



**Comparative study concerning the impact of control measures on  
the televisual advertising markets in the EU Member States and  
certain other countries**

**ROMANIA**

**LEGAL REPORT**

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## **Introduction**

The main regulation of the audiovisual activities is Law n° 504 of 2002 on Audiovisual as amended by Law N° 402 of 2003 (“Audiovisual Law”).

Other relevant regulations are Decision n° 123 of 2003 of the National Council of Audiovisual Regarding Advertising and Teleshopping (“Decision n° 123”), Law n° 148 of 2000 on Advertising (“Law n° 148”) Law n° 32 of 1994 Concerning Sponsoring (“Law n° 32”), Ordinance n° 36 of 1998 regarding Changes and Additions to Law n° 32 of 1994, Emergency Ordinance n° 127 of 1999, Law n° 204 of 2001 regarding Amendment of Law n° 32 of 1994.

The audiovisual network in Romania includes a public radio national broadcaster, the Romanian Radio Broadcast Company (“Societatea Romana de Radiodifuziune”), and 21 private radio broadcasters as follows:

1. Radio BBC;
2. Radio 21;
3. Radio Brasov;
4. Radio Galaxy;
5. Radio Hit;
6. Radio Metronom GX;
7. Radio Minisat;
8. Radio Mix;
9. Radio Nova;
10. Radio PRO FM;
11. Radio Sky;
12. Radio Terra;
13. Radio Vest Timisoara;
14. CD Radio;
15. Radio Europa Libera;
16. Radio Europa FM;
17. Radio Star;
18. Radio Total;
19. Radio GaGa;
20. Radio Romantic;
21. Radio Sud.

The audiovisual network in Romania also includes a public TV broadcaster, the Romanian TV Broadcast Company (“Societatea Romana de Televiziune”) and 19 private TV broadcasters as follows:

1. Antena 1;
2. PRO TV;
3. Acasa;
4. Terra SAT;
5. Prima;
6. National TV;

7. Tele 7 ABC;
8. Realitatea TV;
9. Etno TV;
10. TVsport;
11. B1 TV;
12. Atomic;
13. Analog TV;
14. Fox Kids;
15. HBO;
16. MTV;
17. Minimax TV;
18. TV RM;
19. OTV.

Out of the private TV operators, three broadcasters, MTV, Atomic, and Etno TV, specialized in music, one, TVsport in sports, and one, Fox Kids, in cartoons.

The private operators broadcast via cable. There is an Association of Cable Operators. Another industry group is the Romanian Association for Audio-Visual Communications, which includes radio and TV broadcasters. This Association is now affiliated to the Association of European Radios.

The regulatory authority is the National Audio-Visual Council (“CNA”), a public autonomous authority established by Law n° 48 of 1992. The CNA is an institution under the control of the Romanian Parliament.

According to Art. 10 of Law n° 504 of 2002, CNA must insure the freedom of expression of ideas and opinions broadcast by the broadcasters operating in Romania, the pluralism of the sources of information of the public, the free competition in the audio-visual sector, a balance between the national, local, and theme broadcasters, the protection of minors, and human dignity, the protection of the Romanian language and culture as well as the protection of the language and culture of the national minorities, and the transparency of audio-visual communications.

CNA is authorized to issue rules concerning advertising, teleshopping, and scheduling and broadcasting of election campaign programmes.

CNA issues audio-visual licenses, retransmission authorizations, and audio-visual authorizations.

The references to the articles of various regulations shall be understood as references to such articles as they have been amended by subsequent regulations, and are in effect as of the date of this study.

## I. Definitions

According to the Romanian legislation, both television and radio broadcasting are regulated by the same law, i.e. the Audiovisual Law N° 504 of 2002.

The following terms are defined, *inter alia*, in Art. 1 of the Audiovisual Law:

- Broadcasting

Broadcasting means the initial transmission by wire or by radio-electric waves, including that by satellite, in an encoded or not encoded form, of the programme services intended for reception by the public; broadcasting also includes the communication of programmes between natural or legal persons holding an audio-visual license or a retransmission authorization with a view to their being relayed to the public, without comprising the communication services providing items of information or other messages on individual demand, such as telecopying, electronic data banks and other similar services (// art. 1 a. TVWF Directive) ;

- Broadcaster

Broadcaster means the natural or legal person who has editorial responsibility for the scheduling of programme services intended for reception by the public and that ensures their transmission directly or through a third party (// art. 1 b. TVWF Directive);

- Advertising

Advertising means any form of message, broadcast either on basis of a contract with a natural or legal person, public or private, in return for payment or other benefits, in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable and intangible property, or broadcast for self-promotional purposes (//art. 1 c. TVWF Directive);

- Surreptitious advertising

Surreptitious advertising means the representation in words, sounds or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programs when such representation is intended by the broadcaster to serve an undeclared advertising scope and might mislead the public as to its real nature; such representation is considered to be intentional in particular if it is done in return for material advantages, mutual services or other benefits of similar effects (//art. 1 d. TVWF Directive) ;

- Sponsorship

Sponsorship means any contribution made by a natural or legal person not engaged in radio or television broadcasting activities or in the production of audio-visual works, provided such contribution is destined to the financing of audio-visual programmes with a view to promoting its name, its trade mark, its image, its activities or its products (// art. 1 e. TVWF Directive);

- Teleshopping

Teleshopping means the broadcast of direct commercial offers to the public with a view to the supply of goods, including immovable and intangible property or as the case may be the supply of services in return for payment (// art.1 f. TVWF Directive).

The above-mentioned definitions of the Romanian law are similar to the definitions included in Art. 1 entitled “Definitions” of the TVWF Directive.

