



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

**BULGARIA**

**LEGAL REPORT**

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## **INTRODUCTION**

For the preparation of this report the current Bulgarian legislation as of February 19<sup>th</sup>, 2004 has been taken into consideration.

For the preparation of the report we have reviewed:

- (i) the European Television Without Frontiers Directive;
- (ii) the European Convention on Transfrontier Television;
- (iii) the current Bulgarian legislation (Codes, Acts, Ordinances and other relevant statutory instruments);
- (iv) the practice of the national regulatory media authority (the Electronic Media Counsel);
- (v) the practice of the Supreme Administrative Court and the Sofia Regional Court;
- (vi) the draft of a new Radio and Television Act.

We have carried out also interviews with representatives of the Electronic Media Counsel with respect to the clarification of the issues included in the report.

No self-regulation codes in the sphere of television broadcasting have been adopted in Bulgaria and therefore no respective self-regulation rules have been examined by us.

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## **PRESENTATION OF THE BROADCASTING SECTOR IN BULGARIA**

The legal framework of the broadcasting sector in Bulgaria is provided in the Radio and Television Act (RTA). It regulates the television as well as radio broadcasting activities within the territory of the Republic of Bulgaria. The provisions of the RTA shall apply to all radio and television program services created for the purpose of broadcasting or broadcast by the relevant operators under the jurisdiction of the Republic of Bulgaria.

Radio and television broadcasting activities shall be effected by radio and television operators by virtue of registrations or licenses issued according to the procedure established by the RTA.

Radio and television operators shall be either sole-trader natural persons or legal entities holding radio and television broadcasting licenses or registrations.

Radio and television operators may furthermore be telecommunications operators within the meaning of the Telecommunications Act. In such case, they may not provide telecommunications services to third parties, save as otherwise provided for by their telecommunications operation licenses.

Radio and television operators shall be *public-service* and *commercial*.

*Commercial* radio and television operators shall be sole traders or commercial companies holding a radio and television broadcasting license, which shall operate with the main object of distributing profit among their owners.

*Public-service* radio and television operators shall be sole-traders or legal entities holding a radio and television broadcasting license whose main object is to contribute to the realization of the constitutional right to information.

The Bulgarian National Radio (BNR) and the Bulgarian National Television (BNT) shall be the national public-service radio operator and, respectively, the national public-service television operator.

The regulatory body in the broadcasting sector in Bulgaria is the Electronic Media Council (EMC).

The EMC is an independent specialized body which shall regulate radio and television broadcasting activities by means of registration or issuance of licenses for effecting radio and television broadcasting activities and through exercising of supervision over the activities of radio and television operators as to compliance with the RTA.

In the performance of its functions, the EMC shall be guided by the public interest, protecting the freedom and pluralism of speech and information and the independence of radio and television operators.

The EMC is a legal entity with head office in Sofia and with an independent budget.

The EMC adopts its own Rules of Organization and Procedure. In execution of its powers, the EMC shall adopt regulations, decisions and declarations and shall give opinions in the cases provided for by the law.

The decisions of the EMC may be appealed before the Supreme Administrative Court.

The EMC consists of nine members, five of whom shall be elected by the Parliament and four shall be appointed by the President of the Republic. The members of the EMC shall be elected, respectively appointed for a term of six years. The composition of the EMC from each quota shall rotate every two years.

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## 1. DEFINITIONS

For every text of the Definitions as per the Additional Provision to the Bulgarian Radio and Television Act (*Закон за радиото и телевизията*, promulgated State Gazette No 138/24.11.1998, last amendment State Gazette No 114/30.12.2003) (hereinafter referred to as “RTA”) the compliance is considered between the respective definition and the Definitions stated in Chapter I of the Council Directive of October 3<sup>rd</sup>, 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (89/552/EEC) (also called “Directive TV Without Frontiers”, hereinafter referred to as “TVWF Directive” or “the Directive”).

### Preliminary Notes:

- (i) It should be noted that in 2003 a draft of a new Radio and Television Act was submitted to the Bulgarian Parliament. The Draft is at present in the Media Commission of the Parliament. Many of the rules of the Draft were and still are subject to public disputes and debates resulting in delay for adoption of the new Act. The regulation of advertising, tele-shopping and sponsorship (Chapter VIII of the Draft, Articles 90 to 113) does not differ substantially from the regulation stated in the operative RTA. We have pointed out hereunder some more important differences between the RTA and the Draft in this respect.
- (ii) It should be noted as well that Bulgaria has ratified the European Convention on Transfrontier Television of 1989 (Convention “Transfrontier Television”) by an Act, adopted by the Bulgarian Parliament on December 4<sup>th</sup>, 1997, promulgated in State Gazette No 117/10.12.1997. The full text of the Convention was promulgated in State Gazette No 32/08.04.1999 and the Convention is in force as of July 1<sup>st</sup>, 1999. Pursuant to Art. 5, § 4 of the Constitution of the Republic of Bulgaria, the international contracts (e.g. conventions) which have been ratified, promulgated and have entered into force for the Republic of Bulgaria, are part of the internal legislation and have priority over these regulations of the internal legislation which contradict them. Therefore, the Convention “Transfrontier Television” is part of the Bulgarian internal legislation and can be directly applied in the cases in which there are no respective provisions in this legislation. Moreover, the Convention has priority over these regulations of the Bulgarian legislation which contradict it. Bulgaria has also ratified the Protocol on amendment and supplementation of the Convention “Transfrontier Television” by an Act, adopted by the Bulgarian Parliament on January 12<sup>th</sup>, 2000, promulgated in State Gazette No 7/25.01.2000. The full text of the Protocol was promulgated in State Gazette No 96/11.10.2002 and the Protocol is in force as of March 1<sup>st</sup>, 2002.

The following definitions have been taken from the Additional Provision to the Bulgarian RTA:

➤ **Television broadcasting:**

means the initial transmission or emission, by whatever telecommunication means, of a radio or television program service intended for reception by listeners or viewers. It includes the exchange (re-transmission) of program services between operators with a view to their being relayed to the public. It does not include communication services operating on individual demand (// art. 1 a. TVWF Directive).

Therefore, **Television broadcasting** is the initial transmission or emission, by whatever telecommunication means, of a television program service intended for reception by viewers, including the exchange (re-transmission) of program services between operators with a view to their being relayed to the public.

The definition is in compliance with the definition in the Directive TVWF (the definition in the Directive TVWF is a little bit more detailed).

➤ **Broadcaster**

There is no legal definition of a Broadcaster in the Additional Provision to the RTA. (≠ TVWF Directive)

Pursuant to Art. 3 of the RTA “Television broadcasting activities shall be pursued by **television operators** by virtue of registrations or licenses issued according to the procedure established by this Act. Television operators shall be either natural persons acting as sole-traders registered with the respective courts or legal entities holding television broadcasting licenses or registrations. Radio and television operators may furthermore be telecommunications operators within the meaning of the Telecommunications Act. In such case, they may not provide telecommunications services to third parties, unless otherwise provided for by their telecommunications operation licenses.”

According to the RTA, the television operators are *public-service-operators* and *commercial operators*.

(i) *Commercial* television operators shall be natural persons acting as sole-traders registered with the respective courts or commercial companies holding a television broadcasting license, which shall operate with the main objective of distributing profit among their owners.

(ii) *Public-service* television operators shall be natural persons acting as sole-traders registered with the respective courts or legal entities holding a television broadcasting license, whose main objective is to contribute to the realization of the constitutional right to information. Public-service radio and television operators shall be subject to public law or private law.

