require payment before the product is received and that contain written response mechanisms must contain the full address of the advertiser. Advertisements containing only telephone and/or email response mechanisms must also contain the telephone number and/or email address of the advertiser. If the payment is to be made electronically, it is necessary to specify secure payment conditions.
- If a call results in making an order, the advertiser is obliged to inform consumers that they have the right to receive a confirmation in writing or in a durable medium of contract terms within a reasonable time that must be no later than the date of delivery of the product or the start date of service provision.
- Telephone calls made for commercial purposes must be monitored and recorded with appropriate security measures that can examine the content of the call in order to confirm a commercial transaction for training and/or for quality control purposes. Operators and consumers must be informed at the beginning of a call that the conversation is being recorded. No recording will be made public without the prior consent of both interlocutors.
- Telephone contact for commercial purposes of persons whose phone numbers are not public is prohibited unless the consumer has given the number to the advertiser or to the operator for this purpose.

- Advertisements sent by email must be clearly identified as such in the subject without the need to open the message. The message subject must not be misleading; the commercial nature of the message must not be hidden.
- Advertisements sent through digital media must include a clear and transparent mechanism enabling the consumer to choose the option to stop receiving such messages in the future. These mechanisms must be easy to identify, to understand and to use to quickly unsubscribe.
- Email or mobile advertisements must contain the full name and valid address of the sender so the consumer can send a request to exit the database.
- Advertisements sent by online media such as pop-up's must allow the consumer to easily close the message in a visual and temporal manner so as not to interfere with the editorial content of the page visited.
- The following ways to present a product are recognised and accepted in the practice of product placement: handling (the actor touches the product), implicit display (the actor uses the product), static display (the product is exposed to view), wardrobe (the actor wears the product), verbalization (the actor mentions the product or the brand), verbalization and handling (the actor mentions and touches the product).
- Product placement must not give undue prominence to the product in question.
- Social advertising (including advertising appeal) must include the name of the advertiser as well as the social objective to be achieved.
- In the case of social advertising related to commercial promotion, the amount of money or the percentage for the social purpose must be specified.
- Social advertising shall not (i) hold an exclusively commercial purpose; (ii) exploit human suffering thereby affecting human dignity; (iii) use shocking facts capable of justifying excessive demands or induce feelings of fear and anxiety; (iv) make those who disagree with the appeal feel guilty or indebted; present in an exaggerated manner the degree and the nature of the social problem for which that appeal is made; (v) overestimate the exact or potential value of the population's contribution to that initiative or (vi) ask for money from minors.

#### **IV. NATIONAL LEGAL FRAMEWORK REGULATING ADVERTISING**

The following laws, agreements and codes comprise the legal framework for advertising in the Republic of Moldova.

- Law no. 1227 of 27 June 1997 on Advertising;
- Law no. 1420 of 31 October 2002 on Philanthropy and Sponsorship;
- Audiovisual Code;
- Competition Law no. 183 of 11 July 2012;
- Tax Code;
- Government Decision no. 489 of 4 May 1998 on approving the regulation on the manner of confirmation of donations for philanthropic and/or sponsorship purposes;
- Government Decision no. 338 of 21 March 2003 on the approval of the catalogue of fixed assets and intangible assets;
- Agreement on cooperation among Commonwealth of Independent States (CIS) members in advertising regulation, Moscow, 19 December 2003;
- Agreement on coordinated antimonopoly policy of 25 January 2000.

#### **V. LAW ON ADVERTISING: OVERALL EVALUATION**

The Law on Advertising was adopted in 1997. It contains 34 articles. Between 2001 and 2016, the law was amended 13 times with 42 modifications, 10 of which were made to Article 19, Peculiarities of advertising of certain types of goods and services. Article 22, Sponsorship, and Article 28, Powers of the Competition Council, were each modified five times. According to the authors of this study, these amendments to the law have not led to substantial improvements. Table 1 lists the problematic provisions of the law suggesting that there is a need either for significant amendments or for a new law to form a legal regulatory framework conducive to the proper development of advertising.

**Table 1: Problematic Provisions of the 1997 Law on Advertising of the Republic of Moldova**

Problematic/inaccurate provisions	Analysis
<p><b>Article 1.</b> Basic terms</p> <p>For the purposes of this law the following basic terms shall be defined:</p> <p><i>advertising (advertisement)</i> – public information on persons, goods (works, services), ideas or initiatives (advertising information, advertising material), designed to arouse and maintain public interest thereto, to contribute to their sale and raise the prestige of the producer;</p> <p><i>advertising agent</i> – advertising provider, producer, distributor;</p> <p><i>advertising provider</i> - a person who is the source or the subject of the advertising information, designed for the production, placement and subsequent broadcasting of advertising;</p> <p><i>advertising producer</i> – a person who shapes advertising information as required for broadcasting;</p> <p><i>advertising broadcaster</i> – a person who ensures the placement and broadcasting of advertising (advertising information) through any media;</p>	<p>The term “advertising (advertisement)” suggests the possibility of selling people. In addition, if an advertisement does not help to sell goods, for example, or does not raise the prestige of the producer, would it mean that it has nothing to do with advertising? Even if it is executed poorly and does not achieve its goal, an advertisement remains an advertisement, produced and distributed in return for payment.</p> <p>The term “advertising distributor” is missing. Perhaps “broadcaster” was improperly translated from Russian – „рекламораспространитель”. This creates confusion as without the broadcaster, the distributor cannot ensure/execute the dissemination of advertising. At the same time, the producer, distributor and broadcaster or producer and broadcaster, or distributor and broadcaster may be the same person.</p> <p>In order to ensure the placement and broadcasting of advertising, the broadcaster has to take it from somewhere, i.e., from the distributor.</p>
<p><b>Article 5.</b> Advertising agencies</p> <p>(1) Advertising (providers, producers, broadcasters) agents are natural and legal persons, regardless of the type of property and legal form of organization who, through artistic, technical or psychological means, publicly disclose advertising information about goods (services) to create demand for their effective sale.</p>	<p>Inaccurate formulation: agencies refer only to goods and services, although the definition of advertising is wider (people, ideas, initiatives); “effective” is an extra word at the end of the paragraph.</p>
<p><b>Article 12.</b> Subliminal advertising</p> <p>(1) Subliminal advertising is considered using methods that exercise hidden effects on the customer: special video (25th frame effect) and audio inserts (infra- and ultrasound) and other forbidden methods.</p>	<p>Inaccurate definition: defining subliminal advertising cannot include “using methods.” For example, the Romanian law uses this definition: <i>subliminal advertising</i> – any form of advertising that employs stimuli far too weak to be consciously perceived, but which can influence the economic behaviour of a person.</p> <p>The term “misleading advertising” is not established.</p> <p>The term “comparative advertising” is not established.</p> <p>The article needs to be completed, in compliance with the community legislation.</p>
<p><b>Article 13.</b> Advertising on radio and television</p> <p>(1) The duration of an advertisement shall not exceed 15% of the broadcasting time of each radio or television frequency channel during 24 hours and 20% of one hour of airtime. This provision does not apply to specialized advertising and information channels.</p>	<p>Even though in the Republic of Moldova there are no TV or radio stations that specialize in advertising, the meaning of the phrase “specialized information channels” is not clear. In fact, all radio/TV channels operate with information. Perhaps this refers to announcements.</p>
<p>(3) During broadcasts, consisting of separate parts, or sportscasts, events and shows with a similar structure, containing breaks, advertisement may be inserted only between the parts or in the breaks.</p> <p>(7) When using advertising material by overlapping method, including by means of scrolling text, its size should not exceed 7% of the frame.</p> <p>(8) Advertisements of the same goods (work, services), as well as from the same advertising provider are permitted no more than two times, with a total duration of up to two minutes, during one hour of airtime on a frequency channel.</p>	<p>Inaccurate formulation because the phrase “events and shows with a similar structure” does not refer to actual broadcasts. The variant would be, “or broadcasts on artistic events, sports events, etc., with a similar structure.”</p> <p>By law, in fact, it is not clear if the volume of advertisements placed by overlapping methods or scrolling texts must also be limited to 12 minutes per hour. It is not clear whether the length of scrolling text is added to video advertising time. It is not clear whether an advertisement in a scrolling text should be broadcast under conditions of video advertising, for example.</p> <p>The starting time of a broadcast is also not clearly established.</p>
<p><b>Article 14.</b> Advertising in periodical publications</p> <p>Advertising in periodical publications funded from the state budget, other than those specializing in advertising information and materials, shall not exceed 30% of the volume of one edition.</p>	<p>Since each media outlet has an editorial responsibility, it would be a good idea if the volume of advertisements were established by the outlet at its sole risk.</p>
<p><b>Article 15.</b> Advertising in cinema, video and information services, as well as with the use of telephone, telegraph and telex networks.</p> <p>(4) The use of free telephone lines of police, ambulance and fire services, as well as of other emergency services for the dissemination of advertising is prohibited.</p> <p>(5) Advertising by telex and teletype, by facsimile and other electronic telecommunications is prohibited, unless a special request is made.</p>	<p>The phrase “other emergency services ...is prohibited” is misleading since there are free telephone help lines for domestic violence, corruption, directory inquiries, etc. It would be enough to enumerate cases of urgent help. In other cases, advertising should be permitted after communicating the message.</p> <p>The phrase “other electronic telecommunications” is inaccurate. There is a need to provide for advertising by email and blogs.</p>

<p><b>Article 16.</b> Outdoor advertising (1) Outdoor advertising is executed through visual communication systems which include posters, billboards, stands, installations and constructions (located separately or on the walls and roofs of buildings), three-dimensional and illuminated signboards, suspended electromechanical and electronic display boards, and other technical means.</p>	<p>According to legislative requirements, the terms/definitions set out in the law are included in the general provisions of the law (at the beginning of the law). It would be necessary to examine the appropriateness of adopting a thematic law in this field (see the example of Romania).</p>
<p><b>Article 18.</b> Advertising on modes of transport and postal items</p>	<p>Artificial symbiosis: "modes of transport and postal items" requires clarification because it is not clear, for example, whether an invoice is a postal item. It would be good to split the article.</p>
<p><b>Article 19.</b> Peculiarities of advertising of certain types of goods and services</p>	<p>It is necessary to complete it with either the provisions of the European legislation in this field or those in the Draft Audiovisual Code of the Republic of Moldova.</p>
<p><b>Article 21.</b> Social advertising</p>	<p>It is an improper phrase. Commercial advertising is also social.</p>
<p><b>Article 22.</b> Sponsorship</p>	<p>Since there is a separate law, the article only adds confusion.</p>
<p><b>Article 23.</b> Protection of minors in the production, placement and broadcasting of advertising</p>	<p>The article needs to be completed.</p>
<p><b>Chapter IV. RIGHTS AND OBLIGATIONS OF ADVERTISING AGENTS</b> <b>Article 24.</b> The period of advertising material storage Advertising agents must keep all advertising materials or their copies, including the changes made thereto, for a year from the date of the last broadcast, except for video and audio spots which are to be stored for one month from the date of the last broadcast.</p>	<p>The title of chapter begins with "rights" and its first article – with obligations. It is not clear whether the provision also refers to sites.</p>
<p><b>Article 27.</b> Presentation of information to the Competition Council</p>	<p>The article does not provide exactly what types of information advertising agencies must present. Therefore, it is not clear whether the Competition Council will be able to oversee the advertising market in order not to allow dominant positions to harm fair competition. In addition, the completion of the article would give rise to sufficient statistical data to assess the state of the market.</p>
<p><b>Chapter V. STATE CONTROL AND SELF-REGULATION IN ADVERTISING</b></p>	<p>Given the importance but also the different nature of regulations and self-regulations, these should be separated.</p>
<p><b>Article 28.</b> Powers of the Competition Council a) to examine advertising on its compliance with the provisions of the legislation on advertising</p>	<p>In order to exercise such power the council needs important additional capacities. This power could have been exercised by self-regulatory bodies at the council's request. It would be appropriate for the council to concern itself with the prevention of unfair competition rather than with the content of advertising.</p>
<p><b>Article 29.</b> Right of access to information (2) The information constituting a trade secret under the law on trade secrets obtained by employees of the Competition Council cannot be disclosed. If such information is disclosed, any damage caused will be repaired by the Competition Council in accordance with legislation.</p>	<p>The powers must be completed, since it is not clear whether they can ensure fair competition in the market.</p>
<p><b>Article 30.</b> Rights of public professional organizations working in the field of advertising</p>	<p>Worldwide, self-regulation plays a very important role.</p>
<p><b>Article 32.</b> Responsibility of advertising agents</p>	<p>There are no provisions on advertising distributors. Additions on the advertising distributor's responsibility, including for abuse of a dominant position affecting fair competition in distribution, would be appropriate.</p>

## VI. THE NATIONAL LEGAL FRAMEWORK REGULATING ADVERTISING WITH AN IMPACT ON THE MEDIA

### 6.1. Legal term of advertising and scope of the Law on Advertising

Article 1 of the Law on Advertising entitled Basic terms enshrines the term advertising as, "...public information on persons, goods (works, services), ideas or initiatives (advertising information, advertising material), designed to arouse and maintain public interest thereto, to contribute to their sale and raise the prestige of the producer." The qualifiers mentioned, "to contribute to their sale and to raise the prestige of the producer" lead us to the conclusion that the scope of the Law on Advertising covers only commercial advertising. This conclusion is also confirmed in Article 3, para. (1) entitled Scope of the law: "This law applies in the territory of the Republic of Moldova in all spheres of activity in advertising, excluding political advertising and information not related to entrepreneurial activity."