The above-mentioned Romanian provision also defines other relevant terms such as:

- Programme service

Programme service means the assembly of radio-broadcasting and TV programmes, shows, and the other elements of a specific service provided by a broadcaster under a specific name and identified by a logo, in the case of the television broadcast, or by an acoustic signal, in the case of radio broadcast;

- Audio-visual communication

Audio-visual communication means placing at the disposal of the public in general or of certain public categories, by any electronic communication means, of signs, signals, texts, sounds, data or messages of whatever nature that do not have the features of a private correspondence;

- Programme or show

Programme or show means an audio-visual communication identifiable by title, content, shape or author, within the hourly succession of the programme service;



- Service supplier

Service supplier means any person that creates and sets at the disposal of the public an offer for programme services on a terrestrial radio-electric way or by satellite, by any electronic means, including that by satellite, based on contractual relations with broadcasters or other distributors;

- Exclusivity rights

Exclusivity rights means the rights obtained by a radio-broadcaster on basis of a contract from the organizer of an event and/or from the owner or, as the case may be, the administrator of the site where the event takes place, from authors and from other concerned holders of rights for the exclusive television broadcast by such radio-broadcaster on a determined geographical area;

- Event of major importance

Event of major importance means any event, whether organized or not, that may present interest for an important part of the public and that is comprised in the list approved by the National Audio-Visual Council.

- Audio-visual license

Audio-visual license means the legal act whereby the National Audio-Visual Council grants to a radio-broadcaster located in the jurisdiction of Romania the right to broadcast a certain programme service within a determined area;

- Broadcasting license

Broadcasting license means the legal act whereby the National Regulatory Authority for Communications grants the holder of an audio-visual license under the terms established by it, the right to use one or more radio-electric frequencies for a determined period of time, as the case may be, in compliance with the audio-visual license.

The Romanian law does not provide for definitions regarding split-screen technique, product placement, virtual advertising or inevitable advertising.

## **Conclusion**

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Romanian law is in compliance with the provisions of the Directive.

- Identification of specific rules not included in the TVWF Directive

The Romanian law includes definitions for Programme Service, Audio-Visual Communication, Programme or Show, Service Supplier, Exclusivity Rights, Event of Major Importance, Audio-Visual License, and Broadcasting License.

## II. Advertising recognition and advertising/ programme separation (Art. 10 of TVWF Directive)

### a. Regulations

- Examination of the rules related to advertising and teleshopping spots recognition (acoustic and/or optical means)

Article 7 (1) of the Audiovisual Law provides as follows:

*“The advertising and teleshopping must be broadcast in compact format, they must be easily identifiable by adequate markings, and be separated from the other parts of the program service by optic and acoustic signals.”* (// art. 10 §1 TWF Directive)

- Examination of the rules related to the separation between the commercial content and the programme

See the above provision.

- Examination of the rules related to the isolated advertising and teleshopping spots (allowed/prohibited; specific conditions, etc.)

Article 27 (2) of the Audiovisual Law provides as follows:

*“Advertising and teleshopping spots may be broadcast isolated only in extraordinary cases established as such by the [National Audio-Visual] Council.”* (// art. 10 §2 TVWF Directive)

- Prohibition of the use of “subliminal techniques”

Article 27 (3) of the Audiovisual Law provides as follows:

*“Subliminal techniques in advertising and teleshopping are prohibited.”* (// art. 10 §3 TWF Directive)

- Prohibition of surreptitious advertising and teleshopping

Article 27 (4) of the Audiovisual Law provides as follows:

*"Surreptitious advertising and surreptitious teleshopping are prohibited."* (// art. 10 §4 TWF Directive)

**b. Conclusion**

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Romanian rule related to advertising and teleshopping spots recognition is more restrictive in that it requires the *separation of* the advertising and teleshopping spots from the other parts of the program service by optic and acoustic signals. The TVWF Directive allows the alternative use of optic or acoustic signals.

### **III. Rules related to insertion of advertising and teleshopping spots between and within the programmes (Article 11 of TVWF Directive)**

#### **a. Regulations**

The insertion of advertising and teleshopping spots between and within the programmes is covered by Article 28 of the Audiovisual Law, and by Article 26 (2), (3) of Decision n° 123.

- Examination of the rules related to the insertion of advertising and teleshopping spots between the programmes

Article 28 (1), (2), and (7) of the Audiovisual Law provides as follows:

(1) *The insertion of the advertising spots, including self-promotions or teleshopping, may be made only between programmes (...);(// art. 11 §1 TVWF Directive)*

(2) *In their capacity of public services, the Romanian Television Company may only insert advertising spots, including self-promotion or teleshopping ones, only between programmes. (...);*

- Examination of the rules related to the insertion of advertising and teleshopping spots within the programmes (allowed or prohibited; specific rules regarding the type of programme)

Article 28 (1) of the Audiovisual Law provides as follows:

(1) *(...) If the conditions provided in paragraphs (4) – (7) are met, advertising or teleshopping spots may be also included during a programme so that:*

*a) the integrity and value of the respective programmes are not prejudiced, considering normal interruptions, and their duration and nature and*

*b) copyrights are not prejudiced. (// art. 11 §1 TVWF Directive);*

(3) *In the case of programmes including autonomous parts, or of the broadcast of sport competitions or of other similarly structured events or shows, which contain breaks, the advertising and teleshopping spots may be inserted only between parts or during the breaks (// art 11 §2 TVWF Directive);*

(4) *The broadcasting of audio-visual works, such as movies or television movies with the exception of serials, entertaining programmes and documentaries, may be interrupted only once at every 45-minutes interval, provided their scheduled duration is longer than 45 minutes; a new interruption is allowed only if their scheduled duration is by at least 20 minutes longer than two or several full 45-minute periods (// art. 11 §3 TVWF Directive);*

(5) *If a television programme, other than those mentioned in paragraph (3) hereinabove, is interrupted by advertising spots or teleshopping, there must be an interval of minimum 20 minutes between two successive advertising breaks within the respective programme (// art.11 §4 TVWF Directive);*

(7) *If the scheduled duration of news programmes and commentaries on domestic politics, documentaries, religious programmes and children programmes is of at least 30 minutes, then there must be an interval of minimum 20 minutes between two successive advertising breaks within the respective programme (// art 11 §5 TVWF Directive)*

- Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme
  1. Article 28 of the Audiovisual Law explicitly prohibits the insertion of advertising or teleshopping during a religious service (// art. 11§5 TVWF Directive)
  2. Article 28 of the Audiovisual Law also prohibits the insertion of advertising or teleshopping during the transmission of *news programmes and commentaries on domestic politics, documentaries, religious programmes and children programmes* whose scheduled duration is shorter than 30 minutes (// art 11 §5 TVWF Directive).
  3. Moreover, article 26 (2) and (3) of Decision n° 123 prohibits the broadcasting of advertising for medicines, vitamins, food supplements, nutrients, nutritive supplements and medical treatments during programmes for children or during the advertising breaks preceding or following such programmes.
  4. Article 35 (b) of Decision n° 123 prohibits the advertising and the teleshopping for any product or treatment for slimming or for the maintenance of the body weight during programmes for children or **during the advertising breaks preceding or following such programmes.**

## **b. Conclusions**

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

In general, the Romanian legislation corresponds to the Directive, excepts the following :

Article 28 (2) of the Audiovisual Law provides for a restriction, which is not included in the TVWF Directive, i.e. the state-owned Romanian Television Company, may insert advertising, including self-promotion or teleshopping, only between programmes.

- Identification of specific rules not included in the Directive

The Romanian legislation prohibits the insertion of advertising & teleshopping for medicines, vitamins, food supplements, nutriments, nutritive supplements & medical treatment during programmes for children or during the advertisement break preceding or following such programmes.

The same prohibition exists for advertising & teleshopping for product or treatment for slimming or for the control of the body weight.

#### IV. QUANTITATIVE RESTRICTIONS (ARTICLE 18 OF TVWF DIRECTIVE)

##### a. Regulations

This matter is covered by Article 35 of the Audiovisual Law.

- Examination of the legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising (20% in the TVWF Directive)

The legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots is of 20% of the daily broadcasting time.

Article 35 (1) of the Audiovisual Law provides as follows:

*“(1) The broadcasting time dedicated to advertising, except the teleshopping windows provided for in Article 36 herein below, (...) together with the teleshopping spots may not exceed 20% of the daily broadcasting time.”* (// art. 18 §1 TVWF Directive)

- Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF directive)

The maximum daily transmission time devoted to advertising messages is of 15% of the daily broadcasting time.

Art. 35 (1) of the Audiovisual Law provides as follows:

*“(1) The broadcasting time dedicated to advertising, except the teleshopping windows provided for in Article 36 herein below, may not exceed 15% of the broadcasting time and together with the teleshopping spots it may not exceed 20% of the daily broadcasting time.”* (//Art. 18 §1 TVWF Directive)

- Examination of the maximum daily transmission time devoted to advertising and teleshopping spots within a given clock hour (20% in the TVWF Directive)

Art. 35 (2) of the Audiovisual Law provides as follows:

*“(2) The duration of the advertising spots and teleshopping spots may not exceed 12 minutes of the time of any given hour; in case of public television, their duration may not exceed 8 minutes of the given time of any hour.”* (// art. 18 §2 TVWF Directive)



- Examination of other possible quantitative restrictions

The law does not provide for other possible quantitative restrictions.

- Examination of the factors to take into account or not for the calculation of the advertising time

Article 35 (3) of the Audiovisual Law provides as follows:

(3) *With regard to the application of the provisions of this Article, the following are not considered advertising:*

*a) announcements made by the radio-broadcaster related to its own programmes and auxiliary products directly derived from such programmes;*

*b) announcements of public interest and appeals for charitable purposes broadcast without pay.” (// art. 18 §3 TVWF Directive)*

## **b. Conclusion**

- Emphasis placed upon existence of other rules more or less restrictive than the TVWF Directive

The Romanian law is in compliance with the provisions of the Directive.

- Identification of specific rules not included in the Directive, in particular rules aimed to the reduction of the advertising volume (for instance, the imposition of a special tax on advertising)

The rule provided by Article 35 (b) of the Audiovisual Law, which says that in the case of public television the duration of the advertising and teleshopping spots cannot exceed 8 minutes in any given hour, is not provided for by the Directive and therefore may be construed as an additional restriction.

The decision n°123 also states that *"the duration of advertising and teleshopping should not represent a reason to eliminate the obligation of correctly informing the public in respect of the promoted goods or products"*.

## V. Quantitative restrictions related to teleshopping programmes (Article 18 bis TVWF Directive)

### a. Regulations

This matter is covered by Article 36 of the Law.

- Examination of the minimum duration of windows devoted to teleshopping programmes

Article 36 (1) of the Audiovisual Law provides as follows:

*"Windows dedicated to broadcasting of teleshopping by a channel that is not exclusively dedicated to teleshopping must have a minimum uninterrupted duration of 15 minutes." (// art. 18 bis §1 TVWF Directive)*

- Examination of the maximum number of windows

Article 36 (2) of the Audiovisual Law provides as follows:

*"The maximum number of windows will be of 8 a day.(...) [The windows] must be identified by adequate optic or acoustic signals." (// art. 18bis §2 TVWF Directive)*

- Examination of the maximum daily duration

Article 36 (2) of the Audiovisual Law provides as follows:

*"(...) Their cumulated duration [of the windows] must not exceed 3 hours daily. (// art. 18bis 6 §2 TVWF Directive)*

### b. Conclusion

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

We are not aware of other rules more or less restrictive than the TVWF Directive.

- Identification of specific rules not included in the Directive, for instance rules aimed to the reduction of teleshopping programmes

We are not aware of any rule aimed at the reduction of the teleshopping programmes.

## VI. Sponsoring (Article 17 TVWF Directive)

### a. Regulations

The regulations regarding sponsoring are Law n° 32 of 1994 Concerning Sponsoring (“Law n° 32”), Ordinance n° 36 of 1998 regarding Changes and Additions to Law n° 32 of 1994, Emergency Ordinance n° 127 of 1999, Law n° 204 of 2001 regarding Amendment of Law n° 32 of 1994, the Audiovisual Law, and Decision n° 123.

It is convenient to mention the existence of the article 1 of Law n° 32 defines the sponsorship as the legal act whereby two persons agree with regards to the transfer of the ownership right over certain material assets or financial means for the support of non-profit activities carried out by one of the parties, called the Beneficiary of the sponsorship.