➤ **Television advertising**

Television advertising means any public announcement, inserted in the program service of television operator, in connection with a trade, business, craft or profession, which is intended to promote the sale, purchase or rental of a product or service, including immovable property, to advance a cause or idea, or to bring about some other effect desired by the advertiser.

For such announcement, the advertiser is allotted time in the program service in return for payment or similar consideration ( $\pm$ // art. 1 c. TVWF Directive)

RTA explicitly states that this type of public announcement (i.e. the advertisement) does not include the tele-shopping (the legal definition of tele-shopping is given under item 13 of the Additional Provision to the RTA, see item 6 hereunder).

The definition is in compliance with the definition in the Directive TVWF (the definition in the RTA is a little bit more detailed). It should be noted, however, that, in the Directive, the **broadcast for self-promotional purposes** is explicitly included in the definition of “television advertising”, while in the Bulgarian RTA there is a separate definition for Self-promotion (item 25 of the Additional Provision): “**Self-promotion** means a form of advertising in which the operator promotes its own products, services or programs.”

Note: In the Bulgarian legislation there are also other definitions for **advertising**. For *защита на потребителите и за правилата за търговия*, (promulgated State Gazette No 30/02.04.1999, last amendment State Gazette No 19/28.02.2003) provides the following definition (Art. 29, § 1, the definition is in the chapter related to the misleading and unfair advertising): Advertising is every announcement done in connection with commerce, handicraft or profession, which is intended to stimulate the realization of goods or services.

In this report we shall take into consideration only the definition stated in the RTA with respect to the purpose of the comparative study.

### ➤ **Surreptitious advertising**

means the representation in words or pictures of goods, services, or of the name, the marks or the activities of a producer of goods or [a provider of] services in broadcasts not intended to serve advertising, which representation might mislead the public ( $\pm$ // art. 1 d. TVWF Directive)

The definition is in compliance with the definition in the Directive TVWF. It should be pointed, however, that the definition in the Directive is directed at the broadcaster itself and its intention to advertise, while the definition in the RTA is directed at the broadcasts (which are not intended to serve advertising).

### ➤ **Sponsorship**

means any contribution made by a natural person or legal entity, who or which is not engaged in [radio and/or] television broadcasting activities or in the production of [audio and] audiovisual works, to the direct or indirect financing of [radio and] television programmes with a view to promoting the name, trademark, image, activities or products of the said person/entity (// art. 1 e. TVWF Directive)

The definition is in full compliance with the definition in the Directive TVWF.

Court practice: Pursuant to the practice of the Sofia Regional Court, the main difference between advertising and sponsorship is that it is inadmissible that the sponsorship directly popularizes goods and services produced and provided by the sponsor. On the contrary, the advertising announcement has a direct message to the addressees to stimulate them to buy and use a certain product – good or service, through description or artistic reproduction of specific characteristics of this product. With this respect, the journalists’ practice has developed different ways for delivering sponsorship messages and for their distinction from the advertising announcements, e.g. “with the support of...”, “thanks to ...”, “with the assistance of ...”, etc. (Decision of the Sofia Regional Court dated July 31<sup>st</sup>, 2000 under penalty administrative case No 2411/2000).

Note: It should be noted that according to the Bulgarian Act on the Corporate Incomes Taxation (*Закон за корпоративното подоходно облагане*, promulgated State Gazette No 115/05.12.1997, last amendment State Gazette No 109/16.12.2003, Additional Provisions, paragraph 1, item 20), there is another legal definition of sponsorship for taxation purposes: “sponsorship” is a transaction where the sponsored person acts or restrains from acts, which acts are not monetary equivalent to the provided by the sponsor.

#### ➤ **Tele-shopping**

means any direct offer broadcasted to the public with view to the sale or supply of goods and services, including immovable property, rights and obligations, in return for payment (// art. 1 f. TVWF Directive)

The definition is in full compliance with the definition in the Directive TVWF.

Pursuant to Art. 88, § 1 of the RTA, the forms of tele-shopping shall be (i) an autonomous program service devoted to tele-shopping, (ii) a tele-shopping window (see item 9 hereunder), and (iii) a tele-shopping spot. The RTA does not provide for a legal definition of a “spot”.

“**Subliminal techniques in advertising**” means indirect specific (including technical) advertising methods which are not identified as advertising and are not recognized by the audience like: use of a twenty-fifth frame, emission of infra-sound and other such. These technical means elicit a subconscious mental reaction and produce in the audience a predisposition to the advertised goods, services, etc.

#### ➤ **(Television) Program:**

according to item 3 of the Additional Provision to the RTA, “program” means a system of all items (elements) created and broadcast by the operator, which is furthermore a tenor of a specific content arranged in an hourly schedule. It should be pointed out, however, that after the amendments in the RTA in 2001, there is a new item 32 of the Additional Provision to the RTA, which provides another definition of “program” – the totality of all broadcasts transmitted on specified frequencies and announced under a common name signified by audio-visual means.

Thus, two separate definitions for program<sup>1</sup> exist in parallel in the Bulgarian RTA. Our opinion is that this is a legislator's error and that the new definition (under item 32) abolishes the old one and should be applicable.

➤ **Broadcast**

means a self-contained part of a program distinguishable from other such parts in terms of authorship, content and/or audiovisual realization.

➤ **Window**

means a television program limited in time within the principal program, which has its own specific content.

➤ **Teletext service**

means a system for transmission of information and listing communications and advertising by means of alphanumerics and graphics, through a special signal incorporated into the program television signal.

There are no legal definitions of split-screen technique, product placement, virtual advertising and inevitable advertising provided by the RTA.

➤ **Conclusion**

It could be concluded that in general the definitions provided by the RTA comply with those in the Directive TVWF. The following main differences should be pointed out:

- No legal definition for 'broadcaster' is stated in the RTA.
- Separate definition for 'selfpromotion' in the RTA (stating, however, that 'selfpromotion' is also a form of advertising).
- The definition of 'surreptitious advertising' in the RTA is more restrictive than the definition in the Directive, because it covers not only the cases in which the broadcaster intends to advertise the respective product, but all cases in which goods or services are represented in broadcasts not intended to serve advertising.
- No definition of 'subliminal techniques' in the Directive (in contrast to the RTA).
- Unlike the Directive, the RTA refers to 'broadcasts' instead of 'programmes'.

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<sup>1</sup> In the present report the words "program", "programme" and "program(me) service" are used as synonyms when the provisions of the RTA are commented.

Unlike the Directive, the RTA refers to "broadcasts" instead of "programmes". We shall use the term "broadcast" as an element of the programme under the Bulgarian legislation (see the definition in item 8 hereunder).

## 2. ADVERTISING RECOGNITION AND ADVERTISING/PROGRAMME SEPARATION (ARTICLE 10 TVWF DIRECTIVE)

### a. Regulations

The recognition of advertising is ruled by Art. 82, § 1 and 2 of the RTA. Pursuant to Article 74, § 1 of the RTA, the rules for advertising shall furthermore apply to tele-shopping, unless otherwise expressly provided for by RTA. Hereunder we shall explicitly point out the provisions which envisage special rules for tele-shopping. In the other cases the rules concerning the advertising shall be applicable.