Surprisingly, Article 21 entitled Social advertising also leads to that conclusion:

(1) Social advertising represents society's and the state's interests regarding promoting healthy lifestyles, protecting health and the environment, the integrity of energy resources and the social protection of the population. This advertising is non-profit and pursues charitable and socially important objectives. (2) The free production and broadcasting of social advertising by advertising agencies, the transfer of their property, including cash, to other natural and legal persons to produce and broadcast social advertising is recognised to be a charitable activity for which the law provides privileges.

The presence of regulations even if only in the provisions of this article relating to non-commercial advertising regulated by the Law on Advertising demonstrates the clear intention of the legislature to establish regulations on non-commercial advertising other than political advertising. Other legislation also confirms the need for a broad definition for advertising that would cover commercial and non-commercial advertising. As a good example, we have Article 2 of the Broadcasting Code entitled Meaning of the terms used:

Advertising means any form of public announcement regarding the execution of a commercial, craft or professional activity that is intended to promote goods supply or service rendering against payment, to advance a cause or idea or to bring about some other effect desired by the advertiser or the broadcaster itself, broadcast on the basis of a contract with a public or private natural or legal person in return for payment or similar consideration or for self-promotional purposes.

After analysing the term advertising (advertisement) in Article 1 and the provisions in articles 3 and 21 of the Law on Advertising, we note the presence of legal confusion.

- The title of the law suggests the establishment of regulations on all types of advertising (commercial advertising, political advertising, etc.), but the term advertising (advertisement) in Article 1 refers only to commercial advertising.
- The title of the law suggests the establishment of regulations on all types of advertising, but Article 3 para. (1) enshrines only that information related to entrepreneurial activity (commercial advertising).
- While Article 3 para. (1) enshrines only entrepreneurial activity (commercial advertising), Article 21 has provisions on non-commercial advertising.

It is obvious that the Law on Advertising is meant to be a framework for regulating the fundamental principles of activity, the legal status of advertising agents, the general requirements for advertising, the types of advertising and their general requirements, state control and interaction with self-regulatory advertising bodies and legal liability for breaching advertising legislation. It is unclear, however, why the scope of the law has been narrowed to only commercial advertising despite a number of provisions applicable to all types of advertising, e.g., in articles 4, 5, 6, 7, 11, and 12. We can only assume that the authors of the draft law on advertising intended to develop additional regulations for other types of advertising such as those on political advertising enshrined in the Electoral Code of the Republic of Moldova.

Therefore, there is a need to amend the law as follows.

- Extend the scope to all types of advertising.
- Include regulatory provisions covering all types of advertising.
- Include regulatory provisions covering certain types and/or forms of advertising that are not regulated under thematic and/or special laws as appropriate.
- Include all types of advertising (both commercial and non-commercial advertising) in the legal term for advertising making the Law on Advertising a general legislative act. This would include legal definitions for commercial advertising, non-commercial advertising (social advertising), institutional advertising, political advertising and election advertising.

## **6.2. Social advertising**

The phrase "social advertising" entered Moldovan legal language via Russian during Soviet and post-Soviet times. In turn, this phrase entered Russian from English. In the United States (US) two phrases are used instead: "public service advertising" and "public service announcement" (PSA). Social advertising does not accurately reflect the meaning of PSA and as a term is lacking in the laws of Western countries where advertising is categorized into commercial and non-commercial. Social advertisers may be the state, non-commercial institutions or commercial organisations, the last of which could use social advertising lacking tough restrictions and interdictions for promotional purposes, commercial or even political purposes.

In Moldova, social advertising is broadcast on radio and television in the same time segments reserved for commercial advertising. If social advertising spots have elements that are forbidden by the law for commercial advertising, the threats of sanctions are the responsibility of the body authorized to control the observance of the legislation on advertising.

In order to counter eventual abuses and confusion, it is necessary to determine which advertising is social. In election campaigns, for example, motivational and educational spots oriented to voters produced by non-commercial organisations that essentially represent social advertising are accepted for broadcasting/distribution after the Central Electoral Commission determines that they do not pursue political/election goals. By analogy, this role could have been fulfilled by the Competition Council (CC) which is responsible for compliance with the legislation on advertising in which social advertising is regulated by the Law on Advertising. The preferable solution, however, would be a self-regulatory authority, an eventual national council for advertising, as in countries like the US, Germany and Romania.

The legislation of the Republic of Moldova regulates, sometimes exhaustively, the field of commercial advertising, but that of social advertising is regulated very superficially. Certain rules targeting social advertising are found in the Law on Advertising, in the Tax Code and in the Broadcasting Code. According to Article 1 of the Law on Advertising, and Article 288, par. (9) of the Tax Code, "Social advertising represents society's and the state's interests regarding promotion of a healthy lifestyle, the protection of health, the environment and of the integrity of energy resources and social protection of the population. This advertising is non-profit and pursues charitable and socially important objectives." Thus, the legislation takes into account only five areas of society's and the state's interest. Undoubtedly, the number of areas of interest for the whole of society is much larger, although an exhaustive list would be impossible in any legal act. Therefore, there is a need for a different approach to the problem that does not raise questions when a socially important real idea remains beyond arbitrary restrictions.

According to Article 21, para. (2) of the Law on Advertising, "Free production and broadcasting of social advertising by advertising agencies, the transfer of their property, including cash, to other natural and legal persons to produce and broadcast social advertising is recognised to be a charitable activity for which the law provides privileges." In other words, such charitable activities of natural and legal persons fall within the scope of the Law on Philanthropy and Sponsorship. Thus, the costs of advertising agents directly related to the production and broadcasting of social advertising should be deducted from taxable income; however, this is not expressly stated in the tax legislation. The only exemption from payment expressly provided for in the Tax Code directly related to broadcasting social advertising is contained in Article 295, letter e) stating, "The following shall be exempted from the local fee for placement (location) of advertising (advertisement): producers and broadcasters of social advertising and advertising placed on post items." Thus despite the provisions in Article 21, para. (2), in reality there are no effective tax incentives or legal provisions that promote the production and broadcasting of social advertising.

Free broadcasting of social advertising should be carried out on the basis of a written document that clearly states it is a charitable activity; the media outlet would then have the right not to pay value-added tax (VAT) on this service. It should be noted that some but not all social advertising can be construed for charitable purposes because the term social advertising is broader than that of charity. If social advertising does not pursue charitable purposes, taxes should be paid based on the market price for the service.

The current legislation requires producers and broadcasters/distributors of social advertising who seek tax incentives to focus on social messages that meet the requirements of donations. If the status of a donation cannot be confirmed, difficulties arise. Providing a service free of charge such as broadcasting social advertising still incurs costs for the broadcaster that must be recovered directly or indirectly or the broadcaster will refuse to provide the service free of charge, thereby also discouraging social advertising.

If social advertising is regulated by the Law on Advertising, then advertising agents are engaged in its production and broadcasting/distribution. According to Article 5, para. (1), "Advertising agents (providers, producers, broadcasters) are natural and legal persons regardless of the type of property or legal form of the organisation who, through artistic, technical or psychological means, disclose publicly advertising information about goods (services) to create demand for their effective sale." Within the meaning of this provision, social advertising should be the concern of someone other than advertising agents.

According to Article 21 of the Law on Advertising and Article 288, para. (9) of the Tax Code, social advertising, “is non-profit and pursues charitable and socially important objectives.” We note contradictions herein. On one hand, social advertising is a type of advertising and hence shall be regulated by the legislation on advertising. On the other hand, social advertising “pursues charitable objectives” and hence should be regulated by the legislation on philanthropy. The exclusion of social advertising from the Law on Advertising and its inclusion and regulation by the other law would solve the problems existing at the moment. This would be all the more justified as Article 22, para. (5) of the Broadcasting Code provides the following.

Advertising shall not include:

- announcements made by the radiobroadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
- announcements broadcast free of charge in the public interest;
- charity appeals;
- spots supporting national communication campaigns that promote social messages.

The provisions of the Broadcasting Code in light of Directive 2010/13/EU of the European Parliament and of the Council concerning the provision of audiovisual media services<sup>1</sup> states that commercial advertising is different from social advertising; however, it is not clear whether announcements in the public interest broadcast free of charge or in return for payment are part of the 12 minutes per hour reserved for commercial advertising.

Since “charity appeals” and “spots supporting national communication campaigns that promote social messages” are not found in other legislative acts in force, they could be included in legislation regulating philanthropy and sponsorship or in a separate regulatory act.

Social advertising essentially differs too much from commercial advertising to be regulated by the same law. Since the provider of social advertising may be the state that operates with public money, there is a need for additional regulations that can establish on one hand transparency in the resources used and on the other hand fair rules of distribution in order to avoid cases of favouring certain media outlets to the detriment of others.

### **6.3. Regulatory practices of social advertising in other countries**

The legislation in Lithuania, Latvia and Estonia lacks the term social advertising. Therefore, broadcasters/distributors of social messages can identify them as commercial advertising even if advertising is defined as information or activity aimed at increasing the popularity or demand for a product or a service. In other words, the media set up their own rules.

The Law on Advertising of Armenia lacks a separate definition of social advertising; however, Article 13 has several references related to such messages. Thus, a broadcaster is obliged to grant no less than 5% of annual advertising time on a commercial basis to social advertising of national interest on health matters, environmental protection and social security.

In the Law on Advertising in the Republic of Belarus (February 1997), Article 2 defines social advertising as, “...information from state bodies regarding healthy life-styles, health protection, environmental protection, saving energy resources, crime prevention, social protection and population safety which is non-commercial in nature.” In other words, social advertising can be only certain information received from the state. According to Article 4, collecting money for placing social advertising is forbidden. Broadcasters/distributors of social advertising that are media organisations can place social advertising offered by advertising providers on 5% of the annual broadcasting volume/space/printed surface.

Ukrainian legislation lacks a clear definition of social advertising. At the same time, Article 2 of the Law on Advertising (1998) stipulates that the law does not affect legal relations related to information that reflects social events, and Article 11 defines social advertising information in essentially the same way as the law of the Republic of Belarus. In such information, specific references to products and manufacturers is forbidden. Broadcasters/distributors financed in whole or in part by the state budget are obliged to place social advertising from state bodies free of charge within the limits of at least 5% of the volume/space reserved for advertising, and those financed in whole or in part by the state budget or by local budgets are obliged to offer preferential rates for broadcasting social advertising received from educational, cultural or medical institutions

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:RO:PDF>

maintained from local budgets as well as from philanthropic organisations. Persons producing and broadcasting social advertising information free of charge and persons transferring their property and financial means to other persons for these purposes benefit from the incentives provided for in the legislation of Ukraine on charity.

In Russia, according to Article 149 of the Tax Code supplemented in 2011 with subpara. (32), the activities listed are not subject to taxation if they meet one of the following requirements for social advertising:

- on radio, the duration of announcements about sponsors shall not exceed three seconds;
- on television, the duration of announcements about sponsors shall not exceed three seconds, and such announcements shall not occupy more than 7% of the video frame;
- in other media, the duration of announcements about sponsors shall not exceed 5% of advertising space.

The requirements in this subparagraph do not refer to social advertising announcements about state power bodies and local public authorities, about non-commercial social organisations, or about natural persons in difficulty or requiring treatment with a view to helping them through charitable actions. Organisations producing and broadcasting social advertising free of charge are exempted from VAT payment for these activities.

Another amendment to the Tax Code of the Russian Federation entered into force on 1 January 2012 was in Article 264 in a new subparagraph (48–4) stating that the producer and broadcaster are exempted from income tax on the amounts spent for producing or broadcasting social advertising without reward for the limited partner. Amendments were also made to the Federal Law on Advertising. For example, previously sponsors could be mentioned in social advertising without any limits, but according to para. (5–6) of Article 10 of Law 38-F3, in social advertising broadcast on radio and television the duration shall not exceed three seconds and on television shall not occupy more than 7% of the video frame, and on other media announcements shall not exceed 5% of advertising space. The limits do not refer to state power bodies, to local public authorities or to municipal bodies that are not integrated into the structure of local public bodies. The responsibility for violating the new provisions of the law (no. 115-F3) shall be borne by broadcasters/distributors of advertising.

In Georgia, Article 12 of the Law on Advertising (as amended on 24 December 1999) states the following.

- Social advertising is the matter of social and state interests aimed at achieving charitable goals, at protecting the life, health and property of the population, as well as at protecting the environment. The permission to place and broadcast/distribute social advertising, depending on its nature, belongs to state bodies and respective local public authorities.
- Commercial organisations and sole proprietorships, specific trademarks of their goods (models, marking of goods), or specific trademarks of the goods (models, marking of goods) that constitute the results of ancillary entrepreneurial activity of non-profit organisations shall not be mentioned in social advertising.
- The free production and dissemination of social advertisements by natural and legal persons and the transfer of their own property, including money, to other natural or legal persons for the same purpose shall be considered as a charitable activity for which concessions are provided for in Georgian legislation.
- The organisations broadcasting/distributing social advertising whose activity is financed in whole or in part by the state budget, are obliged to place free of charge social advertising presented by the state body within the limits of at least 5% of the annual volume/space reserved for advertising.

Romanian legislation lacks the term social advertising, but there are regulations on social advertising in acts of the Romanian Advertising Council, the sole auto-regulatory body representing the interests of the advertising industry in its relations with the authorities and consumers. Chapter III on social communication of the Code of Advertising Practice developed by the council introduces the new term “advertising appeal.” Advertising appeals are messages meant to directly or indirectly request voluntary contributions in cash, goods or services of any kind through initiatives designed to arouse public interest and awareness. Referring to social campaigns, Article 35, para (3) of the Audiovisual Law (in force since 11 July 2002) contains a single regulation: “Advertising does not include announcements in the public interest and charity appeals broadcast free of charge.” The National Audiovisual Council in April 2006 established in Article 116 (2) of the code for regulating audiovisual content that, “It is forbidden to broadcast announcements in the public interest and charity appeals by promoting products or services.”