- Examination of the rules related to editorial independence of the broadcaster

The content and the scheduling of the sponsored programmes must not be influenced by sponsors, so that the editorial independence and the responsibility of the broadcaster will not be affected (Art. 34 (1) (a) of the Audiovisual Law, // art. 17 a. TVWF Directive).

The editorial independence of the broadcaster as Beneficiary of a sponsorship is protected by Art. 10 of Law n° 32, which provides that the Sponsor, who directly or indirectly attempts to influence the activity of the Beneficiary of the sponsorship does not benefit of the facilities, i.e. the tax incentives provided by Law n° 32.

- Sponsor identification

The name or the trademark of the sponsor must be distinctly mentioned during the sponsored programs (Art. 34 (1) (b) of the Audiovisual Law). This provision goes further than the Directive as it allows mentioning the sponsor during the programme (versus the Directive that states *"Sponsored television programme shall clearly be identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes"*)

The sponsorship announcement must clearly identify the sponsorship and will be brought to the attention of the public without charge by the Beneficiary of the sponsorship (Art. 5 (4) of Law n° 32.).

The Sponsor or the Beneficiary has the right to bring to the attention of the public the sponsorship by the promotion of the name, the trademark, or the image of the Sponsor (Art. 5 (1) of Law n° 32).

The bringing of the sponsorship to the attention of the public must be made in a manner that will not affect the sponsored activity, public mores, public order and public peace (Art. 5 (2) of Law n° 32.).

- Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme)

Article 34 (1) (b) of the Audiovisual Law provides that the name or the trademark of the sponsor must be distinctly mentioned during the programmes.(≠ art 17b TVWF Directive)

- Identification of the programmes that cannot be sponsored

Programmes that will affect the sponsored activity, public mores, public order and public peace cannot be sponsored (Art. 5 (2) of Law n° 32.) (≠ art 17 TVWF Directive)

The producers and distributors of tobacco products cannot sponsor programmes (Art. 34 (2) of Audiovisual Law., // art. 17 §2 TVWF Directive).

The programs sponsored by manufacturers and distributors of medical products or medical treatments may promote only the name or the image of the sponsors (Art. 34 (3) of Audiovisual Law, // art. 17 §3 TVWF Directive).

The producers and distributors of medicines, vitamins, food additives, nutritional aids, nutritional supplements and medical treatments are forbidden to sponsor programmes or shows for children (Art. 26 (3) of Decision n° 123).

The news and current affairs programmes cannot be sponsored (Art. 34 (4) of the Audiovisual Law, // art. 17 §4 TVWF Directive).

- Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)

There are no specific provisions regarding the content of the message, except :

The advertising and teleshopping must be done in a manner that would comply with the rules of a fair and transparent competition, and primarily must serve the public interests (Art. 1 of Decision n° 123).

The advertising, which suggests to the public to renounce to the use of similar products or services because they are improper, is prohibited (Art. 2 of Decision n° 123).

The inclusion of advertising in the sponsored programmes for the benefit of the Sponsor, or of the Beneficiary, or of third persons is prohibited (Art. 34 (1) (c) of Audiovisual Law and Art. 5 (5) of Law n° 32, // art. 17 §1 c. TVWF Directive)

See Chapter IX regarding other rules concerning certain limitations on the content of advertising and sponsorship of TV programmes. There are no further developments on product placement.

- Examination of the maximum duration of the mention (i.e. name or logo of the sponsor) and/or maximum daily/per hour volume

There are no specific rules on this subject

- Examination of other rules eventually limiting the volume of sponsorship (ceiling for sponsorship profits, special tax, etc.)

The taxable base of the Sponsor will be reduced with an amount equal to the amount of the sponsorship expenses, but such reduction cannot be higher than 5% of the taxable base (Art. 8 (1) of Law n° 32).

In case that the Sponsor had also donation expenses, the taxable base of the Sponsor will be reduced with the total of the donation expenses and sponsorship expenses, but such reduction cannot be higher than 5% of the taxable base (Art. 8 (3) of Law n° 32).

It is important to mention that Art.8 of Law No. 32 regarding sponsorship, as subsequently amended, was abrogated by the Romanian Fiscal Code in force as of January 1, 2004 which contains, inter alia, fiscal provisions re sponsorship.

According to Art. 21 (4) (p) of the new Fiscal Code the sponsorship expenses are not deductible.

However, in the case of income of physical persons Art. 49 (5), provides that the expenses re sponsorship and patronage (maecena donations) made according to the law, are deductible within the limit of a 5% quota of the taxable basis. Art. 49 (6) defines the taxable basis as the difference between the gross income and the deductible expenses, other than the expenses re sponsorship, patronage and protocol.

- Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.

The Romanian legislation contains a provision on the product placement:

The broadcasting of TV shows, other than teleshopping, whereby individualized goods or services are shown, or which are identifiable by the public through their brands, producers or marketing methods is prohibited. Cultural or education-oriented products or services are exempted from the abovementioned prohibition. (Art. 6 of Decision n° 123).

The Decision n° 123 also prohibits the description of products or services offered as prizes during contest shows, with the exception of their brand and price. (Cultural products or services are exempted from this prohibition as well.)

## **b. Conclusions**

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

The Romanian law is less restrictive with regard to the sponsor identification. While Art. 10 of Law n° 32 provides that the sponsor “(...) *has the right to bring the sponsorship by the promotion of the name, the trademark, or the image of the Sponsor to the attention of the public*”, Art. 17.1 (b) of the Directive provides expressly that the sponsor must be identified “(...) *by the name and/or logo.*”

Given that the Romanian law does not contain rules concerning the insertion of the sponsor's name or logo at the beginning/end of the programme, or break bumper rules, but it allows such insertion to be made throughout the programme, it may be considered less restrictive in this respect.

- Identification of specific rules not included in the Directive, in particular rules aimed to the reduction of teleshopping broadcast (special tax on advertising, ceiling for maximum annual advertising profits, etc.)
  - The Romanian law contains a specific provision regarding tax to be born by the sponsor.
  - Moreover the Romanian legislation contains a specific provision on the product placement

## **VII. New advertising techniques**

### **a. Regulations**

- Split screens

This matter is not regulated under Romanian law.