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

Advertising shall be readily recognizable as such and shall be kept separate from the other parts of the program service by optical or acoustic means. (// art. 10 §1 TVWF Directive)

Pursuant to the Draft of a new RTA (Art. 105, § 2), tele-shopping shall be marked as such through an easily distinguishable inscription on the screen during its whole duration. (≠ TVWF Directive)

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

Advertising shall be inserted in program services in the form of **advertisement blocks**. (//10 TVWF Directive)

- Examination of the rules related to the isolated advertising and tele-shopping spots

Separate (i.e. isolated) advertisements may be inserted in the program services only as an exception (// art. 10 §2 TVWF Directive). The RTA does not specify such exceptional cases, which means that an assessment should be done in any particular case.

- Prohibition of the use of "subliminal techniques"

Advertising (Art. 77) and tele-shopping (Art. 74 §.1) that uses subliminal techniques are prohibited (// art. 10 §3 TVWF Directive).

- Prohibition of surreptitious advertising and tele-shopping

Surreptitious advertising (Art. 77) and tele-shopping (Art. 74 §.1) are prohibited (// art. 10 §4 TVWF Directive).

**b. Conclusion**

The regulation of the recognition of advertising is in compliance with the rules provided by the Directive TVWF. There are in no rules more or less restrictive than the Directive TVWF.

However, Article 105 of the draft RTA states that tele-shopping should be market as such for its **all duration** and can thus be considered as a stricter rule.

There are no specific rules not included in the Directive.

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3. **RULES RELATED TO INSERTION OF ADVERTISING AND TELE-SHOPPING SPOTS BETWEEN AND WITHIN THE PROGRAMMES (ARTICLE 11 TVWF DIRECTIVE)**

a. **Regulations**

The insertion of advertising spots between and within the broadcasts is ruled by Art. 82, § 3, 4 and 5 of the RTA. On the grounds of Article 74, § 1 of the RTA, these rules are applicable as well to the insertion of tele-shopping spots between and within the broadcasts.

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

The main principle is that advertising shall be inserted in the program service **between the separate broadcasts** (// art. 11 §1 TVWF Directive).

- Examination of the rules related to the insertion of advertising and tele-shopping spots within the programmes

It may also be inserted **during the broadcast itself**, provided:

- the integrity and value of the said broadcast are not prejudiced (±// art. 11 §1 TVWF Directive);
- the copyrights are guaranteed. (// art.11§1 TVWF Directive)

In broadcasts consisting of autonomous parts, advertising may be inserted between these parts. In broadcasts of sports events and competitions, advertising shall be inserted between the separate parts or in the intervals during the event or competition (// art. 11 §1 and §2 TVWF Directive)

Further rules referring to the insertion of advertising spots within the programmes are provided by Art. 83, 84 and 85 of the RTA:

The transmission of audiovisual works, such as feature films and films made for television, (excluding series, serials, light entertainment broadcasts and documentaries), may be interrupted once for each complete period of 45 minutes, provided the scheduled duration of the broadcast or film exceeds 45 minutes. After two complete periods of 45 minutes, a further interruption is allowed after the lapse of at least 20 minutes (// Art. 11 §3 TVWF Directive).

A period of at least 20 minutes should elapse between the beginning and the first [advertising] break, as well as between two successive breaks in broadcasts other than those cited above. (// art. 11 §4 TVWF Directive)

- Possible prohibitions of insertion of advertising and tele-shopping spots within certain types of programme

No advertising shall be admissible during broadcasts of (i) national observances or (ii) religious services ( $\pm$ // art. 11 §5 TVWF Directive).

Pursuant to Article 83, § 2 of the RTA, several types of broadcasts shall not be interrupted by advertising. These are:

- (i) news;
- (ii) political and business commentaries and analyses;
- (iii) documentaries and
- (iv) children's broadcasts<sup>2</sup> ( $\neq$  TVWF Directive).

Regulatory practice: Pursuant to an Opinion of the *Electronic Media Council* (EMC) a **documentary** which may not be interrupted by advertising in the sense of Art. 83, § 2 of the RTA is an integral author's audiovisual production giving meaning to the social reality on political and/or business themes.

One may note finally that the insertion of paid reports in news and political broadcasts is inadmissible (RTA does not contain a definition of "paid report").

## **b. Conclusion**

The regulation of the above issues, related to the insertion of advertising and tele-shopping spots, is in general in compliance with the rules set forth by the Directive TVWF.

The following differences should be pointed out:

The general rule for inserting advertising spots during the programmes (broadcasts) in the Directive differs from that rules in the RTA in two directions:

On the one hand, Art. 11, §. 1 of the Directive explicitly stipulates that advertising spots may be inserted during programmes, **"provided the conditions set out in paragraphs 2 to 5** [i.e. the rules under the previous items 1.3., 1.4.,

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<sup>2</sup> There is no definition of **"children's broadcasts"** in the RTA. Pursuant to the Act on the Child's Protection (*Закон за закрила на детето*, promulgated State Gazette No 48/13.06.2000, last amendment State Gazette No 63/15.07.2003), a "child" in the context of this Act is every natural person up to 18 years of age (this is also the Definition of a "child" under the Convention on the Child's Rights). Therefore, in our opinion, as "children's broadcast" may be defined a broadcast addressed to the individuals who have not reached 18 years of age.

2.1., 2.2., 2.3. and 2.4. of this report] **are fulfilled**". This rule is not explicitly stated in the RTA and should be deduced through interpretation.

On the other hand, there is an additional requirement in Art. 11, para. 1 of the Directive, which stipulates that by inserting of advertising spots during the programmes, **the natural breaks in and the duration and nature of the programme should be taken into account** as well. Such an additional requirement does not exist in the RTA.

Thus, the Directive TVWF appears to be more restrictive in this direction than the RTA because it states additional requirements for insertion of advertising during the programmes.

On the other hand, the RTA contains some rules **more restrictive** than the Directive.

RTA explicitly prohibits the insertion of *paid reports* in news and political broadcasts (Art. 85).

RTA explicitly states that no advertising shall be admissible during broadcasts of *national observances* (Art. 83, § 1).

According to the TVWF Directive (Art. 11 §5) advertising shall be admissible during news, current affairs programmes, religious programmes and children's programmes if their scheduled duration is 30 minutes or longer, under appliance of the provisions stated in the previous paragraphs of Art. 11.

RTA prohibits in general the interruption of these broadcasts by advertising, irrespective of their duration (Art. 83, § 2) and is therefore **more restrictive** than the Directive in this direction.

The **Draft** of the new RTA allows the interrupting of documentaries by advertising, if their scheduled duration is 30 minutes or longer.

Therefore, it can be concluded that the provisions of Art. 82 § 3, 4 and 5 of the RTA, related to insertion of advertising during programmes are not in full compliance with the provisions of Art. 11 of the Directive TVWF (as described hereinabove, there are rules more restrictive as well as less restrictive than the rules included in the Directive TVWF).

#### 4. QUANTITATIVE RESTRICTIONS (ARTICLE 18 TVWF DIRECTIVE)

##### a. Regulations

The legal framework of the quantitative restrictions for advertising and tele-shopping spots is stated in Article 86 of the RTA.

The legal maximum of the overall duration of the advertising in the separate programs is differentiated depending on the type of operator. The duration of tele-shopping spots shall count against the overall admissible duration pursuant to Art. 74, § 2 and Art. 86.

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

No specific rules provides for a maximum overall daily transmission time devoted to advertising and tele-shopping spots and other forms of advertising. (≠ TVWF Directive)

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

For the **Bulgarian National Television** (BNT), which is the national public-service television operator, the maximum daily duration of advertising broadcast is 15 minutes per day.