Great Britain is a leader among EU countries in the field of advertising with a social message. Activities related to advertising are coordinated by the Central Office of Information established in 1946 to replace the

propaganda ministry. It has an annual budget allowing it to promote effective communication policies without seeking sponsors. Social messages are widely supported by both the state and the commercial and non-commercial sectors. Great Britain has centres for training specialists in social advertising and mechanisms for assessing the impact of social campaigns on the population function effectively. Although the office functions under the British government, it is not a political entity but rather an independent marketing centre that coordinates the activities of government bodies in communication and relationships with advertising agencies. The government is a limited partner in social advertising and finances it from the federal budget. Other aspects are dealt with by the advertising industry's self-regulatory mechanisms. The state does not oblige the media to broadcast social messages free of charge. This refers to advertising agencies too. The office neither obliges them to work unpaid nor pays them excessive fees. The fees are standard in the market. In this regard, the Central Office of Information is a customer like all providers of commercial advertising; however, it is prestigious in Great Britain to fulfil a government order.

In Germany there are no regulatory acts that define social advertising or that regulate its production and broadcasting/distribution. Despite this fact, social activities are institutionalized and represent an effective mechanism to promote social policies. German state policy is oriented towards civil society initiatives, while relations between the state and civil society are conceived and perceived as relations between partner and investor with the state heavily funding social projects it deems important. Advertising companies that produce, broadcast and investigate advertising market belong to the German Advertising Federation established in 1949. The federation coordinates all advertising activity including social advertising and represents its members in dialogues with federal and local public authorities. Thus, if the government decides to carry out a social campaign, it addresses the federation to independently plan and carry it out. The state covers up to 75% of the costs of producing and broadcasting social advertising.

In the US, the history of social advertising began in 1906 when calls to protect Niagara Falls were published. In 1916, the Council for Social Information was established and in 1942 was renamed the Advertising Council. It is namely this body that is charged with coordinating advertising in general and social advertising in particular. The Advertising Council has become the intermediary between the state, commercial and non-commercial organisations and the audience. It is credited with fundamental research on the influence of social advertising on different categories of the population that has demonstrated how effective public advertising is for society's health. American legislation neither defines social advertising nor its principles nor the manner in which it is to be identified. The definition was instead provided by the Advertising Council. Thus, as a rule, social advertising serves the interests of society; its purpose is to draw attention to the need to solve socially important issues and to stimulate changes in society's behaviour or attitude towards these issues.

As early as 1942, the Advertising Council developed criteria to identify information that could be defined as a PSA. In order to be recognised as such, social campaigns must meet certain requirements:

- sponsorship by non-commercial organisations, businesses, natural persons or state structures;
- non-commercial, non-party and non-confessional;
- nationally important;
- broadcast/distributed in donated advertising time/space.

A social campaign cannot be conducted to influence a legislative act. As a rule, PSAs are broadcast/distributed free of charge; however, some non-commercial organisations pay for broadcasting/distribution of social advertising in order to control the schedule of placement on radio/TV or in newspapers. Expenses associated with the production and promotion of PSAs are usually borne by producers. Annually, the Advertising Council awards prizes for domain leaders (Public Service Award) and for media representatives (Silver and Gold Bells), in recognition of activism and generosity in promoting social messages. Every two years the council conducts profile training for the representatives of non-commercial organisations and of state bodies.

#### **6.4. Election advertising and political advertising**

The Law on Advertising does not regulate political advertising: "This law applies in the territory of the Republic of Moldova in all spheres of advertising activity except political advertising and information not related to entrepreneurial activity." [Article 3, para. (1)]. According to the legislation and practice in our country, we must make a distinction between election advertising and political advertising during pre-election and post-election periods. Election advertising is traditionally regulated by the Electoral Code of the Republic of Moldova Regulation on Election Campaign Coverage by Mass-Media (a separate regulation is approved by the Central Electoral Commission for each election) and the Regulation on the Method of Placing Election and Policy Promotion Advertising on Billboards. The Electoral Code of the Republic of Moldova and these regulations shall

regulate political advertising only during the period of time between the day of notifying the public of the election date and the day on which the final results are confirmed by the competent bodies. After two decades of experience, these regulations have been recognised by all electoral stakeholders, including the media and the candidates.

A different situation is observed in terms of regulating political advertising between elections. Although political advertising regulated by the Electoral Code is allowed only during election periods/campaigns, in reality there are cases when such advertising has appeared after or before elections. Advertising spots for political parties and/or their leaders during official and religious holidays or on the launch of allegedly social campaigns have, for example, become traditional. There have been no consequences since clear and accurate regulations in this area are completely missing. Even if most of these spots had the nature/content of political advertising, we suspect that they were placed/broadcast in a legal regime identical to that of commercial advertising. To clear things up, it is necessary to make changes/additions to the national legislation that would establish with complete clarity either bans on political/election advertising during periods other than elections, or conditions for placing/broadcasting such advertising whenever the advertising provider wants. So far, neither broadcasters nor providers (political parties) have shown strong interest in such regulations.

### **6.5. Legislation on advertising**

Article 2 of the Law on Advertising states, "Legislation on advertising includes the Constitution of the Republic of Moldova, the laws and decisions of Parliament, international treaties to which the Republic of Moldova is a party, decrees of the President of the Republic of Moldova, decisions and ordinances of the government and other regulatory acts adopted in accordance with the aforementioned acts." There are numerous inaccurate provisions in it largely due to the outdated vision and practices that formed the basis for the adoption of the Law on Advertising in 1997. The law should:

- clearly name the small number of acts that constitute the legislation on advertising;
- include regulatory determinations of the Broadcasting Coordinating Council (BCC) in the context of legislation on advertising in the Broadcasting Code;
- consider the need and/or opportunity to exclude or maintain the decisions of Parliament and the decrees of the President as acts that may be part of the legislation on advertising;
- include, according to Article 32, para. (1)–(2) and Article 39 letter b) of the Competition Law 183/2012, regulatory determinations of the CC in the legislation on advertising.

### **6.6. Legislation on advertising and audiovisual legislation**

Several provisions on audiovisual advertising are enshrined in articles 8, 13, 19 and others of the Law on Advertising; most are simultaneously found in the Broadcasting Code. In practice, audiovisual representatives ignore the Law on Advertising, although it has at least one provision not found in the Broadcasting Code: "An advertisement for the same goods (work, services), as well as by the same advertising provider is permitted no more than two times with a total duration of up to two minutes during one hour of airtime on a frequency channel" [Article 13 para. (8)]. Over the years, this provision has enabled the BCC to detect violations by broadcasters and to apply sanctions. Possibly that provision was necessary in 1997 when a small number of broadcasters was functioning in the audiovisual market, the advertising market was in the process of becoming established and there was no measurement of television audiences. Now, however, this provision seems to be outdated. To avoid confusion in all situations, we consider it appropriate to indicate exactly when a broadcast begins. At the same time, we consider it preferable to consolidate the provisions covering audiovisual advertising into a single law: the Broadcasting Code of the Republic of Moldova.

The Law on Advertising should be amended:

- to exclude special provisions on audiovisual advertising and, where appropriate, to supplement the Broadcasting Code;
- to exclude Article 13, para. (8).

### **6.7. Advertising in public periodical publications**

Article 14 of the Law on Advertising entitled Advertising in periodical publications establishes the maximum share of advertising volume in periodical publications funded from the state budget: "Advertising in periodical publications funded from the state budget, other than those specializing in advertising information and

materials, shall not exceed 30% of the volume of one edition.” It seems that the legislature’s intention was to establish conditions of fair competition between public and private periodicals and also to establish the requirements for using public money in the written press. Today, however, we are in a position to ascertain the faulty and outdated nature of this provision. On one hand, this provision suggests the absence of a prohibition against founding public periodicals of an advertising nature (in which the volume of advertising is between 30% and 100%) and funding private periodicals from the state budget. On the other hand, this provision is inapplicable in the case of a periodical with the state as founder (periodical founded with public money) and which temporarily is not “funded from the state budget.” In this instance we mention the case of the state enterprise Moldpres which publishes the *Official Gazette of the Republic of Moldova*. This enterprise was not included in the Annex 6 list of self-managed public authorities and institutions, state enterprises and joint stock companies that receive funds from the national budget in the Law on State Budget of the Republic of Moldova for 2016; hence, it has not been funded from the state budget during 2016. As a result, the provision of Article 14 of the Law on Advertising does not apply, and the volume of advertising information and materials may exceed 30% of one edition.

The legislation on advertising in public periodicals should be amended:

- to adjust the terminology “periodical press”, “periodical publications funded from the state budget” and the provisions of the legislation on advertising to the terminology “periodical publication,” “public periodical publication” and the provisions of the Law no. 221 of 17 September 2010 on the denationalization of public periodical publications;
- as a general rule, to establish the share (of the volume of one edition) of the maximum space that can be offered for advertising (commercial or non-commercial) in public periodical publications;
- to establish the share (of the volume of one edition) of the maximum space that can be offered for commercial advertising in public periodical publications (in our opinion, this share must not exceed 10%, which will help (i) ensure, in the context of political pluralism, freedom of expression and access to information which would in turn contribute to the free formation of public opinion; (ii) strengthen the editorial and creative independence of periodical publications; (iii) harmonize proportions of public property with state functions and functions of administrative-territorial units; (iv) develop competition in periodical publications and (v) attract investment and ensure efficient management of periodical publications);
- to prohibit publishing political advertising in public periodicals except for election advertising;
- to establish the share (of the volume of one edition) of the maximum space that can be offered for election advertising in public periodicals (in our opinion, this must not exceed 10%);
- to establish the maximum share of the volume of non-commercial advertising in public periodicals (in our opinion, this must not exceed 10%);

## **VII. THE NEED TO IMPLEMENT EUROPEAN LEGISLATION IN THE FIELD**

Advertising can affect not only the economic situation of traders and consumers but also competition within the internal market of each state. It is obvious that today’s advertising in European states crosses borders and therefore has a(n) (in)direct effect on the market in Moldova as well. The differences among the laws of European states on advertising prevent the implementation of advertising campaigns beyond national boundaries that affect the free movement of goods and provision of services; however, the Directives adopted by the European Parliament and the Council of the European Union represent acts that establish minimal regulations binding on Member States. Moldova is currently not a member and thus does not (yet) have the express obligation to comply with and implement the provisions of European directives. We must recognise, however, that it is in our interest to remove quickly and efficiently the barriers and obstacles that hamper Moldova’s European integration.

For the purpose of determining those barriers and obstacles, we intend to further examine the national legislation on advertising in the light of European standards and requirements in order to identify gaps and inconsistencies. Identifying such gaps and inconsistencies can be a real contribution to the modernization of national legislation, to strengthening and developing the advertising field and to adjusting it to the community advertising market. At the same time, this research could prevent legislative initiatives contrary to European standards, requirements and best practices in the field. The process of implementing EU legislation implies, however, adjusting the terminology in national legislation to European terminology as well.

### **7.1. Directive concerning misleading and comparative advertising**

Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising was adopted to stimulate competition among suppliers of goods and services to the consumer's advantage and aimed, "...to lay down the conditions under which comparative advertising is permitted" (Article 1). Directive 2006/114/EC defines comparative advertising as, "advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor" (Article 2) and implies the introduction, at the European level, of uniform regulations on the form and content of comparative advertising as well as the conditions harmonized for the use (broadcasting) of comparative advertising.

As another legitimate means of informing consumers, Article 4 of Directive 2006/114/EC permits comparative advertising when the following conditions are met:

- a) it is not misleading [...];
- b) it compares goods or services meeting the same needs or intended for the same purpose;
- c) it objectively compares one or more material, relevant, verifiable and representative features of those goods and services which may include price;
- d) it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities or circumstances of a competitor;
- e) for products with designation of origin, it relates in each case to products with the same designation;
- f) it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of a competitor or of the designation of origin of competing products;
- g) it does not present goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name;
- h) it does not create confusion among traders, between the advertiser and a competitor or between the advertiser's trade marks, trade names, other distinguishing marks, goods or services and those of a competitor.

Article 9 letter b) and para. (2) of the Moldovan Law on Advertising prohibits as unfair advertising that, "...contains incorrect comparisons of the advertised products with similar products of another economic entity as well as statements or images defaming the honour, dignity or professional reputation of the competitor." At first glance, this requirement does not establish an express prohibition of the right to use comparative advertising. Practically, however, the phrases "incorrect comparisons" and "as well as statements or images defaming the [...] professional reputation of the competitor" make it impossible to use comparative advertising. On one hand, "incorrect comparisons" is not accompanied by any determining criteria and, hence, its significance is to be determined by the court. On the other hand, the law does not introduce any criteria for false information defaming the professional reputation of the competitor. Therefore, the statement in the advertisement "The undershirts produced by ABC SRL are of a better quality than the undershirts produced by our competitor in Moldova but cost half as much" could be considered defamatory even if true.

The possibility to use comparative advertising in Moldova is further reduced in the context of Article 8, para. (10) of the Law on Advertising: "It is not permissible to use state symbols, the names or abbreviations of companies, enterprises, or institutions in advertising without permission." It is obvious that this provision contradicts the very spirit of the term of comparative advertising in Directive 2006/114/EC: "Advertising that explicitly or by implication identifies a competitor or goods or services offered by a competitor."