- Interactive advertising

This matter is not regulated under Romanian law.

- Virtual advertising

This matter is not regulated under Romanian law.

- Other new advertising techniques

None.

### **b. Conclusion**

Following our review of the Romanian legislation and a telephone conference with the CNA's representatives, it appears that there are no rules specifically concerning new advertising techniques, i.e. split screens, interactive advertising and virtual advertising.



## VIII. General rules related to advertising and teleshopping content (Art. 12 of TVWF Directive)

### a. Regulations

- Indication of the rules related to the content of commercial messages (human dignity, discrimination, religious or political beliefs, health and safety, environment and eventually other rules):

#### Audiovisual regulation

Art. 29 (1) of the Audiovisual Law provides as follows:

*“(1) Advertising, including self-promoting advertising and teleshopping, must observe the following terms:*

*a) shall not prejudice the physical, psychological or moral development of minor children;*

*b) shall not prejudice human dignity (// art 12.a TVWF Directive);*

*c) shall not include any discrimination form on basis of race, religion, sex, nationality and sexual orientation (// art 12.b & c TVWF Directive);*

*d) shall not be offensive at the address of religious or political beliefs of on-lookers and listeners (// art 12.c TVWF Directive);*

*e) shall not encourage a conduct that can damage public health or safety (// art 12.d TVWF Directive);*

*f) shall not encourage a conduct that can damage the environment (// art 12.e TVWF Directive);*

*g) shall not encourage indecent or immoral conduct;*

*h) shall not promote, directly or indirectly, any occult practices.*

*(2) Advertising and teleshopping that harm the legal interest of the consumers are prohibited.”*

The above-mentioned rule of the Romanian law is similar to the rule of Art. 12 of the TVWF Directive. The regulation contains some more specific provisions.

### General regulation:

Other provisions of the Romanian law with regard to the content of commercial messages concerning human dignity, discrimination, religious or political beliefs, health and safety, environment are as follows:

1. Art. 6 of the Law n° 148 provides for the prohibition of advertising which:
  - (a) *"is deceptive;*
  - (b) *is subliminal;*
  - (c) *prejudices the respect for human dignity and public morality;*
  - (d) *includes any discrimination form on basis of race, sex, language, origin, social origin, ethnic identity or nationality;*
  - (e) *is offensive at the address of religious or political beliefs;*
  - (f) *prejudices people's image, honor, dignity and private life;*
  - (g) *exploits people's superstitions, credulity or fear;*
  - (h) *prejudices people's security or instigates to violence;*
  - (i) *encourages actions that can damage the environment;*
  - (j) *facilitates the marketing of goods or services which are manufactured or distributed contrary to the legal provisions."*
2. Any form of promotion for products or services which suggests to the public or incites the public to renounce to other similar or comparable products or services on the grounds that the latter become useless or improper to use is prohibited (decision n°123);
3. Any form of advertising which suggests to the public to give up using fruit and basic natural food is prohibited (decision n°123);
4. Comparative advertising is possible only when it complies with the provisions of article 8 of Law n° 148, as subsequently amended and completed. This legislation corresponds to the content of Directive 97/55/EU of European Parliament and Council of 6 October 1997 on comparative advertising
5. The information broadcast during the advertising spots or teleshopping should not directly or by omission mislead the public as regards:
  - the characteristics of the product and, mainly, of its nature, identity, properties, composition, amount, duration, origin or source, as well as of the manufacturing or production methods;

- effects or properties which the product does not own.
6. Restrictions with regard to persons who present the news on a regular basis: advertising and teleshopping may not relate verbally and visually to persons who present the news on a regular basis, according to the provisions of Art. 81 of the CNA Decision n° 17 of 2004 that amends Decision 123.

**b. Conclusions**

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive

In general, the Romanian law corresponds to the ones of the directive, except for article 29 (1) of the Audiovisual Law which is more restrictive than the TVWF Directive with regard to the following:

1. Self-promotion advertising is also subject to the prohibitions provided by Art. 29 (1), while the TVWF Directive only refers to “television advertising and teleshopping”;

- Indication of specific rules not included in the TVWF Directive

Two prohibitions can be outlined (Art. 29 (1) of the Audiovisual Law) which are not provided for by the TVWF Directive:

1. advertising, self-promotion, and teleshopping shall not encourage indecent or immoral conduct;
2. advertising, self-promotion, and teleshopping shall not promote directly or indirectly occult practices.

Also Art. 29 (2) of the Audiovisual Law incorporates by reference the consumer protection laws prohibiting the advertising and teleshopping that harm the legal interest of the consumers.

## IX. Specific products and targets

### a. Regulations

- Tobacco products (Arts. 13 and 17 of the TVWF Directive): Examination of the specific and/or restrictive rules related to tobacco products (advertising, teleshopping, sponsorship and other advertising forms)

- Article 30 of the Audiovisual Law provides as follows:

*“Any form of advertising or teleshopping for cigarettes or other tobacco products is prohibited*

The Romanian provision is similar to the one included in Art. 13 of the TVWF Directive.

- As mentioned above, Article 10 of Law n° 148 also prohibits the explicit advertising for tobacco products during radio and television programmes.

- Regarding the article 34 of the Audiovisual Law provides as follows:

*“No program may be sponsored by natural or legal persons whose main activity is the manufacturing or trading of cigarettes and of other tobacco products.” (// art. 17 §2 TVWF Directive).*

- Medicines (Art. 14 TVWF Directive): Examination of the specific and/or restrictive rules related to medical products (advertising, teleshopping, sponsorship and other advertising forms)

Regarding the **advertising & teleshopping**; article 31 of the Audiovisual Law provides for the following:

*“Advertising or teleshopping for medical products and medical treatments wherefore a prescription is necessary, shall be prohibited.”* Regarding the teleshopping, this provision seems less restrictive than the Directive.