There is no threshold related to the maximum daily transmission time.

BNT shall be entitled to use up to one-third of the overall daily duration of advertising during the time period commencing at 19:00 hours and ending at 22:00 hours.

For the other **public-service television operators** this time period is extended to 6 minutes per hour, i.e. 10% of the daily transmission time.

Those restrictions shall not apply to advertising inserted in broadcasts covering art, culture or sports events of national and international importance, designated as such by decision of the management boards of the relevant television operators. In such a case, the rules applying to commercial operators shall apply to the duration of the advertising.

For **commercial operators** the ceiling is 15% of the daily transmission time (// art. 17 §1 TVWF Directive).

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

For BNT, the maximum daily transmission time devoted to advertising within a given clock hour is 4 minutes (6,6 %).

The overall duration of advertising in the program services of the regional centers of the BNT, intended for regional broadcasting, may not exceed 6 minutes per hour, i.e. 10 %.

For the other **public-service television operators** this time period is extended to 6 minutes per hour; i.e. 10%.

For commercial operators, the time limit within a clock hour is 12 minutes (20%) (// art 17 §2 TVWF Directive). This restriction limiting the maximum duration of advertising to 12 minutes per hour shall not apply to programs devoted exclusively to **tele-shopping**.

For these programs there are special rules stated in Art. 74, § 2 of the RTA. According to them (i) in programmes exclusively devoted to **tele-shopping** advertising shall not exceed 15% of the daily transmission time and (ii) in programmes exclusively devoted to **self-promotion** advertising shall not exceed 15% of the daily transmission time and 12 minutes per hour.

Otherwise, Art. 74, § 2 of the RTA stipulates that the provisions of this Act shall apply accordingly to (i) the programmes exclusively devoted to tele-shopping and to (ii) the programmes exclusively devoted to self-promotion, which is in compliance with Articles 18 and 18bis of the Directive TVWF.

The **Draft** of new RTA explicitly sets out rules related to the duration of tele-shopping spots, e.g. the duration of a tele-shopping spot may not exceed 90 seconds.)

- Examination of the other possible quantitative restrictions

None.

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

Art. 87 of the RTA provides for specific rules for calculation of the advertising time.

Pursuant to § 1, promotional films, promotional interviews and infomercials shall count against the overall duration of advertising.

Special attention should be paid to Article 81 of the RTA which mentions that the above described restrictions under Article 74, § 2 and Article 86 shall not apply to:

- the announcements made by television operators in connection with their own program or subsidiary services provided by them (self-promotion);
- any public service announcements and charity appeals which are inserted in the programs free of charge (// art. 17 §3 TVWF Directive).

The participation of journalists presenting news and political and business broadcasts shall be admissible in the presentation of advertising under the previous paragraph (this is an exception from the rule under Art. 79 of the RTA, see Part VIII, Section a), item 6 hereunder).

**b. Conclusion**

The regulation of the quantitative restrictions for advertising and tele-shopping spots is in general in compliance with the rules provided by the Directive TVWF. The following differences should be pointed out:

The legal maximum of the overall duration of the advertising in the separate programs is differentiated depending on the type of operator (BNT, public-service operators and commercial operators). The Directive does not provide for such a division. With this respect there are specific rules referring to the different types of operators which are not included in the Directive.

It should be noted that the time restrictions for advertising stated in the RTA for the **commercial operators** (Art. 86, § 1, item 4) are in compliance with those stated in the Directive (Art. 18, § 1 and 2) - 15% of the daily transmission time and 12 minutes per hour (i.e. 20% of a clock hour).

However, the RTA does not contain a general rule for maximum percentage of daily transmission time devoted to tele-shopping spots, advertising spots and other forms of advertising (20% as per Art. 18 of the Directive).

This means that in the transmission time according to the RTA (15% for the commercial operators) are included the advertising spots as well the tele-shopping spots (see also the above Section a), item 4). Thus, the RTA appears to be **more restrictive** in this respect than the Directive TVWF.

The Directive does not provide for specific rules for calculation of the advertising time, such as the rules under Article 87, § 1 of the RTA (see the above Section a), item 5).

In the Bulgarian legislation there are no special rules for taxation of the incomes from advertising. The tax treatment of incomes from advertising is in accordance with the general rules. Pursuant to the Act on the Corporate Incomes Taxation

(Additional Provisions, §graph 1, item 20), if a sponsored person has the obligation to advertise the sponsor and this advertising is equivalent to the sponsorship provided by the sponsor, the rules for the commercial transactions stated in the Bulgarian Commercial Act (promulgated State Gazette No 48/18.06.1991, last amendment State Gazette No 58/27.06.2003) have to be applied. The advertising services are explicitly defined as a commercial transaction in Art. 286, § 2 in connection with Art. 1, § 1, item 13 of the Commercial Act. The provision of advertisement services (including through TV broadcasting) is generally considered VAT chargeable transaction as per the Bulgarian VAT Act. The rate of the VAT in Bulgaria is 20 %. However, if the advertisement services are rendered to a foreign recipient, which is not tax resident in Bulgaria and has no permanent establishment in Bulgaria, the provision of the advertisement services is considered VAT-exempt transaction, i.e. no VAT is charged over the service fee.

\* \* \*

## 5. QUANTITATIVE RESTRICTIONS RELATED TO TELE-SHOPPING PROGRAMMES (ARTICLE 18 BIS TVWF DIRECTIVE)

### a. Regulations

The rules regulating the quantitative restrictions related to the tele-shopping programs are stated in Article 88 of the RTA:

- Examination of the minimum duration of windows devoted to tele-shopping programmes (15 minutes in the TVWF Directive)

Each tele-shopping window has a minimum duration of 15 minutes ( $\pm$  // art. 18bis §1 TVWF Directive, as the Bulgarian legislation does not precise “uninterrupted”)

- Examination of the maximum number of windows (8 in the TVWF Directive)

The maximum number of tele-shopping windows per day is eight (// art. 18bis 2 TVWF Directive)

- Examination of the maximum daily duration (3 hours in the TVWF Directive)

Their overall duration may not exceed three hours per day (// art. 18bis §2 TVWF Directive).

These restrictions do not apply to specialized tele-shopping channels.

### b. Conclusion

The above rules are in compliance with the Directive TVWF, Art. 18bis.

The following clarifications, explicitly included in the Directive and not in the RTA, should be pointed out:

1. The Directive stipulates that the minimum **uninterrupted** duration of tele-shopping windows shall be 15 minutes. Such an explicit requirement for uninterrupted duration is not stated in the RTA and should be deduced through interpretation.

2. The Directive provides that the tele-shopping windows must be clearly identified as such by optical and acoustic means. Such a rule is not explicitly stated in Art. 88 of the RTA and should be deduced on the grounds of Art. 74, § 1 (see also the above Part II, Section a), item 1.2.).

Note: In compliance with Art. 18bis of the Directive we comment herein only the rules referring to the **windows** devoted to tele-shopping broadcast.

\* \* \*

## 6. SPONSORING (ARTICLE 17 TVWF DIRECTIVE)

### a. Regulations

The sponsorship is regulated in Art. 72 - 73 and Art. 89 – 92 of the RTA (for the definition of sponsorship see the above Part I).

Certain programs and broadcasts of television operators may be sponsored (in accordance with the provisions of the RTA) (Art. 72, § 2).