In our opinion, the provision in Article 13, para. (7) letter a) of Law 105 of 13 March 2003 on consumer protection under Moldovan conditions is only a transposition of the provision in Article 6 § (2) letter (a) of Directive 2006/114/EC and does not enshrine the right to use comparative advertising. Thus, the legislation on advertising is to be supplemented and reviewed in order to:

- enshrine the terms of misleading advertising and comparative advertising; to define them and establish the right to use comparative advertising;
- establish the requirements, harmonized at the European level, on the form and content of comparative advertising, as well as the conditions for its use;
- introduce a ban on the use of misleading advertising and enshrine sanctions for failure to comply with the ban;
- with regard to misleading advertising, introduce, where appropriate, regulations aimed at ensuring more extensive protection for traders, competitors and consumers;
- introduce bans or limitations on the use of comparisons in the advertising of professional services.

## **7.2. Directive on unfair commercial practices**

Harmonization of the national legislation with Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market

and amending Directives 84/450/EEC of the Council, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and the Regulation (EC) No. 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) was the concern of the Moldovan Parliament when adopting Law no.140 of 28 July 2011 on amending and supplementing certain legislative acts.<sup>2</sup> It substantially amended and supplemented the preamble to Law no. 105 of 13 March 2003 on consumer protection stating the following:

This law establishes the legal bases for state protection of people as consumers and transposes Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Directives 84/450/EEC of the Council, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and the Regulation (EC) No. 2006/2004 of the European Parliament and of the Council, published in the Official Journal of the European Union No. L 149/22 of 11 June 2005.

The most important innovations included in the Law on Consumer Protection with respect to adding European regulations into national legislation on advertising are found in Article 13. In the process of harmonizing national legislation with EU regulations, it is, however, necessary not only to transpose the texts of European directives into national laws but also to establish applicable practical mechanisms and rules. Thus, for example, we mention Article 15, para. (1) of the Law on Consumer Protection.

Taking into account all interests involved and, in particular, the public interest, the competent courts or the Consumer Protection Agency: [.] c) request the submission by the Audiovisual Coordinating Council within 5 working days of identification data of natural or legal persons involved in making audiovisual advertising considered to be an unfair commercial practice, and a copy of the broadcasted advertising material.

Can it be true that the national legislature in 2011, the year when that provision was enshrined, did not know what the BCC was doing? Identifying natural/legal persons “involved in making audiovisual advertising” is not an obligation of this authority. At the practical level, even broadcasters are not supposed to know these persons. The legislation on advertising should be reviewed in order to:

- harmonize the national legislation with the provisions of Directive 2005/29/EC;
- introduce necessary and sufficient regulations with a view to implementing uniform European rules in the field;
- establish European terminology and terms with a view to ensuring legal certainty.

### **7.3. Directive on advertising and sponsoring tobacco products**

Directive 2003/33/EC of the European Parliament and the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of Member States relating to the advertising and sponsorship of tobacco products, “is intended to ensure the free movement of the media concerned and of related services and to eliminate obstacles to the operation of the Internal Market” (Article1). In order to achieve this goal, regulations harmonized at the European level have been established covering a) the advertising of tobacco products and their promotion in periodical publications, in radio broadcasting and in information society services and b) tobacco-related sponsorships, including the free distribution of tobacco products. Establishing these regulations aimed to remove disparities among national laws of Member States that had the effect of increasing barriers to the free movement among Member States of the goods and/or services that provide support for such advertising and sponsorship. The most important objectives/regulations pursued/established by Directive 2003/33/EC are a) an extension of the ban on television for advertising broadcasts as provided in Article 15 of the European Convention on Transfrontier Television to include all media and the Internet (“information society services”) and b) establishing a ban on the sponsorship of events or activities involving or taking place in several Member States or that otherwise have cross-border effects. These objectives are the subject of the Law of the Republic of Moldova no. 124/2015 on Amending and Supplementing Certain Legislative Acts.

With a view to implementing the first objective of Directive 2003/33/EC, Article 19, para. (2) of the Law on Advertising reads as follows:

It shall be prohibited to advertise, directly or indirectly, tobacco products, including advertising on the radio and television, in print, in film advertising, on videos, via the Internet, using telephone networks or telegraph which includes but is not limited to outdoor advertising and advertising in closed and semi-closed public spaces, in particular advertising

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<sup>2</sup> Law of the Republic of Moldova 140/2011 is in force since 01 January 2012.

outside and inside wholesale and retail premises where tobacco products are sold, premises where services are provided, advertising on or inside public means of transport, by direct mail and advertising for smoking accessories.

The applicability of this provision is questionable, however, considering the appearance of this tobacco advertisement on the Internet.



Directive 2003/33/EC defines the second objective very clearly: "Sponsorship of events or activities involving or taking place in several Member States or otherwise having cross-border effects shall be prohibited" (Article 5). In order to avoid any confusion, the following definition was also introduced in Article 2 of the directive: "Sponsorship' means any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product." Implementing this objective was a concern of the Parliament of Moldova in adopting Law no.124/2015 on Amending and Supplementing Certain Legislative Acts which involved reviews of the Law on Advertising and of Law no.278/2007 on tobacco control. In this process, the national legislature proved to be very original. Article 22 on sponsorship in the Law on Advertising was supplemented with a new paragraph:

(7) It shall be prohibited to promote tobacco products, including through sponsorship or any other means of support for public or commercial actions or initiatives where the brand name of the tobacco product or manufacturer's name may be visible or information on his relationship with the event is accessible to the public. Any activity that misleads or creates a false idea about the tobacco product's characteristics and their impact on health shall be prohibited.

The applicability of this legislative innovation is questionable. Is, for example, a TV series in which the main character regularly finds solutions to his problems only when consuming tobacco products a violation of the provisions in the final sentence of Article 22, para. (7)? This situation certainly "creates a false idea about the tobacco product's characteristics and their impact on health." Finally, what is the connection between sponsorship (as this article of the law is titled) and "any activity that misleads or creates a false idea"?

Does the phrase "or information on his relationship with the event is accessible to the public" prohibit a broadcaster from reporting in a main news bulletin on the philanthropic activities ("through sponsorship or any other means of support for public or commercial actions or initiatives") of a tobacco industry executive renovating a monastery or lending financial support to a festival under the patronage of the President of the Moldovan Parliament? In this case, on one hand, the broadcaster cannot be sanctioned because broadcasting

such information is in the public interest, i.e., the public was informed about who responded to a call to support national cultural events. On the other hand, neither can the tobacco industry executive be sanctioned because while the law prohibits the promotion of tobacco products, including through sponsorship or any other means of support for public or commercial actions or initiatives, it does not prohibit television stations from making the executive's relationship with the event accessible to the public.

We therefore find that the provision in Article 22, para. (7) of the Law on Advertising is not a prohibition to broadcast news on the sponsorship of social events by an executive of the tobacco industry. It is obvious that such news also appears on the broadcasters' websites giving them a cross-border nature. We recall in this context that one of the objectives of Directive 2003/33/EC is to introduce restrictions on certain types of sponsorships for the benefit of tobacco products with cross-border effects which gives rise to an appreciable risk of distorting competition within the EU market.

Following the adoption in Modolva of Law no.124/2015 on amending and supplementing certain legislative acts, provisions on sponsoring tobacco products were also enshrined in Article 21 of Law no.278/2007 on tobacco control as shown in Table 2.

**Table 2: Moldovan Law on Tobacco Control**

LAW ON TOBACCO CONTROL	LAW ON ADVERTISING
<b>Article 2. Basic terms</b>	
<b>promotion of tobacco products:</b> actions other than those of advertising and sponsorship, having the purpose or the direct or indirect effect of stimulating sales and increasing consumption of tobacco products;	
<b>cross-border advertising, promotion and sponsorship of tobacco products:</b> actions of advertising, promoting and sponsoring tobacco products originating in the Republic of Moldova that can pass into or be received in another state and includes but is not limited to posting on the Internet or through radio broadcasts or by means of other communication and advertisement technologies, and actions of advertising, promoting and sponsoring tobacco products originating outside the territory of the Republic of Moldova and which enter or are meant to enter the territory of the Republic of Moldova	
<b>Article 21. Advertising and promotion through sponsorship of tobacco products</b>	<b>Article 22. Sponsorship</b>
(3) Any activity that misleads or creates a false idea about the tobacco product's characteristics and their impact on health shall be prohibited.	(7) [...] Any activity that misleads or creates a false idea about the tobacco product's characteristics and its impact on health shall be prohibited.
(4) It shall be prohibited to promote tobacco products, including through sponsorship or any other means of support for public or commercial actions or initiatives. (5) Economic entities in the tobacco industry shall be prohibited from initiating or participating in actions of sponsorship or philanthropy where the economic entity's name, the brand name of the tobacco product, or any other references to the tobacco product's name may be visible, or other information on his relationship with the event is accessible to the public. (6) Advertising or promoting tobacco products, as well as the sponsorship of events and activities related to tobacco products that are conducted in the territory of the Republic of Moldova and have cross-border effect, shall be prohibited.	(7) It shall be prohibited to promote tobacco products, including through sponsorship or any other means of support for public or commercial actions or initiatives where the brand name of the tobacco product or manufacturer's name may be visible, or information on his relationship with the event is accessible to the public [...]

Following an examination of the provisions in Article 21 (5)–(6) of the above law in light of Directive 2003/33/EC Article 5 (1) (“Sponsorship of events or activities involving or taking place in several Member States or otherwise having cross-border effects shall be prohibited”) and of the definition of sponsorship in Article 2 of Directive 2003/33/EC (“sponsorship means any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product”), the following conclusions are appropriate.

- Certain requirements on restricting the cross-border sponsorship of tobacco products are imposed on Member States of the European Union by means of Directive 2003/33/EC.
- Member States have the right to establish a less restrictive legal regime for national sponsorships of tobacco products in relation to cross-border sponsorships of tobacco products.
- The legislation of the Republic of Moldova establishes restrictions on cross-border sponsorships of tobacco products only in cases of “activities related to tobacco products.”
- the legislation of the Republic of Moldova establishes fewer restrictions on cross-border sponsorships of tobacco products and, respectively, a much larger number of restrictions (though they are less applicable) for national sponsorships of tobacco products.

The legislation on advertising and the Law on Tobacco Control should be reviewed in order to:

- adjust the provisions of national legislation with the provisions of Directive 2005/29/EC;
- remove contradictions from national legislation in terms of the sponsorship of tobacco products;
- introduce applicable and efficient provisions on the sponsorship of tobacco products;
- introduce provisions on advertising and sponsorship of tobacco products into the Law on Advertising and the framework law on advertising.

#### **7.4. Directive relating to medicinal products for human use**

Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the community code relating to medicinal products for human use was adopted with a view to stimulating European trade in medicinal products by removing disparities among national provisions of Member States and codifying regulations in a large number of directives by assembling them in a single text. In the context of legislation on advertising, under Directive 2001/83/EC the principle prohibiting the advertising of medicinal products available only by prescription was generalized at the European level; this principle had been previously established for television advertising only by Directive 89/552/EEC of the Council of 3 October 1989. At the same time, articles 86–100 of Directive 2001/83/EC established a number of essential requirements for advertising non-prescription medicinal products for human use with a view to ensuring a high degree of consumer protection so medicinal products could be used correctly on the basis of full and comprehensible information supplied to users.

Some of the regulations in Directive 2001/83/EC are enshrined in Moldova in Article 19 of the Law on Advertising and in articles 22 and 23 of Law no. 1409 of 17 December 1997 on medicinal products: (i) the prohibition on advertising medicinal products to the general public for which there is no license to sell them in Moldova (no marketing authorization was granted); (ii) the encouragement of the rational use of medicinal products by presenting them objectively without exaggerating their properties; (iii) the prohibition against misleading advertising to the general public; (iv) the prohibition against advertising to the general public medicinal products available by prescription only and (v) the prohibition against advertising therapeutic treatments for incurable or serious diseases.

At the same time, however, legislative acts of the Republic of Moldova have not been harmonized with the special provisions of Directive 2001/83/EC in the following areas:

- advertising medicinal products to the general public;
- prohibitions on advertising medicinal products with therapeutic indications to the general public (tuberculosis, sexually transmitted diseases, other serious infectious diseases, cancer and other tumoral diseases, chronic insomnia, diabetes and other metabolic illnesses);
- requirements regarding the content of advertising messages (see articles 89 and 90 of Directive 2001/83/EC);
- advertising medicinal products to persons qualified to prescribe or supply such products;
- visits by medical sales representatives to persons qualified to prescribe medicinal products;
- the supply of samples;

- the provision of inducements to prescribe or supply medicinal products by the gift, offer or promise of any benefit or bonus, whether in money or in kind, except when their intrinsic value is minimal;
- sponsorship of promotional meetings attended by persons qualified to prescribe or supply medicinal products;
- sponsorship of scientific congresses attended by persons qualified to prescribe or supply medicinal products and in particular payment of their travelling and accommodation expenses in connection therewith.

We exclude the presence of regulations on advertising medicinal products for human use in the Audiovisual Code since this legislative act regulates audiovisual advertising only.

The legislation on advertising should be reviewed in order to:

- adjust the provisions of national legislation with the provisions of Directive 2001/83/EC;
- introduce the provisions on advertising medicinal products for human use into the Law on Advertising and the framework law on advertising.