Regarding the **sponsoring**; according to Article 34 §3 of the Audiovisual Law, the sponsoring of programs by the persons whose activities include the manufacturing or trading of medical products or medical treatments may be performed only by promoting the name or image of the respective person.

Article 34 §3 above is less restrictive than the provision of Art. 17 para. (3) of TVWF Directive because the latter additionally provides that: “*sponsorship of television programs by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may not promote specific medical products or medical treatments available only on prescription in the Member State within whose jurisdiction the broadcaster falls.*”

The above-mentioned Romanian provisions are completed by Decision n° 123 that provides specific and detailed restrictions with regard to advertising and teleshopping for medicinal products.

According to Article 20 of the Decision n° 123, the audiovisual advertising for medicine products and medical treatment is defined as any form of promotion, performed during programme services destined to stimulate their distribution, usage or sale.

The general restriction is provided by Article 21 of the Decision n° 123 which specifies the following two conditions:

- (1) Advertising and teleshopping are allowed only as regards the medicine products and the medical treatments which do not need medical prescription (// TVWF Directive).
- (2) Advertising shall warn the public if the medicines sold without prescription contain health-threatening substances.

Article 22 of the Decision n° 123 provides that, according to the international conventions, the advertising and teleshopping for medicine products which contain psychotropic or narcotic substances are prohibited.

Further on, the Decision n° 123 provides for the rational use and objectivity of the presentation of medicine products, as well as for the prohibition of exaggerations concerning the curative qualities of medicine products.

The initial Article 24 of the Decision n° 123 was replaced by the provisions of the CNA Decision N° 17 of 2004. The new Article 24 provides for the following rules:

“1. *The advertising for medicine during the audiovisual program services shall mandatory include:*

*(a) the name of the product;*

*(b) the common name if the product contains only one active ingredient;*

*(c) the therapeutic indication (what diseases is the medicine used for);*

*(d) the warning: “This product may be released without medical prescription. It is recommended the careful reading of the prospectus. In case of unpleasant symptoms, contact a physician or a pharmacist.”*

2. *By exception from the above-mentioned provision of letter (d), advertising for medicine products broadcast in a short form (reminder) shall include the warning: "The careful reading of the prospectus is recommended".*
3. *In the sense of this decision, reminder signifies the advertising spot which cumulatively complies with the following conditions:*
  - (a) *it is a part, continuation and/or completion of the same advertising campaign for a certain medicine made within the same programme service;*
  - (b) *reminds the public the elements of the message broadcast in the main advertising spot of the campaign;*
  - (c) *its duration does not exceed 10 seconds.*
4. *The warnings mentioned at item 1 above, letter (d), as well as at point 2 above, shall be broadcast under the following two conditions:*
  - a) *as to the main spot, the message shall be presented audio and visually at the end of the advertising spot for a minimum period of 6 seconds;*
  - b) *as to the reminder, the message shall be presented throughout the broadcast of the spot under conditions which should insure a clear perception of the message."*

Further on, the following prohibitions provided by Decision n° 123 outline an even wider restriction area with regard, but not limited to, advertising, teleshopping and recommendation of medicines:

- (1) The broadcast of advertising and teleshopping for medicines, vitamins, food supplements, nutrients, nutritive supplements and medical treatments, presented or recommended by public, cultural, scientific, sports personalities or other persons who, due to their reputation, can encourage the use of these products or treatments is prohibited.
- (2) The broadcast of advertising and teleshopping which show physicians, dentists, pharmacists or nurses who medically recommend or approve medicines, medical treatments, vitamins, food supplements, nutrients, nutritive supplements or mass consumption products is prohibited.
- (3) The broadcast of advertising and teleshopping for medicines, vitamins, food supplements, nutrients, nutritive supplements, medical treatments, products of mass consumption, if the presentations contain recommendations or approvals of the medical associations is prohibited.
- (4) The broadcast of advertising and teleshopping for medicines, vitamins, food supplements, nutrients, nutritive supplements, medical treatments, products of mass consumption, if the presentations are associated with elements from the medical field which may suggest a medical approval or recommendation is prohibited.

Article 26 of Decision n° 123 provides for limitations with regard to advertising of medicines or medical treatments to minors:

- (1) No advertising message for medicines or medical treatments may be addressed to persons less than 16 years old;
- (2) The broadcast of advertising for medicines, vitamins, food supplements, nutrients, nutritive supplements and medical treatments, during programmes for children or during the advertising breaks preceding or following such programmes is prohibited;
- (3) The producers and distributors of medicines, vitamins, food supplements, nutrients, nutritive supplements and medical treatments may not sponsor the programmes or broadcasts for children.

Article 27 of Decision n° 23 prohibits the broadcast of advertising and teleshopping for medicines in respect of:

- a) products for the treatment of alcoholism;
- b) clinical treatments against the shedding of the hair;
- c) hypnosis, hypnosis therapy, psychology, psychoanalysis or psychiatry;
- d) medicines whose costs are compensated by state aid.

Also, the mentioning in advertising or teleshopping of some therapeutic prescriptions is prohibited for the following diseases:

- a) tuberculosis;
- b) sexual transmission diseases;
- d) cancer and tumour diseases;
- e) chronic insomnia;
- f) diabetes and other metabolic diseases.

Article 28 of Decision n° 123 provides for further restrictions with regard to the advertising for the medicines, i.e. such advertising must not contain any reference which:

- a) could give the impression that a medical advice or an operation is not necessary, especially by offering diagnosis or treatment suggestions at a distance;
- b) could suggest that the effect of the treatment with the respective medicine is guaranteed, does not have side effects or is better than or similar to another treatment or medicine;

- c) could suggest that the public health might be improved by using the respective product;
- d) could suggest that the public health might be affected if the respective product is not used;
- e) could suggest that the respective medicine is an aliment, cosmetic product or another product of mass consumption;
- f) could suggest that the safety or the efficiency of that medicine is due to the fact that it is a natural product;
- g) could result, by the detailed description or representation of certain symptoms or clinical cases, into an erroneous self-diagnosis;
- h) could make reference to healing, in improper or inaccurate terms;
- i) could use images, schemes or photographs which show changes in the human body or parts of such, in improper, inaccurate or alarming terms;
- j) could evidence that the respective medicine is authorised by the National Drugs Agency.