The separate broadcasts of operators may be sponsored in whole or in part (Art. 89 of the RTA). With respect to this text the following issues should be clarified:

It should be noted that the respective Section III of Chapter IV (Articles 89 to 92) of the RTA does not explicitly mention the sponsorship of *programs* but refers only to the sponsorship of *broadcasts*. Therefore, the rules of the said Section III of Chapter IV should be applied by analogy (*analogia legis*) to the sponsorship of programs, as well as the rules stipulated by the Convention “Transfrontier Television” (see the above Part I, Preliminary Notes, item (ii)).

With this respect it should be noted also that the Draft RTA explicitly states that only the *broadcasts* included in the programs of the operators may be sponsored, therefore pursuant to the Draft *programs* may not be sponsored.

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

The sponsor shall have no right to influence the content and presentation of the sponsored broadcast (±// art. 17 §1 a. TVWF Directive)

- Sponsor identification

The sponsor shall be identified in accordance to the rules related to the logo.

- 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)

The name of the sponsor and/or his trademark (the logo of the sponsor is a kind of trademark) shall be mentioned, presented or depicted in any other way **only at the beginning and/or at the end of the broadcast** (Art. 92, § 2 of the RTA). Pursuant to the constant practice of the courts and the EMC, this rule is imperative and may not be subject to a broader interpretation (±// art. 17 §1 a. TVWF Directive).

- (i) In its Decision No 15-00-24/18.01.2002 the *Electronic Media Council* (EMC, see Part II, Section a), item 3.2. hereinabove) stated that the announcements made by television operators in connection with their own program or subsidiary services provided by them (*self-promotion*), as well as to any public service announcements and charity appeals which are inserted in the programs free of charge and to which pursuant to Art. 81 of the RTA the restrictions under Art. 74, § 2 and Art. 86 of the RTA do not apply, **may include the name of the sponsor or its trademark**. The Decision was appealed before the Supreme Administrative Court (administrative case No 4752/2002 of 5<sup>th</sup> panel).

The Supreme Administrative Court repealed the said Decision with the reason that every presentation of the sponsor not in compliance with the said requirement of Art. 92, § 2 of the RTA (e.g. through a message included in a self-promotional rubric of the television operator) would be advertising under the meaning of the Additional Provision to the RTA, § 1, item 12 to which the respective rules referring to advertising shall be applicable. That is why the Supreme Administrative Court agrees with the appellant that with the said Decision the EMC “recommends” in practice to the television operators to evade the law and in particular the restrictions related to sponsorship. On this way the quantitative restrictions referring to advertising are evaded as well. On this ground the Supreme Administrative Court repealed Decision No 15-00-24/18.01.2002 by its Decision No 10385/20.11.2002 in the said administrative case No 4752/2002.

- (ii) It should be noted that before the submission of the said appeal the EMC had issued a new Decision No 15-00-59/08.04.2002 in which the issue had been decided in a different and more correct way. Item 10 of this Decision rules that the mentioning, representing or depicting in any other way the name and/or the trademark of the sponsor of a broadcast in a self-promotion converts the self-promotion into a general form of advertising, to which all rules of the RTA related to advertising shall be applicable. However, the said Decision No 15-00-59/08.04.2002 did not explicitly abolish Decision No 15-00-24/18.01.2002 and that is why it was appealed before the Supreme Administrative Court and repealed by the Court.
- (iii) It should be noted as well that pursuant to the legal theory and court practice (e.g. the said Decision No 10385/20.11.2002 of the Supreme Administrative Court, 5<sup>th</sup> panel in administrative case No 4752/2002), the Decisions of the EMC on interpreting the RTA have only recommendable (and not obligatory) character.

It should be also stated that pursuant to the Bulgarian legislation the Court decisions **are not precedent law** (like in the Anglo-Saxon legal system), which means that a similar case may be resolved by another Court or another panel of the same Court in a different way.

- (iv) The Draft RTA (Art. 110, § 3) explicitly states that the announcing of the sponsor in a self-promotional rubric is deemed as advertising and shall be regulated by the rules related to advertising.

- Identification of the programmes that cannot be sponsored

Political and business broadcasts, which (i) contain analyses and comments or (ii) whose subject is similar to the scope of activities of the sponsor, may not be sponsored (Art. 90, § 3 of the RTA). (≠ TVWF Directive).

Broadcasts may not be sponsored by:

- (i) political parties and organizations;
- (ii) religious organizations;
- (iii) persons whose principal activity is the manufacture of goods and [the provision of] services the advertising of which is prohibited (see Part IX hereunder).

Therefore, such parties, organizations and persons may not be sponsors of *programmes* either, because the sponsor of a programme is sponsor also of all broadcasts included in it (Decision No 15-00-59/08.04.2002 of the EMC).

Court practice: Pursuant to the practice of the Sofia Regional Court (e.g. Decision dated July 31<sup>st</sup>, 2000 under penalty administrative case No 2411/2000 and Decision dated August 31<sup>st</sup>, 2000 under penalty administrative case No 3652/2000), the political character of a broadcast is deduced not from the persons participating in it, but from the issues that are subject to discussion in this broadcast. If these issues concern the governmental activities and the way for their carrying out, the respective broadcast should be considered as political. An information broadcast, dedicated to the political event which is reflected (e.g. local elections), including analysis and comments of journalists and specialists in the sphere of politics on this event, has political character as well.

On the above grounds the Sofia Regional Court has confirmed penalty decrees No 67/13.03.2000 and No 19/28.04.2000 by which pecuniary penalties have been imposed respectively to the BNR [the case refers to a radio broadcast but the principle rules are applicable towards television operators as well] and to the BNT for infringement of Art. 90, § 3 of the RTA by allowing the sponsorship of a political broadcast which reflects the local elections and includes analysis and comments.

Pursuant to Art. 90, § 4 of the RTA, sponsorship of news shall not be allowed, with the exception of sports news, if the sports news are kept quite separate from the other parts of the program service by optical or acoustic means or are presented as autonomous broadcast.

Regulatory practice: According to Opinion of the EMC, dated October 7<sup>th</sup>, 2002, the persons who have provided dress, make-up, hair-style, etc. to the journalists presenting the news in the television programs, finance indirectly the respective news. Thus, the prohibition of sponsorship of news stated in Art. 90, § 4 of the RTA, is infringed. The writing down of the so called “wardrobe”, make-up, hair-style, etc. is an announcement of the name and/or the trademark of the sponsor. Therefore, it is admissible only the names of the persons who have provided dress, make-up, hair-style, etc. to be written down in the titles of the end of the news **without any specific type or trade mark**, as part of the team who has realized the broadcast.

By analogy (see the above item 1.2.1. of this Part VI), *programmes* which contain news, political and business broadcasts, which include analysis and comments or whose subject is similar to the objects of activity of the sponsor, may not be sponsored (Decision No 15-00-59/08.04.2002 of the EMC). Such a programme can be sponsored only partially and indirectly – by sponsoring of separate broadcasts in compliance with the provisions of Section III of Chapter IV of the RTA.

Regulatory practice: Pursuant to Opinion of the EMC of September 16<sup>th</sup>, 2002, the “clock” rubrics of the television operators have neither author, nor content and therefore cannot be defined as a “broadcast” under the meaning of the RTA (see the above Part I, item 8). Hence, it is inadmissible sponsors’ and advertising announcements to be included within the “clock” rubrics.