## **7.5. Directive concerning the manufacture, presentation and sale of tobacco and related products**

Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC came into force on 20 May 2016. The adoption of the new directive was required due to the substantial differences among Member States' laws, regulations and administrative provisions and to eliminate obstacles impeding the good functioning of the European market, scientific progress, and significant evolution in the European market and in the international context. Innovations include regulations related to advertising and the sponsorship of electronic cigarettes and refill containers for electronic cigarettes. In the context of an emerging market for electronic cigarettes and refill containers and of the possibility of using electronic cigarettes as a "gateway" to nicotine addiction and ultimately to traditional tobacco consumption as they mimic and normalize the action of smoking, Article 20 (5) prohibits

(a) commercial communications (advertising, sponsorship and other forms of commercial communication) in the press (audiovisual, periodical publications) and in information society services with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers and b) cross-border sponsorship as any form of public or private contribution to any event, activity or individual person with the aim or direct or indirect effect of promoting electronic cigarettes and refill containers and involving or taking place in several Member States or otherwise having cross-border effects.

Following an examination of articles 19 and 22 of the Law on Advertising and Article 21 of the Law on Tobacco Control which regulate the advertising of tobacco products and promotion through sponsorship of tobacco products in Moldova, we can only acknowledge the lack of harmonization of the national legislation with the provisions of Directive 2014/40/EU.<sup>3</sup>

The legislation on advertising and the Law on Tobacco Control should be revised in order to:

- adjust the provisions of national legislation with the provisions of Directive 2014/40/EU;
- introduce the prohibition of commercial communications (advertising, sponsorship and other forms of commercial communication) in the press (audiovisual, periodical publications) and in information society services on electronic cigarettes and refill containers into national legislation;
- introduce the prohibition of sponsorship of electronic cigarettes and refill containers into national legislation;
- introduce the provisions on commercial communications concerning electronic cigarettes and refill containers and sponsorship of electronic cigarettes and refill containers into the Law on Advertising and the framework law on advertising.

## **VIII. ADVERTISING MARKET AND MEDIA PLURALISM**

### **8.1 Community legislation on advertising market and media pluralism**

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<sup>3</sup> See also the arguments on the need to eliminate the contradictions from the national legislation on sponsorship of tobacco products, presented in the context of examining harmonization of the national legislation with the *Directive on advertising and sponsorship of tobacco products*.

In the Charter of Fundamental Rights of the European Union, the EU confirmed its commitment to the defence and the promotion of media pluralism as an essential pillar of the right to information and freedom of expression in Article 11 which contains the fundamental principles for preserving democracy, civic pluralism and cultural diversity<sup>4</sup>: “(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. (2) The freedom and pluralism of the media shall be respected.”<sup>5</sup>

At the European level, the advertising market is regulated by legislation on competition and state aids and on audiovisual and telecommunications. The regulations on audiovisual and telecommunications were established in the context of protecting the media pluralism enshrined in Article 11 and to establish a system of pluralist competition to prevent abuses by companies enjoying monopolies or dominant positions. These regulations prevail over community legislation on competition and state aids. We note in this context that the ECHR ruled that Member States have a positive obligation to guarantee media pluralism arising from Article 10 of the European Convention on Human Rights and Fundamental Freedoms which contains provisions similar to those set out in Article 11, part of the *acquis communautaire*.<sup>6</sup> It should be recalled that according to jurisprudence of the ECHR, “The effective exercise of certain freedoms does not depend merely on the State’s duty not to interfere, but may require positive measures of protection.”

European Council (EC) Regulation No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)<sup>7</sup> applies to concentrations with a European dimension.

A concentration shall arise when a change in control on a lasting basis results from a) the merger of two or more previously independent undertakings or parts of undertakings or b) the acquisition, by one or more persons (already controlling at least one undertaking), or by one or more undertakings of direct or indirect control of one or more other undertakings” (Article 3). “A concentration has a European dimension when a) the aggregate worldwide turnover of all the undertakings concerned is more than 5 (five) billion EUR or b) the aggregate European Union-wide turnover of each of at least two of the undertakings concerned is more than 250 million (two hundred and fifty) EUR, unless each of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same Member State (Article 1).

Certain concentrations that do not meet the said thresholds (aggregate turnover) under certain conditions may acquire a European dimension; however, in this case as well, one or more of the undertakings concerned must meet a certain threshold (aggregate turnover) that is more than the amount that makes up the entire advertising market of the Republic of Moldova.

Even under such conditions, the provisions of Article 21 of Regulation No 139/2004, application of the regulation and jurisdiction are of interest in the process of harmonizing national legislation with European legislation:

(2) Subject to review by the Court of Justice, the Commission shall have sole jurisdiction to take the decisions provided for in this Regulation. (3) No Member State shall apply its national legislation on competition to any concentration that has a Community dimension. [...] (4) Notwithstanding paragraphs 2 and 3, Member States may take appropriate measures to protect legitimate interests other than those taken into consideration by this Regulation and compatible with the general principles and other provisions of Community law. Public security, plurality of the media and prudential rules shall be regarded as legitimate interests within the meaning of the first subparagraph [the phrase “first subparagraph” meaning the first sentence of para. (4).

Thus, European institutions foresaw the powers of Member States to establish in national legislation demands as legitimate interest much greater than those set out in the regulation to protect media pluralism.

In European Parliament Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union (2007/2253 INI),<sup>8</sup> the European Parliament expressed its concern about the lack of institutional involvement in restricting the concentration of media ownership in order to safeguard media pluralism: “Whereas experience shows that the unrestricted concentration of ownership jeopardises pluralism and cultural

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<sup>4</sup> See *Recital A* of the *European Parliament Resolution of 25 September 2008 on concentration and pluralism in the media in the European Union (2007/2253(INI))*.

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0389:0403:ro:PDF>

<sup>6</sup> See *Recital A* of the *European Parliament Resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU (2011/2246(INI))*.

<sup>7</sup> <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:32004R0139>

<sup>8</sup> <http://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52008IP0459>

diversity and whereas a system purely based on free market competition alone is not able to guarantee media pluralism.”<sup>9</sup> The European Parliament further shattered the myth of the disappearance of the problem of media monopolisation in the Republic of Moldova under various forms of media ownership and under conditions of technological advancement in general and the digitization of national television in particular: “[...] respect for pluralism of information and diversity of content is not automatically guaranteed by technological advances, but must come about through an active, consistent and vigilant policy on the part of the national and European public authorities.”<sup>10</sup> The EU Parliament also ascertained the presence of obstacles and dangers in regulating concentration of media ownership and safeguarding media pluralism in the following statements:

Whereas EU competition law is somewhat limited in its ability to address media concentration issues because the activities creating concentration of media ownership at the vertical and horizontal levels in the new EU Member States have not reached the financial threshold at which EU competition law would apply.

Whereas the introduction of over-restrictive rules on media ownership risks reducing the competitiveness of European enterprises in the world market and increasing the influence of non-European media groups.<sup>11</sup>

Parliament further expressly noted the absence of competence of European institutions to intervene with express regulations on media concentration and also noted areas and specific regulatory powers through which those institutions could strengthen and promote media pluralism:

Whereas the EU has no intrinsic competence to regulate media concentration, nevertheless its competence in various policy fields enables it to play an active role in safeguarding and promoting media pluralism; whereas competition and state aid law, audiovisual and telecommunication regulation as well as external (trade) relations are areas in which the EU can and should actively pursue a policy to strengthen and foster media pluralism.”<sup>12</sup>

With a view to overcoming this uncertainty, Parliament declared that, “It encourages the creation of a charter for media freedom to guarantee freedom of expression and pluralism” (adopted in 2013).

On page 4 of the September 2008 resolution, Parliament, “...highlights that the concentration of ownership of the media system creates an environment favouring the monopolisation of the advertising market, introduces barriers to the entry of new market players and also leads to uniformity of media content” for which it, “considers, therefore, that competition law must be interlinked with media law, in order to guarantee access, competition and quality and avoid conflicts of interests between media ownership concentration and political power which are detrimental to free competition, a level playing field and pluralism” (page 5). Finally, on page 36, Parliament encourages, “Member States to ensure that the application of national competition law to the media as well as to the Internet and communication technology sector facilitates and promotes media pluralism.”

In Resolution of 21 May 2013 on the EU Charter, standard settings for media freedom across the EU (2011/2246 INI),<sup>13</sup> the European Parliament reiterated its commitment to measures to build and promote media pluralism as a cornerstone of EU external relations and in particular in the context of the European Neighbourhood Policy and the Enlargement Strategy, extended the applicability of the requirements of this resolution with respect to candidate countries (Moldova in particular) as well:

Whereas free and independent media and free exchange of information have a decisive role in the democratic transformations taking place in non-democratic regimes, and the Commission is requested to undertake the close monitoring of media freedom and pluralism in accession countries and to pay sufficient attention to the role of free media in the promotion of democracy throughout the world (see Recital B).

With the technological changes in recent decades, this position has been substantiated by the cross-border nature of the media which helps inform national communities living abroad and fosters mutual knowledge and understanding among countries/societies (see Recital H), and by the fact that, “Media freedom is a qualifying criterion for the accession of candidate countries to the EU under the Copenhagen criteria, and is also one of the principles promoted by the EU in its foreign policy” (see Recital M).

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<sup>9</sup> Recital N.

<sup>10</sup> Recitals S, V, AD.

<sup>11</sup> Recitals Z, AA and AY.

<sup>12</sup> Recital AT.

<sup>13</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0203&language=RO&ring=A7-2013-0117>

In its 2013 Resolution (2011/2246 INI), Parliament specifically addressed the safeguarding of media pluralism: “Whereas, therefore, any undue restrictions on media freedom, pluralism and the independence of journalism are also restrictions on the freedom of opinion and on economic freedom” (see Recital D), noting among the threats posed to a free and independent media by governments, “...direct or indirect partisan political control and influence over the media or media control bodies, ...the absence of laws on media concentration and conflicts of interest, ...the use of advertising to influence editorial lines” (see Recital J). It also went beyond the 2008 resolution and stated categorically the existence and extent of the competences of European institutions in media pluralism and on the protection of media freedom:

Whereas the EU has competences in media-related fields such as the internal market, audiovisual policy, competition (including state subsidies), telecommunications and fundamental rights; whereas Parliament has stated that on this basis minimum essential standards should be defined in order to ensure, guarantee and promote freedom of information and an adequate level of media pluralism and independent media governance (Recital S);

Whereas Member States have a duty to constantly promote and protect freedom of opinion, expression, information and the media, as these principles are also guaranteed in their constitutions and laws, and also to provide citizens with fair and equal access to different sources of information and thus to differing viewpoints and opinions; [...]; whereas, should these freedoms be placed at serious risk or violated in a Member State, the Union is obliged to intervene in a timely and effective fashion, on the basis of its competences as enshrined in the Treaties and in the Charter, so as to protect the European democratic and pluralistic order and fundamental rights (Recital R).

Resolution (2011/2246 INI) further:

- calls on Member States and the EU to respect, guarantee, protect and promote the fundamental right to freedom of expression and information, as well as media freedom and pluralism [...] (p.1);
- recalls that, according to the ECHR, states party must guarantee media pluralism under Article 10 of the European Convention on Human Rights [...] (page 5);
- notes that under the Copenhagen criteria countries wishing to accede to the EU must comply with the *acquis communautaire*, which includes the Charter of Fundamental Rights and, more particularly, Article 11 thereof, which requires respect for the freedom and pluralism of the media; notes, conversely, that although existing Member States are also required to comply with the Charter, no mechanism exists to ensure that they do so (page 7);
- calls on the Commission and the Member States to apply competition and media rules, to ensure competition in order to address and prevent dominant positions, possibly through setting lower competition thresholds in the media industry than in other markets, to guarantee the access of new entrants on the market, to intervene where the media are excessively concentrated and where media pluralism, independence and freedom are in danger, in order to ensure that all EU citizens have access to free and diversified media in all Member States and to recommend improvements where needed; stresses that the existence of press groups owned by enterprises that have the power to award public procurement contracts represents a threat to media independence; calls on the Commission to assess how existing competition rules relate to the increasing concentration of commercial media in the Member States; calls on the Commission to propose concrete measures to safeguard media pluralism and prevent excessive media concentration (page 14);
- calls for rules to ensure that conflicts of interest such as those resulting from the amalgamation of political office and control over media outlets are properly addressed and resolved, and, in particular, that the beneficiary owners of media conglomerates are always public so as to avoid conflicts of interest; calls for the effective implementation of clear rules to ensure transparent and fair procedures for media funding and state advertising and sponsoring allocation, so as to guarantee that these do not cause interference with freedom of information and expression, pluralism or the editorial line of media, and calls on the Commission to monitor this (page 17);
- highlights that, despite the use of competition policy through the EU Merger Regulation and, in particular, its Article 21, concern has been raised that these instruments do not adequately control media concentration due to problems of market delimitation, where in some cases large cross-media mergers fall short of turnover thresholds stipulated in EU competition policy (page 17);
- highlights that market power in the media industry arises not only from monopoly pricing power, but also from political influence leading to regulatory capture, making dominant positions more difficult to dismantle once they are established; calls for competition thresholds to be set lower in the media industry than in other markets (page 18);

- believes that in the case of further accessions to the EU additional emphasis should be placed on the protection of freedoms and on freedom of speech, since these are widely considered to be elements of the human rights and democracy conditionality of the Copenhagen criteria; calls on the Commission to continue to monitor the performance and progress of EU candidate countries as regards the protection of media freedoms (page 39).

## **8.2. National legislation on advertising market and media pluralism**

The Law on Advertising contains the chapter State control and self-regulation in advertising which includes three articles intended to establish the CC as the authority to ensure compliance with and the application of the legislation on advertising. The preamble to the Competition Law states:

This law transposes the provisions of articles 101–106 of the Treaty on the Functioning of the European Union of 25 March 1957, the provisions of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, published in the *Official Journal of the European Union* L1 of 4 January 2003, and, partially, the provisions of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings, published in the *Official Journal of the European Union* L24 of 29 January 2004.