The Decision n° 123 also contains restrictions with regard to natural (not naturist) products:

- (1) The broadcast of advertising and teleshopping for natural products and treatments which, as the case may be, which are not accompanied by the following acoustic and written warnings, is prohibited:
  - a) “**product not authorised medically**”; or
  - b) “**method not authorised medically**”.
- (2) In case that the natural products and treatments have been medically tested, this will be certified by the College of Physicians of Romania.
- (3) The warning provided for at para. (1) hereinabove shall be made at the end of the advertising message.

Art. 30 of Decision n° 123 contains a restriction rule regarding homeopathic products and treatments, i.e. advertising and teleshopping for homeopathic products and treatments are allowed only for the products and treatments approved by the Health Ministry and by the College of Physicians of Romania.



According to Article 31 of Decision n° 123, the broadcast of programmes or teleshopping which present healing cases of serious diseases by means of conventional or unconventional treatments, if the diagnosis and the medical documents attesting such have not been certified by the College of Physicians of Romania, or if during the programme or teleshopping a representative of the College of Physicians of Romania who could medically certify the respective results is not present, are prohibited.

Article 32 of Decision n° 123 provides for the prohibition of the broadcast of advertising and teleshopping in which suggestions are made that it is necessary for all the people to supplement their diet with vitamins and minerals or that such supplement can improve physical or mental functions which normally are in a good condition.

Article 33 of Decision n° 123 provides the following rules for advertising and teleshopping with regard to slimming and weight maintenance products or treatments:

- a) *"there should exist medical trustworthy evidence for each statement regarding the beneficial effects of the said products or treatments;*
- b) *they should indicate, when stating that a person lost certain weight, the period during which the said loss was obtained;*
- c) *the weight lost and the period during which that occurred must be compatible with the generally accepted medical and diet practices and shall not to reflect unrepresentative qualities of the offered products or medical service;*
- d) *in case of the medicines and drinks with low caloric values, if they are presented as part of the slimming diet, there should be indicated the fact that the said product may result in weight loss only as part of a diet which controls the calories/energy;*
- e) *in the case of the products especially made for using in diets with caloric restrictions which, according to the prescriptions of the producer, wholly or partially replace the daily food supply, these cannot be promoted under another name than **"complete food substitute for slimming"** or **"partial food substitute for slimming"**;*
- f) *in the case of the food products and drinks with low caloric values there shall not be made references to the rate or the volume of the weight loss as a result of using the said products or to the decrease of the hunger sensation or to the increase of the satiety sensation."*

Article 34 of the Decision n° 123 provides further restrictions with regard to the advertising or presentation of the products and treatments for slimming and maintenance of the body weight that must include the following acoustic and written warning, with a duration of minimum 5 seconds: **"take medical advice before going on the diet"**; the diet must be presented or advertised as a short-term measure. The declarations or presentation of some particular cases which are meant to justify the use of the said diet are prohibited.

Article 35 of the Decision n° 123 provides that the advertising and the teleshopping for any product or treatment for slimming or for the maintenance of the body weight shall be made in compliance with the following conditions:

- a) *"shall not be addressed to persons under 18 years old and shall warn the public in this respect by a written and/or acoustic insertion;*
  - b) *shall not be broadcast during programmes for children or during the advertising breaks preceding or following such programmes;*
  - c) *shall not be addressed directly to obese persons, shall not include examples of cases in which there are discussions about or are presented persons who have been obese before using the advertised products or services;*
  - d) *shall not suggest or state that it is proper or desirable not to be fat."*
- Alcoholic beverages (Art. 15 of TVWF Directive): Examination of the specific and/or restrictive rules related to alcoholic beverages (advertising, teleshopping, sponsorship and other advertising forms)

Article 32 of the Audiovisual Law provides as follows:

*"Advertising and teleshopping for alcoholic beverages must observe the following terms:*

- a) *shall not be addressed to minor children or shall not show minors consuming alcoholic beverages (// art. 15 a. TVWF Directive);*
- b) *shall not establish a link between alcohol consumption and the improving of physical and psychological qualities or the capacity of driving vehicles (//art. 15 b. TVWF Directive);*
- c) *shall not create the impression that social or sexual performances can be attained through the consumption of alcohol (// art. 15 c. TVWF Directive);*
- d) *shall not suggest the idea that alcohol has therapeutic qualities or that it is a stimulant, sedative or a means to solve personal problems (// art. 15 d. TVWF Directive);*
- e) *shall not encourage the exaggerated consumption of alcohol or set in a negative light the refrain from the consumption or moderate consumption of alcoholic beverage (// art. 15 e. TVWF Directive);*
- f) *shall not indicate that a high degree in alcohol concentration represents a quality of the beverage (//art. 15 f. TVWF Directive) ."*

The above-mentioned Romanian provision is similar to the provision of Article 15 of TVWF Directive, except for a minor difference consisting of the additional mention made by the Romanian provision in para. (b), i.e. the link between the consumption of alcohol and improvement of both physical and psychological performances. Thus, from this point of view, the Romanian provision which adds the psychological element of performance might be considered more restrictive than the similar provision of the TVWF Directive.

The above-mentioned Romanian provision is completed by the provisions regarding advertising for alcoholic beverages, i.e. Articles. 9 to 15 of the Decision 123.

These rules provide that any form of advertising for distilled alcoholic beverages during the TV shows broadcast between 6.00 – 22.00 hours is prohibited.

According to Decision n° 123, the distilled alcoholic beverages are the ones defined in the Order of the Minister of Food and Agriculture and of the Minister of Health N° 17/240 of 2000 for the approval of the Regulations Regarding the Nature, Content, Origin, Manufacturing, Packaging, Labelling, Marking and Quality of the Distilled Alcoholic Beverages for Sale.

Article 11 of Decision n° 123 provides that the broadcast of advertising for alcoholic beverages whereby violent aggressive or anti-social behaviour or attitudes are promoted is prohibited.