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

Sponsored broadcasts may not encourage the sale, purchase or use of goods and services of the sponsor or a third party, in particular by making special promotional references to such goods and services in the broadcasts (Art. 92, § 1 of the RTA). By analogy (see the above item 1.2.1. of this Part VI), this rule is applicable towards sponsored *programmes* as well (in this sense also Decision No 15-00-59/08.04.2002 of the EMC). (// art.17.1.c TVWF Directive)

- Examination of the maximum duration of the mention and/or maximum daily/per hour volume

There are no limitations for the maximum duration of the sponsorship announcements.

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

None.

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

- **Product placement:**

There is no legal definition of product placement in the RTA. However, the regulatory body EMC exercises severe control over the broadcasters with this respect and has passed several decisions related to this matter. By these decisions were imposed pecuniary sanctions to the broadcasters (television and radio broadcasters as well) for advertising in an inadmissible manner certain products during the programmes. For instance, the appearance of a person wearing a T-shirt with a brand on it which could be seen by the audience, shall be deemed inadmissible advertising.

There is also a new trend in the TV-shows in which prizes (e.g. cars) are being bestowed, the trade mark of the respective sponsor not to be mentioned, in order to avoid the eventual imposing of pecuniary sanctions by the EMC. The showing of the car is not considered as an infringement, if the name of the sponsor and/or its trade mark can not be seen. On the contrary, each mentioning of the sponsor's name and/or showing of its trade mark during the programme, or any other way for advertising its products is considered by the EMC as an infringement of the provisions of RTA for which pecuniary sanctions shall be imposed. Such mentioning is considered as advertising and is admissible only in compliance with the rules of the RTA referring to advertising.

According to the practice of the EMC, the presenting of a product (good or service) of the sponsor is inadmissible in the beginning and/or the end of the programme together with its name and/or trade mark.

The sponsor's products may be presented in the form of an advertising spot (in this case the rules referring to advertising shall be applicable, e.g. identification and separation by visual and/or acoustic means, insertion in the form of advertisement blocks, etc.).

The EMC exercises control with view to compliance of the broadcasters' activities with the legal requirements related to product placement and sponsorship on the basis of casual checks effected by the monitoring department.

- **Regulatory practice:**

- (i) Pursuant to the said Decision No 15-00-59/08.04.2002 of the EMC, “making special promotional references” means not only the verbal mentioning of a good or a service, but also the writing of their names, qualities, etc. on the television screen. The showing of the good itself in a broadcast, e.g. by the bestowing of prizes in television games, is not “making special promotional references” in the meaning of the RTA (and is therefore not prohibited), if the shown good cannot be identified as good of the sponsor by a trade mark, industrial design or any other way.
- (ii) Pursuant to the above mentioned Decision of the EMC, the interruption of a sponsored broadcast by advertising of goods or services of the sponsor or a third party does not infringe Art. 92, § 1 of the RTA, because the advertising that interrupts the broadcast is not part of it. The opposite understanding would lead to a general prohibition for including of advertisements in the sponsored broadcasts, which is not the purpose of the legislator (otherwise he would have explicitly laid it down parallel with the other prohibitions stated in Art. 83). In this sense, EMC’s opinion is that it is admissible a sponsored broadcast to be interrupted by advertising of goods or services of the sponsor or a third party in compliance with the rules referring to advertising.

Pursuant to item 9 of the said Decision of EMC, the mentioning, presenting or depicting of any other way of the name and/or the trade mark of the sponsor of a broadcast in advertising is not an infringement of the RTA. A similar rule is included in the Draft of a new RTA as well.

- (iii) Pursuant to Decision No 15-00-30/12.05.2003 of the EMC by which the said Decision No 15-00-59/08.04.2002 was amended and supplemented, in the presentation of the sponsor by the television operators may **not** be included:
  - (a) offers for the purchase of products of the sponsor or for the use of services provided by the sponsor;
  - (b) mentioning or other way of emphasizing of qualities of products of the sponsor or of the services provided by the sponsor;
  - (c) address, telephone number or other contact details which assist the acquisition of a product or the use of a service of the sponsor.

- (iv) In its Decision No 15-00-59/08.04.2002 the Electronic Media Council (EMC, see Part II, Section a), item 3.2. hereinabove) stated that the sponsor may contribute to the full direct or indirect financing of a separate broadcast, as well as to the financing of a part of the broadcast or a separate activity related to its creation (e.g. providing of sets, transport, equipment, etc.).

**b. Conclusion**

- The main requirements of the Directive TVWF (Art. 17, § 1),

related to sponsorship, are included in the RTA (Art. 91 - 92). However, some important differences between the Directive and the RTA should be pointed out as follows:

1. The rule regulating the independence of the broadcaster in the Directive explicitly stated that the programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes. The Bulgarian RTA does not contain such an additional explanation (see the above Section a), item 2). However, this additional rule is applicable on the grounds of the Convention “Transfrontier Television”, Art. 17, § 2 (see the above Part I, Preliminary Notes, item (ii)).
2. The Directive specifies that the sponsored television programmes must be clearly identified as such. The relevant text of the RTA (Art. 92, § 2, see the above Section a), item 3) does not contain such an explicit requirement (neither regarding the programmes, nor regarding the broadcasts). Our opinion is that this requirement could be deduced through interpretation of the text but it is recommendable to be explicitly implemented in the RTA.

Besides, the said requirement is applicable on the grounds of the Convention “Transfrontier Television”, Art. 17, § 1 (see the above Part I, Preliminary Notes, item (ii)). In its Decision No 15-00-59/08.04.2002 the EMC explicitly stated that in order for the sponsored programme to be identified, the name and/or the trade mark of the sponsor should be obligatory presented at the beginning and/or at the end of the programme.

The Draft RTA explicitly states that the sponsored broadcasts shall be clearly identified as such at their beginning and/or at their end through depicting of the sponsor by audio-visual means.

3. On the other hand, the Directive does not explicitly prohibit the insertion of messages referring to the sponsor (to its name and/or its trademark) in the broadcasts. Pursuant to the RTA (Art. 92, § 2), the name of the sponsor and/or his trademark shall be mentioned, presented or depicted in any other way **only** at the beginning and/or at the end of the broadcast. Thus, the RTA appears to be **more restrictive** than the Directive in this direction.
4. Next direction in which the RTA is **more restrictive** than the Directive concerns the rules related to the undertakings/organizations which may not be sponsors.
  - 4.1. Pursuant to the RTA (Art. 90, § 1) broadcasts may not be sponsored by (i) *political parties and organizations* and (ii) *religious organizations*. There is no such a prohibition in the Directive.
  - 4.2. The prohibition for being sponsors in the RTA (Art. 90, § 2) refers to all persons whose principal activity is the manufacturing of goods and [the provision of] services the advertising of which is prohibited (see the above Section a), item 5(iii)). The explicit prohibition in the Directive (Art 17, § 2) refers only to undertakings whose principal activity is the manufacturing of cigarettes and other tobacco products. (// Art 17.2 TVWF Directive)
    - 4.2.1. It should be noted, however, that the prohibition under the Directive for being sponsors refers also to undertakings whose principal activity is the *sale* of cigarettes and other tobacco products (and not only the manufacture), which makes the rule of the Directive more restrictive in this direction.
5. On the other hand, the RTA does not contain a specific rule referring to the sponsorship by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment (Art. 17, § 3 of the Directive). Thus, the RTA appears to be **less restrictive** than the Directive in this direction.
6. Next direction in which the RTA is **more restrictive** than the Directive concerns the rules related to the broadcasts that may not be sponsored. The scope of these broadcasts in Art. 90, § 3 (see the above Section a), item 4.1.) is bigger than the “current affairs”, mentioned in Art. 17, § 4 of the Directive.
7. On the other hand, the general prohibition for sponsoring of news, included in the abovementioned Art. 17, § 4 of the Directive, is **more restrictive** than the rule of Art. 90, § 4 of the RTA, which excludes the sports news if they conform to some additional legal requirements (see the above Section a), item 4.2.).