The law establishes the powers of the CC on “competition, state aid and advertising” in the absence of special regulations and/or powers of the CC in the advertising market and/or media pluralism. Consequently, the CC has the power to apply general rules in the advertising market as well.

The Broadcasting Code of the Republic of Moldova contains provisions that are designed to prevent abuses by companies enjoying monopolies or dominant positions: “The concentration of property in the audiovisual field is limited to dimensions ensuring economic efficiency, and it shall not generate dominant positions in the formation of public opinion, in order to protect pluralism and political, social and cultural diversity” [Article 7 para.(5)] and “A natural or legal person may hold not more than two broadcasting licenses in the same administrative-territorial unit or area, without the possibility of holding exclusivity and may be the majority shareholder for no more than two broadcasters” [Article 68 para. (3)]. These provisions, although legal, are not implemented in everyday practice.

## **IX. SELF-REGULATION IN ADVERTISING**

### **9.1. General provisions**

European and international practice shows that self-regulation in advertising, as well as in other areas of human activity, is preferable to regulation. Self-regulatory principles include the following:

- timeliness dictated by the needs of the contemporary market;
- legality as self-regulation acts in the same system as state regulation and interacts and in some cases replaces it.

Self-regulation acts in the legal field, does not contradict it, but complements and specifies legal rules, forming the practices for their enforcement. Non-commercial and non-government organisations whose members represent the advertising industry can be subject to self-regulation. This gives rise to the professionalization of the field through authoritative and persuasive techniques that are more effective than applying legal sanctions.

Self-regulation systems for advertisers in advanced countries meet six requirements:

1. developed ethical standards and general and sector standards;
2. knowledge and recognition of rules undertaken by most members;
3. independent self-regulatory organisations;
4. consultations to prevent violations;
5. a monitoring system;
6. means to influence those who break the rules.

The functions of self-regulatory organisations also include settling disputes, conducting research and studies and providing recommendations among others.

Self-regulatory organisations are guided by principles such as:

- ✓ independence from the state and from the subjects of the advertising industry;
- ✓ responsibility;
- ✓ judicious exercise of power;
- ✓ objectivity;
- ✓ accessibility;
- ✓ impeccable reputation;
- ✓ authority;
- ✓ professionalism;
- ✓ stability.

## 9.2. Situation regarding self-regulation of advertising

A well-organised and properly managed self-regulatory system proposes operative, flexible, cheap and effective solutions involving actions of most responsible representatives of the advertising industry to discourage and limit the irresponsible minority and those who ignore the rules whereby they can compromise the reputation of advertising in the eyes of society. The International Code of Advertising Practice itself, adopted by the International Chamber of Commerce (Paris, 1987) which underpins the regulations in most countries of the world, is a self-regulatory document.

Self-regulation means recognition by the industry that advertising must meet general requirements including legality, decency, honesty and realism, and must demonstrate respect for the consumer and society and the rules of fair competition. All important markets have adopted and implemented self-regulatory advertising systems. Adopting legislation requires political will and a great deal of time though self-regulatory codes can be drafted and adopted swiftly in response to social and technological changes. Self-regulation is much more flexible since it enjoys the support of those involved in the field and can respond to problems that arise more quickly than the law can.

The International Code of Advertising Practice, first issued in 1937, is used alongside other specific codes for advertising and marketing worldwide and is one of the most successful examples of voluntary self-regulation of advertising as it provides a simple, internationally recognised manner for establishing global standards and is used as a benchmark by all code implementation bodies worldwide. Such a document can serve as a key tool for self-regulation of commercial communications—a preferred method for establishing standards in advertising—and, more importantly, a primary resource for governments and decision makers who address these problems.

In countries where there are codes for advertising practice and they are complied with, the number of cases resolved by self-regulatory organisations often largely exceeds the number of cases reported by government regulatory bodies. For example, in Germany in 2015, 258 cases were reported to self-regulatory bodies but only 121 were reported to the government.<sup>14</sup> Romania has enjoyed self-regulation in advertising since 1999 when the Romanian Advertising Council was established, the only self-regulatory body in the country recognised by the National Audiovisual Council. Since 2003, the two have been interacting based on a protocol of cooperation and have become partners in settling complaints on advertising. Annually, over 120 cases come to the Romanian Advertising Council's attention. The complaints are received from consumers, the National Audiovisual Council, companies or state institutions that also cover the advertising of various products. The Romanian Advertising Council's decisions in these cases are taken based on the Code of Advertising Practice developed by its members<sup>15</sup> in 2006 that contains 5 chapters and 45 articles.<sup>16</sup> In addition, several self-regulatory documents have been adopted including: the ethical code for food product advertising targeting children,<sup>17</sup> the code of practice in commercial communication<sup>18</sup>; the code of good practice in labelling and advertising of food supplements developed by the Romanian Food Supplements Industry Association<sup>19</sup>; commercial communication rules on telecommunication services and products; the

<sup>14</sup> <http://www.scribub.com/management/marketing/Codul-Consolidat-ICC-pentru-Pr24224201614.php>

<sup>15</sup> <http://membrii.rac.ro/autoreglementarea-in-romania>

<sup>16</sup> <http://www.iqads.ro/articol/3306/codul-de-practica-in-publicitate>

<sup>17</sup> <https://es.scribd.com/document/143568202/Codul-Etic-Pentru-Publicitatea-Adresata-Copii-or-Referitoare-La-Produse-Alimentare-Format-Doc>

<sup>18</sup> <http://membrii.rac.ro/cod>

<sup>19</sup> <https://www.google.com/#q=BUNE+PRACTICI+%C3%8EN+ETICHETAREA+%C8%98I+PUBLICITATEA+SUPLIMENTELOR+ALIMENTARE+>

In Great Britain, the Advertising Standard Authority oversees compliance with its code of advertising in media, cinema, Internet, etc. Annually this authority examines over 10,000 complaints filed mainly by advertising customers and, where appropriate, amends or suspends the broadcasting of advertising. The Independent Television Commission, the supreme body of private television stations empowered by the government and in cooperation with other public organisations representing consumers, advertising providers and broadcasters develops new rules and, if necessary, monitors compliance with them. On a monthly basis, the commission publishes widely advertised monitoring reports. Thereby advertising that is considered not to be in line with the rules is dropped from broadcasts.<sup>20</sup>

In the US, the central role in the self-regulatory system is played by the American Advertising Federation established in 1905. The federation still has authority and is operating throughout the country through local offices. There are other self-regulatory bodies as well that interact to ensure a proper environment for business. For example, in 2003 the Direct Marketing Association, the Association of National Advertisers and the Association of Advertising Agencies adopted new rules for broadcasting advertising via electronic mail known as spam. Among those was the obligation that the advertising must be truthful and that the consigner's address must be real.<sup>21</sup>

In Russia, the Association of Communication Agencies which included over 1000 advertising agencies was established in 1993, and in 1995 the Public Council of Advertising was established which in 1999 was reorganised as the Advertising Council of Russia. In 2003, the first comprehensive self-regulatory document—the Advertising Code containing 22 articles<sup>22</sup>—was adopted inspired by the International Code of Advertising Practice. Currently in Russia, a multitude of organisations operates in the field of self-regulation, but according to experts, there is no clear delineation of their functions and duties and often they focus their activities in the interests of advertising producers and broadcasters thus ignoring the interests of consumers.

In Ukraine the Advertising Coalition consists of 104 members. The coalition organises and carries out extensive activities including an international advertising festival, an social advertising scholarship and a video marketing and advertising institute on an open platform on You Tube among others. It also develops and adopts various self-regulatory documents such as recommendations for selecting radio media agencies and a guide for communication providers and agencies on the conditions for conducting a tender and others. For more than 10 years, the coalition has examined advertising materials to determine their compliance with the legislation in force both at the request of advertising agents and corresponding state bodies. In 2013, for example, the coalition offered over 20 examinations to applicants which helped issue decisions on an informed basis. The coalition sees its mission as contributing to the development of advertising in Ukraine.<sup>23</sup>

At the European level, the European Advertising Standards Alliance Cross-Border Complaint System<sup>24</sup> was set up in Brussels in 1992. Currently, the alliance has 25 members including Romania. It imposes the following sanctions on rule breakers: mandatory pre-clearance before advertising is broadcast; refusal of the media to broadcast the offender's advertising; deprivation of trade privileges and addressing the appropriate state institutions.

### **9.3. Self-regulation in the Republic of Moldova**

In Moldova, the Association of Advertising Agencies has been operating for several years and currently comprises 16 members and 4 partners including the Audit Bureau of Circulation and Internet and the CIS Advertising Coordination Council. In September 2011, the association adopted a code of ethics and in 2016 a guideline for assessing sexist advertising.<sup>28</sup> In the ethical code, the association's members are guided by the following principles: honesty, good faith, fairness and transparency. In addition, para. 2.1.7. requires that they undertake not to accept unfair competition defining it as using personal information that does not refer to the active profile or that has been obtained with the help of an insider.<sup>29</sup> Other institutions in the self-regulatory system are not visible, demonstrating the need to boost professionalisation in advertising. Moreover, although

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<sup>20</sup> Richter A. Legal regulation of advertising in media // Media law and practice. 2001. No. 10.

<sup>21</sup> Erkenova F. Advertising self-regulation. Moscow, 2003.

<sup>22</sup> <http://www.advesti.ru/law/rosreckodeks>

<sup>23</sup> <http://vrk.org.ua/>

<sup>24</sup> <http://www.easa-alliance.org/>

the association although has merits, it neither cooperates formally nor effectively with authorities such as CC or the BCC. We observe that Casa Media, the largest operator in the market, is not an association member.

We can find other elements of a self-regulatory advertising system in documents that have elements in common with that activity. For example, para. 2.10 of the Journalists' Code of Ethics of the Republic of Moldova states: "It is mandatory to separate clearly journalistic products from those produced for advertising purposes. Advertising materials shall be distinctly marked and shall be presented in such way as to not be confused with journalistic ones."<sup>25</sup>

In the Broadcasters' Code of Conduct adopted in 2007, no direct separate references are made to advertising; however, indirectly they may be implied in Article 31: "Radio and TV journalists shall avoid putting themselves in a conflict of interest. It is recommended to separate editorial activities from political and economic ones," advertising being an economic activity.

Since 2007, Teleradio-Moldova, the national public broadcaster, and the National Public Audiovisual Institution (NPAI) have relied on two self-regulatory documents: the Code of principles, standards and recommendations of producers of the Public Company Teleradio-Moldova<sup>26</sup> and the Regulation of Professional standards and principles of journalistic of ethics in the programmes of NPAI/Teleradio-Moldova.<sup>27</sup> The first document, a complex one, contains two separate articles: Article 31 entitled Advertising and marketing and Article 32 Sales of advertising space at Teleradio-Moldova: benchmarks and recommendations. The second document contains Article 19 entitled Advertising, promotion and sponsorship of the programmes of NPAI/Teleradio-Moldova. It would seem, however, that these documents as well as the Broadcasters' Code of Conduct are merely formal in nature since there are no functional, recognised or effective bodies to monitor the manner in which the rules are complied with even though at the NPAI for almost three years they have been part of the structure of Ombudsman's service. The BCC occasionally monitors the broadcasting of advertising by various stations, but when taking decisions it usually does not seek the opinion of self-regulatory advertising bodies as sometimes happens in the case of the Press Council.

Thus, there is a slow and still inefficient process of professionalisation of the field of advertising in Moldova. It needs to be developed since as demonstrated by the experience of advanced countries, the self-regulatory system is very important in economic regulations. Self-regulatory institutions in old democracies have sufficient authority to effectively influence the subjects in the advertising market. International practice shows that the lack of self-regulation leads to dishonest economic behaviour that generates a negative attitude on the part of society and, consequently, to tightening-up of state regulations.

## **X. ADVERTISING IN THE REPUBLIC OF MOLDOVA: OVERVIEW**

### **10.1. Introduction**

In their annual reports, national authorities such as the National Bureau of Statistics (NBS), the CC or the BCC do not present comprehensive data regarding advertising separately. This is not justifiable since the field represents 0.3% of annual GDP and media advertising (radio/TV, print and online press) represents 0.23%, an indicator comparable to that in the Baltic States (Estonia – 0.45%, Latvia – 0.32%, Lithuania – 0.27%).<sup>28</sup> The NBS, for example, includes in the *Statistical Yearbook of the Republic of Moldova* the chapter Culture; Sport<sup>29</sup>, but it is limited only to data on the circulation of books, magazines, and newspapers. In its activity report for 2015, the CC included Chapter 3.3, Unfair competition and advertising. The chapter, however, states:

During the reporting period, 18 cases of unfair competition were investigated; 12 cases were completed of which in 4 no violations were found and in 8 decisions of the Competition Council on violations of the competition law were issued. At the same time, 35 cases on violations of the legislation on advertising were found.<sup>30</sup>

Although there were several relevant advertising cases, there is no answer to the key question: What does the advertising market consist of in general? Without having the answer to this question we cannot have answers

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<sup>25</sup> [http://consiliuldepresa.md/fileadmin/fisiere/documente/cod\\_d\\_rom.pdf](http://consiliuldepresa.md/fileadmin/fisiere/documente/cod_d_rom.pdf)

<sup>26</sup> <http://trm.md/ro/documente/>

<sup>27</sup> <http://trm.md/ro/documente/>

<sup>28</sup> <http://sovetreklama.org/2016/05/estoniya-operezhaet-latviyu-i-litvu-po-reklamnym-investiciyam-na-odnogo-zhitelya/>

<sup>29</sup> <http://www.statistica.md/pageview.php?l=ro&idc=263&id=2193>

<sup>30</sup> <http://www.competition.md/public/files/RaportactivitateCons-Concur2015323f6.pdf>

to questions derived from it: How big or small is the advertising market?; What structure does it have?; Who are the main actors in the market and what market shares do they have?; Are there dominant positions?; Are there abuses of dominant positions? Let's remember that the Competition Law (in force from 14 September 2012) in Article 1 (Object and scope of this law) states:

- (1) This law establishes the legal framework for the protection of competition, including preventing and counteracting anticompetitive practices and unfair competition for economic concentrations in the market, establishes the legal framework on the activities and the competence of the Competition Council and the liability for infringing the legislation on the competition.