Article 12 of Decision n° 123 provides another restriction, i.e. the prohibition regarding broadcast of advertising spots for alcoholic beverages, which show minors.

Article 13 of Decision n° 123 stipulates a restriction concerning the broadcast of TV shows sponsored by sponsors whose names or brands are identical with the names or brands of certain alcoholic beverages, between 6h00 and 22h00.

Also, the broadcast of contest shows or advertisements which contain references to the name or brand of a distilled alcoholic drink is prohibited between 6:00 – 22:00 hours. This provision is more restrictive than the Directive.

The display of images whereby such products and/or their manufacturers can be identified during sports transmissions broadcast before 22h00 is considered advertising for distilled alcoholic beverages (Art. 14 of Decision n° 123).

Advertising spots whereby distilled alcohol products are promoted shall end with the warning: “The excessive consumption of alcohol is a serious threat to your health”.

- Minors (Art. 16 of TVWF Directive): Examination of the specific and/or restrictive rules related to minors (advertising, teleshopping, sponsorship and other advertising forms)

Article 33 of the Audiovisual Law provides as follows:

- “(1) *Advertising must not cause any moral, physical or intellectual damage to minors and especially:*
- it must not directly instigate minors to purchase a product or service by exploiting their lack of experience or credulity (// art. 16 §1 a. TVWF Directive);*
  - it must not directly encourage minors to persuade their parents or other persons to purchase goods or services that represent the object of the advertising (// art. 16 §1 b. TVWF Directive);*
  - it must not exploit the special trust that minors have in parents, teachers or other persons (// art. 16 §1 c. TVWF Directive) ;*
  - it must not unjustifiably show minors in dangerous situation (//art. 16 §1 d. TVWF Directive).*
- (2) *Teleshopping must observe the terms provided for in paragraph (1) and it must not instigate minors to conclude contracts for the sale or rent of goods or services (//art. 16 §2 TVWF Directive).”*

The first paragraph of Article 33 (1) mentioned above is similar to Art. 16 of the Directive, except for a minor addition made in the first paragraph which refers, in addition to moral and physical damage, to intellectual damage. Thus, from this point of view, the Romanian law can be considered to be more restrictive than the provision of the Directive.

At the same time we note the use of the word “protection” in the first paragraph of Article 16 of the Directive, which is missing in the correspondent Romanian provision, i.e. first paragraph of Article 33 (1).

The Decision 123 provides for the following prohibitive and restrictive rules:

1. The prohibition of the broadcast of advertising spots for alcohol featuring minors.
2. The prohibition of advertising messages for medicines or medical treatments addressed to persons less than 16 years old.
3. The prohibition of the broadcast of advertising for medicines, vitamins, food supplements, nutrients, nutritive supplements and medical treatments, within programmes for children or during the advertising breaks preceding or following such programmes.

4. The producers and distributors of medicines, vitamins, food supplements, nutrients, nutritive supplements and medical treatments may not sponsor the programmes or broadcasts for children.
  5. Article 35 of the Decision 123 provides that the advertising and the teleshopping for any product or treatment for slimming or for the maintenance of the body weight shall be made in compliance with the following conditions:
    - a) *shall not address persons under 18 years old and shall warn the public in this respect by a written and/or acoustic insertion;*
    - b) *shall not be broadcast within programmes for children or during the advertising breaks preceding or following such programmes;*
    - c) *shall not directly address obese persons, shall not include examples of cases in which there are discussions about or are presented persons who have been obese before using the advertised products or services;*
    - d) *shall not suggest or state that it is proper or desirable not to be fat.”*
- Other product/services categories subject to a specific regime: Identification of these sectors, for instance food retailing or the press sector in France

#### Regarding political advertising

Article 42 of the Audiovisual Law provides that all broadcasters must reflect election campaigns in a fair, balanced and impartial way in order to encourage and facilitate the pluralist expression of opinion trends.

According to Article 36 of Decision n° 123, “**political advertising**” means the advertising spots which promote a certain party, political person or political message. The political advertising is prohibited, except for the electoral campaign periods.

#### Regarding food products

Article 16 of Decision n° 123 provides that the advertising for food products shall comply with the following conditions:

- a) excessive food consumption shall not be encouraged;
- b) exact statements regarding nutrition (e.g. the effects of the C vitamin) or health-related statements (e.g. “favours a healthy digestion”) shall be based on solid scientific facts and shall not create misleading impressions regarding nutritional or health benefits of the respective food product.

Further on, Article 17 of Decision n° 123 provides for restrictions re broadcasting, i.e. that *“the illustration by means of fruit and/or vegetal parts is not allowed unless the fruit (or parts of the fruit – juice, pulp) and/or vegetal parts are mentioned on the product label and represent at least 4% of its content.”*

Article 18 of Decision n° 123 provides that food products shall not be assigned properties of prevention, treatment or cure of disease and references to such properties shall not be made. However, an exception from this prohibition is mentioned, i.e. natural mineral waters which are used in spas as medicine or for treatment purposes.

## **b. Conclusion**

- Emphasis placed upon the existence of other rules more or less restrictive than the TVWF Directive:

In general the provisions of the Romanian law are in accordance with the provisions of the Directive, with the variations discussed hereinabove.

### Except for:

The sponsoring of programs by persons who's activities include the manufacturing/sale of medicinal products: these undertakings may promote the name or the image of the undertaking but may promote specific medicinal products or medicinal treatments available only on prescription (less restrictive than the Directive). In addition, the teleshopping for medicinal products which are available without prescription is authorized (interpretation a contrario of the rule). (less restrictive than the Directive).

The sponsoring of programs by alcoholic beverages:

There are some specific rules that prohibits advertising for distilled alcoholic beverage during the TV show broadcast between 6.00 and 22.00.

- Identification of specific rules not included in the TVWF Directive:

There are no specific rules on this subject

- Court cases

In Romania there is no specialized Reporter of court cases concerning advertising or teleshopping that would be issued periodically, e.g. on a quarterly or yearly basis.

Our research did not locate court cases referring to the issues discussed in this study.

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