8. Finally, one can note that pursuant to the Draft of a new RTA, sponsoring of advertising blocks and of tele-shopping shall be inadmissible.

- Identification of specific rules note included in the Directive:

Pursuant to the Corporate Incomes Taxation Act (Articles 35 and 48, § 1), one-time tax in the amount of 20 % is levied on the sponsorship accounted as expenses. This one-time tax and the sums for the sponsorship are recognized as expenses for the activity of the respective company.

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## 7. NEW ADVERTISING TECHNIQUES

Neither the Bulgarian RTA, nor other Bulgarian statutory instruments contain any specific provisions related to the new advertising techniques (split screens, interactive advertising, virtual advertising, etc.).

According to the information received in the interviews carried out by us with representatives of the *Electronic Media Council*, EMC as national media authority has not issued any rules or decisions regarding the new advertising techniques.

The above new advertising techniques are not exploited in the broadcasters' practice either. Therefore, it can not be assessed what the EMC's opinion would be with respect to these techniques (would they be tolerated or regulated).

The **Draft RTA** includes a rule related to the **virtual advertising**. Pursuant to Article 97 of the Draft, the virtual advertising is admissible in broadcasts when it replaces surfaces with advertising images already existing on the place of event and appearing on the screen. In the beginning and at the end of the broadcast the use of the virtual advertising shall be explicitly noted through audio- or audiovisual means.

The Draft contains also a definition of "virtual advertising": this is the "including of an additional visual advertising message by the re-broadcasting of the initial television signal through the use of a digital technology".

During the public discussions on the Draft RTA have been expressed opinions that it is recommendable also the other new advertising techniques to be regulated in the Draft RTA (split-screen and interactive advertising). However, we are not acquainted with any practical steps with this respect which have been undertaken (except for the above mentioned regulation of the virtual advertising).

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## **8. GENERAL RULES RELATED TO ADVERTISING AND TELE-SHOPPING CONTENT (ARTICLE 12 TVWF DIRECTIVE)**

### **a. Regulations**

The general rules related to advertising and tele-shopping content are set out in Articles 73, 75, 76, 78 and 79 of the RTA. On the grounds of Article 74, § 1 of the RTA the above rules apply respectively to tele-shopping.

It shall be inadmissible to broadcast advertising that (i) contains *pornography* or (ii) incites to violence and disrespect for human dignity (// art. 12 a. TVWF Directive) , as well as to (iii) behavior prejudicial to public order and generally accepted moral standards.

Advertising of an *erotic content* with the participation of infants and minors or addressed to them is inadmissible. (+ restrictive Directive)

It is also inadmissible to broadcast advertising based on national, political, ethnic, religious, racial, sexual or any other form of discrimination (// art. 12 b. & 12 c. TVWF Directive).

Advertising may not encourage (i) behavior prejudicial to health or to safety, or (ii) behavior prejudicial to the protection of the environment (// art. 12 d. & 12 e. TVWF Directive)

The RTA includes further restrictions, related to the content of the advertisements. Pursuant to Article 79, advertising shall not feature (i) the coat of arms and (ii) the national anthem of the Republic of Bulgaria, (iii) the faces of holders of elective office in national government, or (iv) the voices and the visions of journalists regularly employed by the operators to present news, political and business broadcasts.

Furthermore, advertising shall conform to the requirements of fair competition according to the effective legislation (the cases of unfair competition are regulated by Articles 30 to 35 of the Act on Protection of Competition (APC, *Закон за защита на конкуренцията*), promulgated State Gazette No 52/08.05.1998, last amendment State Gazette No 107/09.12.2003<sup>3</sup>)

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#### <sup>3</sup> **General prohibition**

**Art. 30.** Prohibited is every activity or lack of activity in carrying out economic activity which contradicts the good will trade practices and harms or could harm the interests of the competitors in their mutual relations or their relations with the consumers.

#### **Prejudicing the good name of the competitors**

**Art. 31.** (1) Prohibited is the prejudicing of the good name and the trust in the competitors, as well as of the commodities and services offered by them by ascertaining or spreading false information, as well as by presentation of facts in distorted manner.

(2) Prohibited is the assignment, by means of advertising or in any other way, of non-existent faults of the commodities or services of the competitors.

The rules stated in the APC related to advertising are applicable towards TV advertising as well and there is respective administrative (of the Commission for

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### **Misleading**

**Art. 32.** (1) Prohibited is suppressing or hiding substantial shortcomings or dangerous qualities of the offered commodities and services.

(2) Prohibited is the misleading regarding substantial qualities of the commodities and services or regarding the way of using the commodities or providing the services through assertion of false information or through extortion of facts.

(3) Prohibited is the advertisement of commodities or services which are not available for satisfying the demand or are in insufficient quantity.

(4) Prohibited is the use of misleading information about prices, about reduction of prices or other trade conditions in offering commodities or services.

### **Imitation**

**Art. 33.** (1) Prohibited is the offering or advertisement of commodities or services with appearance, packing, marking, name or other signs which mislead or could mislead regarding their origin, the producer, the seller, the way and the place of production, the source and the place of acquisition or using, the consumer qualities and other substantial characteristics of the commodity or service.

(2) Prohibited is the use of firm, marks or identification sign, identical or similar to those of other persons, in a way which could lead to harming the interests of the competitors and/or of the consumers.

### **Unfair attraction of customers**

**Art. 34.** (1) Prohibited is the unfair competition aimed at attracting customers, as a result of which concluded contracts of competitors are suspended or violated.

(2) Prohibited is the compulsory using or other illegal means of influence against the sellers not to sell commodities or offer services to certain persons.

(3) Prohibited is the compulsory using or other illegal means of influence over the customers in order to buy, not to buy or use certain type of services offered by certain persons.

(4) Prohibited is the announcement of instalment sale or similar legal transaction, whereupon the seller does not declare clearly his firm, does not present exact information regarding the number and the size of the individual instalments, the interest rate on the unpaid sums and the total sale price.

(5) Prohibited is the offering or attachment of extras to the sold commodity or service gratuitously or against fictitious price of other commodity or service with the exception of: advertising objects of insignificant value and with clearly stated statement of the advertising enterprise; subjects or commodities which, according to the trade practice belong to the sold commodity or offered sale; commodities or services as a discount in the sale of larger quantities as well as printed matter for sale or subscription of periodicals.

(6) Prohibited is the sale, when together with it is offered or promised something whose obtaining depends on: solving puzzles, tasks, answering questions, riddles; collection of series of coupons and other similar; games with cash or material awards, whose value considerably exceeds the price of the sold commodity or service.

(7) Prohibited is the sale on the home market of considerable quantities for a continuous time at prices lower than the expenses for their production and realisation with the purpose of unfair attraction of customers.