Obviously, without accurate and complete data on the advertising market, the authority in charge of competition cannot achieve its tasks in full.

The BCC's activity report for 2015 also contains chapter 5.7 on advertising, Compliance with the conditions of advertising placement,<sup>31</sup> but as in the case of the CC, the chapter does not contain complex data on the audiovisual advertising market but instead establishes the BCC's decisions adopted in public meetings, either after monitoring the placement of advertising by broadcasters or as a result of referrals. The BCC could easily analyse the audiovisual advertising market since it has data on the annual turnovers of each broadcaster. In the absence of a presentation and, subsequently, of an analysis of the advertising market, the level of concentration of ownership and/or control in this sector cannot be measured, and furthermore it cannot be prevented. On the contrary, para. (3) of Article 66 of the Broadcasting Code generates concentration of ownership and control in the field that in turn also generates or may generate advertising concentration or the occurrence of dominant market positions. This is also possible since the legislation does not provide specific limits for media outlets.

The BCC can and does collaborate with the CC. An agreement in this sense was signed on 4 July 2014, but it is rather a formal agreement as concrete results have not as yet materialised. This state of affairs is probably also due to the lack of a legal provision whereby the BCC would be obliged to request the opinion or intervention of the CC (and vice versa) before granting frequencies/licenses to broadcasters already in the market to ensure that no abusive or dominant positions are generated. In other words, the Broadcasting Code and the Competition Law grant powers to their respective authorities but not the mechanisms for using those powers, so they are not implemented effectively. For example, in Article 7, the Broadcasting Code provides in (5) that, "The concentration of ownership in the audiovisual field is limited to dimensions ensuring economic efficiency, and it shall not generate dominant positions in the formation of public opinion in order to protect pluralism and political, social and cultural diversity." Article 23 states in (3) "The Broadcastong Coordinating Council shall issue a broadcasting licence under the following conditions:

- b) issuing a broadcasting licence is deemed to meet the principles of ensuring pluralism in the audiovisual field, precluding the creation of any potential conditions for a monopolistic ownership and media concentration in the audiovisual sector particularly and in mass media on the whole, taking into account the degree of compliance with this requirement of the broadcasters already issued with a license."

Regarding the revocation of a broadcasting license, Article 27 states: (1) "The Broadcastong Coordinating Council may revoke a broadcasting license if:

- f) the standards on audiovisual ownership regime are violated."

Article 38 on sanctions states that (2) "According to this Code there are the following contraventions:

- k) failure to observe the provisions regarding the judicial system of ownership in the audiovisual field."

Although the Broadcasting Code gives importance to media ownership in the licensing process, these provisions are declaratory and ineffective. Neither the CC nor the BCC controls or detects violations of the rules for protecting audiovisual competition. In this situation, it is neither easy nor possible to establish the "failure to observe the provisions regarding the judicial system of ownership in the audiovisual field" in Article 38 to eventually impose sanctions. Specifically, the BCC and CC are not concerned with issues related to the concentration of ownership and control in broadcasting and, respectively, to concentrations in advertising.

Most of the advertising market belongs to television. Advertising reaches television stations either via advertising agencies (local or international), media sellers or sales departments of TV channels. TV sales departments manage to access about 15% of the advertising volume. As a rule, small economic entities work

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<sup>31</sup> <http://cca.md/files/RAPORT%20CCA%202015.pdf>

directly with TV stations, sporadically and in the absence of an advertising strategy. Local media get little advertising for two main reasons: a) advertising is concentrated excessively in the capital and b) audience measurements, which are increasingly requested by advertisers, are designed for large radio and TV stations that can pay for these services.<sup>32</sup>

Advertising agencies in fact work with all media but more actively with television and online media as they are the most transparent and the most in demand by advertising providers. The share of advertising revenues is very different in different media outlets. Central radio and TV channels are used all the time for advertising placement as allowed by the legislation. Locally, however, the space for advertising is used at a rate of 5–7%, and often consists of social advertising broadcast free of charge.

In the Republic of Moldova, the government and local public authorities are not important advertising providers. At the same time, there is no monitoring to clarify how state money is spent on advertising. This requires both monitoring the situation and developing a regulatory framework that would impose rules for the strict and fair selection of media to broadcast advertising coming from the state.

Moldova has several hundred advertising agencies,<sup>33</sup> but the number of functioning ones is much smaller. Globally, advertising agencies are divided into two types: media agencies and advertising agencies. Media agencies determine on what media outlets and what volume advertising will be proposed for broadcasting while an advertising agency deals mainly with creating ads starting with concepts and ending with promos, logos, and spots. It should be mentioned that an advertising provider wants to be served by an agency with a good name in the market; however, the good name can be determined also by an independent company with a recognised reputation. At the international level, Regma is a company that determines an agency's rating based on several indicators including cumulative budget of advertising providers (customers) served; quality of management and how it influences customers and number, quality and satisfaction of agency staff among others. Since Regma does not operate in Moldova, there is no 100% credible rating for advertising agencies. An estimate can be made based on data provided by AGB Moldova (insufficiently credible): the amount of time for advertising placement after which its cost is estimated depending on the radio/TV channel used, potential discounts and placement periods. Finally, it would be possible to determine only a very approximate rating for an advertising agent since there is no way to refer to all advertising in all media: TV, radio, written and online press, outdoor. Here we share the Vivaki agency's opinion:

At the current stage of development of the advertising market of Moldova, its growth can be possible only due to the further development of services for measuring and monitoring media channels, even in today's context of economic crisis. At the moment, we are doing well with regard to television, but we do not have data for the rest. Big advertising agencies and Vivaki particularly are trying of course to estimate the potential and efficiency of all media outlets, investing in their own analysis tools or acquiring tools that have been recommended on a global level, but without precise measurement and the independent monitoring of local media channels, big and transnational customers will be careful in taking decisions to invest in the advertising market in the Republic of Moldova, and the market will continue to show uneven results.<sup>34</sup>

## **10.2. Advertising market: distribution**

In Moldova, for several years the most comprehensive data in the annual analyses of the advertising market,<sup>35</sup> although approximate, have been presented by a non-government institution: the Association of Advertising Agencies. Here is a summary of the data included in the analysis for 2015.

In 2015, the advertising market in total was 22.3 million EUR or 465.3 million MDL. This was an increase of 0.7% in MDL and a decrease of 10% in EUR. It should be mentioned that at the beginning of 2015, several experts had expressed concern that the advertising market would decrease by 30%. An increase in MDL to 490 million and a decrease in EUR to 21.5 million was forecast for 2016.

In 2015 advertising was distributed as follows:

**TV:** 12.4 million EUR (55%) of the total or 259.2 million MDL.

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<sup>32</sup> AGB Nielsen Media Research is the company that monthly measures the audience of 15 television channels and 6 radio channels.

<sup>33</sup> <http://totul.md/ro/company/Reklamnye-i-marketing/page-15.htm>

<sup>34</sup> <http://vivaki.md/ro/multimedia/publicitate-moldova-situatia-actuala-2015/>

<sup>35</sup> <http://www.aapm.md/rom/obzor-media-rinka-2015.html>

Advertising was sold mainly by the following agents:

1. Casa Media (Prime, Canal 2, 4, Canal 3, Ren, Publika) with about 50% of the market;
2. Alkasar (7, TNT Bravo, STS and NTV) with about 21% of the market;
3. Nova (RTR, Super and Ru) with about 15% of the market;
4. Other agents (TMoldova 1, Pro, Realitatea, Acasă) with about 14 % of the market.

In 2016, stations STS and Super went with Casa Media, hence Alkasar and Nova, by estimate, will reduce their market share to 13-12% while Casa Media will increase its share to 59 %.

In 2015, 5 stations—Prime, RTR, 7, Moldova 1 and Canal 2—with a cumulative audience of 44%, broadcast 58% of advertising. Eleven stations with a cumulative audience of 22% broadcast 42%.

**radio:** Advertising decreased from 1 million EUR in 2010 to 0.6 million in 2015 and, by estimate, will also decrease in 2016 to 0.56 million. In 2015, the number of advertising spots decreased by 17% compared with 2014 to slightly more than 400,000, of which nearly a quarter were covered by the largest 15 advertising providers (87,065) compared with 87,603 in 2014. Even major advertising providers reduced their budgets for radio advertising; for example, Orange moved from 3rd in 2014 to 6th in 2015;

**print:** Advertising budgets decreased from 3.6 million EUR in 2010 to 2.5 million in 2012–2013 and to 1.3 million in 2015. A decrease of up to 1.2 million EUR is expected in 2016 due to decreasing audiences for all types of written media: daily newspapers, weekly newspapers, magazines.

**online:** Advertising is sold by the following main agents:

1. MediaContact (md. mail. ru; ok.ru; unimedia.md; agora.md; ea.md) with 61.8% of the market;
2. Number (999.md; point.md; play.md; mama.md; forum.md; sporter.md; mamaplus.md) with 35.89% of the market;
3. Alkasar (noi.md; megogo.net; moldovenii.md) with 13.8% of the market;
4. ProDigital (protv.md; kp.md; perfecte.md; acasatv.md; inprofunzime.md) with 16.65% of the market.

It is important to point out that the Internet penetration rate in the Republic of Moldova in 2015 was 71% (in Ukraine 43%, in Romania 56%, in Russia 70.5%, in Estonia 84.2%, in Finland 93.5%).

**outdoor:** Advertising dropped from 6.1 million EUR in 2010 to 4.9 million in 2011 and to 5.18 million in 2015. A decrease of up to 4.75 million EUR is estimated for 2016. Advertising is placed on about 15 types of surfaces: billboards, LED boards, boards, public transport stations and consoles. In Chisinau in 2015, there were 6529 constructions for placing outdoor advertising. Over 20 agents are operating in the market, the biggest being EpaMedia (20%), Standart (12%) and Valoinform (8%). EpaMedia is the only agent that sells advertising on small constructions in public transport stations. The top five largest operators have a combined market share of 52% (ArtPrint has 7% and Cebacot 5%). In all, 48% of the market is held by other agents with shares between 1% and 4%. Trendseter is the only operator that does not have its own constructions and sells areas bought from other operators. In 2015, the largest areas covered advertising in communications, food, construction, services and social messages.

### 10.3. Audiovisual advertising market in 2015

The situation in the audiovisual advertising market can be understood from annual allocations to the Broadcasters Support Fund which, according to the legislation, is replenished by contributions at a rate of 1% of the turnover of each broadcaster. In all 70 television stations, including 29 local ones, and 56 radio stations, including 23 local ones, were operating in the Republic of Moldova at the end of 2015. According to data provided by the BCC, the contribution to the Broadcasters Support Fund of these 126 broadcasters in 2015 made up 3.1634 million MDL. As a result, we conclude that the turnover of all broadcasters slightly exceeded 316 million MDL. The list of owners with the highest turnovers is presented in Table 3.

**Table 3: Broadcasters with the greatest turnover in 2015**

No.	Owner	Contribution to Broadcasters Support Fund (1%) in 2015	Deducted turnover (approximately)	Market share held (%)
1.	General Media Group ICS	1.238.771.51 MDL	124 million MDL	39.24%
2.	Jurnal de Chişinău Plus SRL	258.754.70 MDL	26 million MDL	8.22%
3.	Analiticmedia-Grup SA	232.267,76 MDL	23 million MDL	7.28%

4.	Prodigital SRL	214.351,26 MDL	21 million MDL	6.77%
5.	NPAI Company Teleradio-Moldova	194.331.30 MDL	19 million MDL	6.14%

It should be noted that the largest outlet, General Media Group ICS, in 2015 held a market share of almost 40% which is more than the rest of the top 5 together and with them 67.4% of the total (213 million MDL out of 316 million).

According to the same data provided by the BCC, the amounts transferred in 2015 by the 52 local broadcasters to the Broadcasters Support Fund made up approximately 121,000 MDL. Therefore, the turnover of all local broadcasters was slightly more than 12 million MDL which is only 3.8% of the total turnover of broadcasters in Moldova. The 52 local broadcasters represent 41.3% of all broadcasters while the share of the local population in the total national population is 77.2%. Thus, the ratio between the two turnover rates was 0.53 or about 1 to 2, while the ratio between the turnover of local broadcasters in 2015 (3.8%) and the share of the local population (77.2%) was 0.05 or 1 to 20.

## XI. ADVERTISING MARKET: COMPARATIVE DATA ON DISTRIBUTIONS IN 2015

**Table 4: Advertising data from neighbouring countries**

	Country	TV	radio	Press	outdoor	on-line	total
1.	Moldova	55% (12.4)	3% (0.6)	6% (1.3)	24% (5.2)	13% (2.8)	22.3 million EUR
2.	Romania	64% (212)	4.8% (16)	5.7% (19)	8,4% (28)	17% (57)	332 million EUR
3.	Ukraine	44.7% (3 986)	3.4% (304)	14.8% (91 320)	10,7% (952)	26,4% (2 355)	8.917 million UAH (without advertising in cinemas)
4.	Russia	45.7% (131.036)	4.4% (12.675)	7.5% (21.515)	9,9% (28.420)	32,5% (93.071)	286.717 million RUB (without indoor advertising and advertising in cinemas)

These data reveal a different advertising distribution in the Republic of Moldova compared with neighbouring countries (Table 4). Thus, television advertising is about 10% higher than in countries such as Ukraine and Russia but almost 10% lower than in Romania. Radio advertising, in fact, is comparable with differences between 0.4 and 1.8%. Advertising in print media shows the same trends except in Ukraine where this indicator is about twice that in Moldova, Romania and Russia. It should be emphasized that online advertising in Moldova despite clear increases in recent years nevertheless remains far behind the trends in neighbouring countries, especially in Russia and Ukraine. It should be noted that in the US<sup>36</sup> since 2014 and in EU countries since 2015, the volume of online advertising exceeded that of television advertising.<sup>37</sup>

**Table 5: Advertising market in various countries in 2015**

No	Country	Advertising market (EUR)	Source	Population (mil.)	Per capita (EUR)
1.	Lithuania	101.1 million	TNS <sup>38</sup>	2.9	43.8

<sup>36</sup>[http://www.tadviser.ru/index.php/%D0%A1%D1%82%D0%B0%D1%82%D1%8C%D1%8F:%D0%98%D0%BD%D1%82%D0%B5%D1%80%D0%BD%D0%B5%D1%82-%D1%80%D0%B5%D0%BA%D0%BB%D0%B0%D0%BC%D0%B0\\_\(%D1%80%D1%8B%D0%BD%D0%BE%D0%BA\\_%D0%A1%D0%A8%D0%90\)](http://www.tadviser.ru/index.php/%D0%A1%D1%82%D0%B0%D1%82%D1%8C%D1%8F:%D0%98%D0%BD%D1%82%D0%B5%D1%80%D0%BD%D0%B5%D1%82-%D1%80%D0%B5%D0%BA%D0%BB%D0%B0%D0%BC%D0%B0_(%D1%80%D1%8B%D0%BD%D0%BE%D0%BA_%D0%A1%D0%A8%D0%90))

<sup>37</sup>[http://www.tadviser.ru/index.php/%D0%A1%D1%82%D0%B0%D1%82%D1%8C%D1%8F:%D0%98%D0%BD%D1%82%D0%B5%D1%80%D0%BD%D0%B5%D1%82-%D1%80%D0%B5%D0%BA%D0%BB%D0%B0%D0%BC%D0%B0\\_\(%D1%80%D1%8B%D0%BD%D0%BE%D0%BA\\_%D1%81%D1%82%D1%80%D0%B0%D0%BD\\_%D0%95%D0%B2%D1%80%D0%BE%D0%BF%D1%8B\)#2015:\\_%D0%92\\_%D0%95.D0.B2.D1.80.D0.BE.D0.BF.D0.B5\\_.D0.B8.D0.BD.D1.82.D0.B5.D1.80.D0.BD.D0.B5.D1.82-.D1.80.D0.B5.D0.BA.D0.BB.D0.B0.D0.BC.D0.B0\\_.D0.BE.D0.B1.D0.BE.D0.B3.D0.BD.D0.B0.D0.BB.D0.B0\\_.D1.82.D0.B5.D0.BB.D0.B5.D0.B2.D0.B8.D0.B7.D0.B8.D0.BE.D0.BD.D0.BD.D1.83.D1.8E\\_.D0.B8\\_.D0.BF.D0.BE\\_.D0.BE.D0.B1.D1.8A.D0.B5.D0.BC.D1.83.2C\\_.D0.B8\\_.D0.BF.D0.BE\\_.D0.BF.D1.80.D0.B8.D1.80.D0.BE.D1.81.D1.82.D1.83](http://www.tadviser.ru/index.php/%D0%A1%D1%82%D0%B0%D1%82%D1%8C%D1%8F:%D0%98%D0%BD%D1%82%D0%B5%D1%80%D0%BD%D0%B5%D1%82-%D1%80%D0%B5%D0%BA%D0%BB%D0%B0%D0%BC%D0%B0_(%D1%80%D1%8B%D0%BD%D0%BE%D0%BA_%D1%81%D1%82%D1%80%D0%B0%D0%BD_%D0%95%D0%B2%D1%80%D0%BE%D0%BF%D1%8B)#2015:_%D0%92_%D0%95.D0.B2.D1.80.D0.BE.D0.BF.D0.B5_.D0.B8.D0.BD.D1.82.D0.B5.D1.80.D0.BD.D0.B5.D1.82-.D1.80.D0.B5.D0.BA.D0.BB.D0.B0.D0.BC.D0.B0_.D0.BE.D0.B1.D0.BE.D0.B3.D0.BD.D0.B0.D0.BB.D0.B0_.D1.82.D0.B5.D0.BB.D0.B5.D0.B2.D0.B8.D0.B7.D0.B8.D0.BE.D0.BD.D0.BD.D1.83.D1.8E_.D0.B8_.D0.BF.D0.BE_.D0.BE.D0.B1.D1.8A.D0.B5.D0.BC.D1.83.2C_.D0.B8_.D0.BF.D0.BE_.D0.BF.D1.80.D0.B8.D1.80.D0.BE.D1.81.D1.82.D1.83)

<sup>38</sup><http://sovetreklama.org/2016/05/estoniya-operezhayet-latviyu-i-litvu-po-reklamnym-investiciyam-na-odnogo-zhitelya/>

2.	Estonia	92.6 million	TNS <sup>39</sup>	1.3	71.2
3.	Latvia	77.2 million	TNS <sup>40</sup>	2.01	38.4
4.	Romania	332 million	Annual report of Media Fact Book 2016 <sup>41</sup>	19.9	16.7
5.	Russia	4.264 million	Russian Association of Communication Agencies (RACA) <sup>42</sup>	143.5	29.7
6.	Ukraine	311.5 million	All-Ukrainian Advertising Coalition <sup>43</sup>	45.5	6.8
7.	Azerbaijan	103.6 million	Zenith Optimedia Advertising Agency <sup>44</sup>	9.4	11.2
8.	Moldova	22.3 million	AAPM <sup>45</sup>	3.55	6.3
9.	US	177 million	Top 10 – position 1 <sup>46</sup>	318.9	555
10.	Canada	11 million	Top 10 – position 10 <sup>47</sup>	35.2	312.5

The data in Table 5 indicate that the Republic of Moldova has an underdeveloped advertising market compared with that in other countries. Judging by the advertising market value per capita, the situation in Moldova is comparable to that in Ukraine; it is 2–4 times lower than that of Azerbaijan, Romania and Russia; 6–10 times lower than that in the Baltic countries and about 80 times lower than that in the highly developed advertising market in the US.

## XII. CONCLUSIONS AND RECOMMENDATIONS

### 12.1. Conclusions

1. The national legal framework regulating advertising that directly impacts media activities is incomplete and needs to be substantially supplemented and improved in order to meet European requirements.
2. The national legislation does not contain provisions that limit the access of media, especially of audiovisual media, to the advertising market and that thus prevent abusive dominant positions in the market.
3. The national legislation contains inaccurate terms and definitions and vague provisions.
4. The national legislation continues using the term “social advertising,” a term invented in Soviet times and that is not found in the legislation of democratic countries. The inaccurate definition and improper use of the terms “advertising” and “social advertising” generates confusion.
5. The national legislation is not explicit with regard to indicating sponsors in messages in the public interest (including volume/duration/space).
6. The Law on Advertising and the Tax Code define social advertising in a manner that does not allow wide promotion of messages in the public interest. The definition exhaustively lists only five fields deemed to be of interest to society and the state.
7. The national legislation provides no effective tax incentives for producers and broadcasters of social advertising. The Tax Code expressly provides for a single payment exemption with reference to the broadcasting of social advertising.
8. The Law on Advertising defines advertising (providers, producers, broadcasters) agents in such a way that social advertising is not their concern. According to the national legislation, social advertising is non-profit and pursues charitable and socially important objectives. Despite these provisions, social advertising is regulated by the same law as commercial advertising.
9. The Broadcasting Code states that announcements broadcast in the public interest free of charge are not advertising but neither creates an obligation to be broadcast free of charge nor clarifies the situation in which announcements in the public interest are broadcast in return for payment.
10. The national legislation does not operate with unified terms and definitions; it does not provide for a mandatory minimum of social advertising; it does not expressly stipulate whether social advertising must be accounted for in the 20% allowed in an hour of airtime for commercial advertising and 15% in a broadcast day.

<sup>39</sup> <http://sovetreklama.org/2016/05/estoniya-operezhayet-latviyu-i-litvu-po-reklamnym-investiciyam-na-odnogo-zhitelya/>

<sup>40</sup> <http://sovetreklama.org/2016/05/estoniya-operezhayet-latviyu-i-litvu-po-reklamnym-investiciyam-na-odnogo-zhitelya/>

<sup>41</sup> [http://economie.hotnews.ro/stiri-media\\_publicitate-21037765-media-fact-book-piata-publicitate-crescut-semnificativ-2015-creste-din-nou-anul-acesta-pana-peste-350-milioane-euro.htm](http://economie.hotnews.ro/stiri-media_publicitate-21037765-media-fact-book-piata-publicitate-crescut-semnificativ-2015-creste-din-nou-anul-acesta-pana-peste-350-milioane-euro.htm)

<sup>42</sup> <http://tass.ru/ekonomika/2711161%20http://tass.ru/ekonomika/2711161>

<sup>43</sup> <http://vrk.org.ua/news/237>

<sup>44</sup> <http://www.echo.az/article.php?aid=81166>

<sup>45</sup> <http://www.aapm.md/rus/obzor-media-rinka-2015.html>

<sup>46</sup> [http://www.akarussia.ru/press\\_centre/news/id6044](http://www.akarussia.ru/press_centre/news/id6044)

<sup>47</sup> [http://www.akarussia.ru/press\\_centre/news/id6044](http://www.akarussia.ru/press_centre/news/id6044)

11. The national legislation has not favoured the development of the media market and of the advertising market on the principles of fair competition.
12. In the Republic of Moldova, there are only estimates referring to the volume and structure of the advertising market that do not come from authorized state authorities but rather from self-regulatory organisations.
13. According to estimates, the advertising market is excessive in the capital region and insignificant in rural areas.
14. There is insufficient transparency in the activities of advertising agents in the Republic of Moldova.
15. The advertising market is not able to contribute to the economic independence of media outlets; on the contrary, it requires them to seek other sources of funding likely to erode their economic independence and, hence, their editorial independence as well.
16. The Republic of Moldova has no regulatory or self-regulatory authority whose tasks are to identify and classify the nature of public interest and of social messages.
17. In the Republic of Moldova, there are elements of self-regulating bodies, but they need to be fortified.

## **12.2. Recommendations**

1. In accordance with European legislation, develop and adopt amendments and additions to the Competition Law in order to ensure the adequate development of the advertising market without adversely affecting media pluralism.
2. In accordance with European legislation, develop and adopt amendments and additions to the Broadcasting Code in order to protect media pluralism. These amendments and additions are to create a viable mechanism to implement the provisions of Article 7, para. (5) and Article 68, para. (3) of the Broadcasting Code.
3. Following the implementation of the first recommendation, detailed regulations on the concentration of media ownership shall be developed and adopted by the CC.
4. Develop and adopt amendments to the national legislation to ensure the full transparency of the activities of advertising agents.
5. The CC shall annually assess ex officio the advertising market and the concentration of media ownership, and the Parliament of the Republic of Moldova shall examine that assessment in the context of the debate on the CC's annual report.
6. In its annual activity report, the BCC shall evaluate the ownership of broadcasting outlets and the audiovisual advertising market.
7. Review the terms and definitions of the terms "advertising" and "social advertising" in the national legislation. Replace the phrase "social advertising" with the phrase "message of public interest." The phrase "public interest" is defined in the Law on Freedom of Expression, and the phrase "public service announcement" is enshrined in public relations literature.
8. To establish a national authority, preferably a self-regulatory one, whose task would be examining messages/calls claiming to be in the public interest.
9. The national legislation shall include clear provisions for the production, distribution and broadcasting of social advertising in which the advertising provider is the state.
10. The national legislation shall set out clear rules for sponsors of messages/calls of public interest referring to tax incentives, benefits, appearances in messages/calls.
11. Increase the number of fields currently considered in the legislation as being of interest to society and the state. If "preventing and counteracting social epidemics" were added to Article 21 of the Law on Advertising and Article 288, para. (9) of the Tax Code, this would broaden the opportunities for promoting messages of public interest.
12. Supplement the legislation with provisions that would provide sufficient tax incentives, especially to businesses, to establish clear and differentiated rules for providers and broadcasters of messages/calls of public interest according to their status: state bodies; non-commercial organisations; commercial organisations.
13. Since messages/calls of public interest differ essentially from commercial advertising, a separate law is appropriate which would define relevant terms; would establish the object and subjects of messages of public interest; would list their duties and responsibilities; would establish the relationships between providers and broadcasters of messages of public interest; would provide tax privileges and incentives for all categories of providers/broadcasters of social messages; would indicate the manner of keeping records of social messages and measuring their impact on society.

14. The BCC shall develop additional regulatory acts, mandatory for broadcasters, that would fill certain gaps in the legislation including the minimum daily broadcasting space given for messages of public interest; the procedure for granting that space of time and an accounting and reporting method.
15. Study foreign experience in order to take over practices and rules that can function in the Republic of Moldova.