### **Prohibition of divulging manufacturing or trade secrets**

**Art. 35.** (1) Prohibited is the acquisition, using and divulging manufacturing or trade secrets in contradiction to the conscientious trade practice.

(2) The acquisition of manufacturing or trade secrets contradicts to the conscientious trade practice and when it has been achieved through eavesdropping, penetration in premises, opening correspondence, photographing or investigation without the knowledge of the owner of documents or objects stored in a way restricting the access to them, as well as through fraud or offering benefits to persons who have access to the secret by virtue of official or contractual relations.

(3) Prohibited is the using or divulging of manufacturing or trade secrets when is acquired on condition not to be used or divulged.

Protection of the Competition) and court practice (of the Supreme Administrative Court) on their application.

Rules related to advertising are included also in the Act on the Consumers Protection and the Rules on Commerce (Art. 29 to 34). The regulation refers to the misleading<sup>4</sup> or unfair<sup>5</sup> advertising which are prohibited (the rules stated in the Act on the Consumers Protection and the Rules on Commerce related to misleading and unfair advertising are applicable towards TV advertising as well and there is some respective court practice on their application).

The advertiser and the advertising agency shall bear responsibility for misleading or unfair advertising. Every person who has legal interest may submit a claim for prohibition of an advertising which he/she deems misleading or unfair and/or for the damages he/she has incurred as a result of this advertising. When such a claim is submitted, the court can order the stopping of misleading or unfair advertising or prohibit its distribution before it has become public knowledge. The court can take these measures regardless of whether damages have been incurred as a result from this advertising and whether these measures are claimed by the claimant. The court can order the advertiser to prove the assertions included in the advertising. When the court adopts a decision that the advertising is misleading or unfair and this decision has entered into force, at request of each of the interested persons it can oblige the advertiser to make public on its own expense in a suitable way the court decision or a part of it, as well as the respective corrected advertising on the advertiser's expense.

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<sup>4</sup> **Art. 33.** (1) Misleading is every advertisement which, in any way, including its presentation, misleads or can mislead the persons to whom it is addressed or whom it reaches and, due to its misleading nature can influence their economic behaviour.

(2) In order to judge whether an advertisement is misleading taken into consideration must also be:

1. the characteristics of the commodities and services such as: type, contents, date of production or fulfilment of the services, year of using, quantity, geographic and trade origin, results and substantial characteristics from the tests or the sample tests of the commodities or services;
2. the price or the way of its forming and the conditions of delivery of the commodities and fulfilment of the services;
3. characteristic data for the advertiser or the advertising agent such as: name or company, address or seat, address of management, property, right on industrial and intellectual property, received awards or insignia of honour.

<sup>5</sup> **Art. 34.** Unfair is every advertisement which:

1. contains elements of discrimination regarding sex, race, religion, nationality, political convictions, age, physical or mental abilities or which offends the human dignity;
2. aims at causing worry or fear or uses these feelings and the lack of experience of the consumers;
3. uses in unsuitable way the public aptitude to prediction of the future or promises easy profit;
4. through the way of presentation of the elements it contains instigates confusion among the consumers of the commodity or service through their presentation in a way similar to those of unknown producers;
5. can cause moral or mental disorders in children;
6. frequently uses data for the supremacy of the advertised commodities or services which are not significant or cannot be verified;
7. other similar cases.

**b. Conclusion**

The general rules related to advertising and tele-shopping content, included in the Directive TVWF, are stated in the RTA as well. The differences are in some directions:

1. In comparison with the Directive, the RTA does not include an explicit prohibition of the advertising/tele-shopping that is offensive to **religious or political beliefs**. However, it is disputable if this lack is to be considered as a rule less restrictive than the Directive, because in our opinion such an advertisement/tele-shopping would contravene the prohibition of advertising/tele-shopping which is based on political and religious discrimination (Art. 76, § 2 of the RTA).
2. On the other hand, there are some rules in the RTA, which could be considered as **more restrictive** than the Directive:
  - The rule of Article 79 which prohibits the use of coat of arms and the national anthem of the Republic of Bulgaria, as well as the faces of holders of elective office in national government and the voices and the visions of journalists regularly employed by the operators to present news, political and business broadcasts. There is no such respective rule in the Directive.
  - Advertising that contains pornography is explicitly prohibited as well pursuant to Art. 76, § 1 of the RTA. It should be noted, however, that the RTA does not contain a definition of the term “pornography” and does not clarify where the difference between erotic and pornography is, which in our opinion could cause some practical problems when assessing if an advertising contravenes this prohibition or not.
  - The Draft of a new RTA, however, contains a definition for pornography.
  - Pursuant to Art. 76, § 1, it is inadmissible to broadcast advertising that incites to behavior prejudicial to public order and generally accepted moral standards. There is no such rule in the Directive.
  - The range of the prohibition of discrimination in the RTA (Art. 76, § 2) is wider than this in the Directive (Art. 17, item (b)) (see the above Section a), item 4). Besides, the provision of the RTA prohibits all kinds of discrimination in advertising, while the prohibition in the Directive is limited to discrimination on grounds of race, sex and nationality.
  - There is no explicit rule in the Directive, prohibiting the advertising of an erotic content with the participation of infants and minors or addressed to them, such as the rule of Article 76, § 1, second sentence of the RTA.

- Pursuant to the explicit rule of Art. 75, § 1, advertising shall conform to the requirements of fair competition according to the effective legislation (there is no such rule in the Directive). As we pointed out hereinabove, the cases of unfair competition are regulated by the Bulgarian Act on Protection of Competition (APC).
- It is our opinion that the text of Art. 75, § 1 of the RTA is unnecessary. On the one hand, this rule repeats the rules of the APC. On the other hand, the issue with the respective pecuniary penalties is not quite clear, having in mind the two sanctions in the two Acts – ACP and RTA. The practice is that the sanctions under the APC are applicable. This means that it is recommendable at least the sanction in the RTA referring to the infringing of Art 75, § 1 to be abolished.

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## 9. SPECIFIC PRODUCTS AND TARGETS

### a. Regulation

On the grounds of Art. 74, § 1 of the RTA the above rules apply respectively to **tele-shopping** (the provisions which envisage special rules for tele-shopping have been explicitly pointed out).

#### - Tobacco products:

The regulation is in Article 80, § 2 of the RTA, which states that any advertising for *cigarette products and tobacco smoking* shall be **prohibited** (// art. 13 TVWF Directive).

There is similar rule also in Art. 55 of the Act on the Public Health (APH, *Закон за народното здраве*, promulgated State Gazette No 88/06.11.1973, last amendment State Gazette No 102/21.11.2003). The prohibition concerns the advertising in television emissions of tobacco products.

There is a respective rule in the Act on the Tobacco and Tobacco Products (*Закон за тютюна и тютюневите изделия*, promulgated State Gazette No 101/30.11.1993, last amendment State Gazette No 20/04.03.2003) as well, which says: “Advertising of tobacco and tobacco products outside the enterprises where they are produced and outside the sites where they are sold shall be **prohibited**”. The Act on the Tobacco and Tobacco Products contains also definitions for tobacco and for tobacco products in the context of this Act (Additional Provision, § 1, items 1 and 4):

- “Tobacco” is agricultural crop, produced from tobacco seeds. “Tobacco” is also tobacco leaves, harvested in technical ripeness, cured, as well as non cured long leaf tobaccos.
- “Tobacco products” are:
  - a) cigarette – cylindrical body, formed from special paper with sticking, evenly filled with cut tobacco (fibres);
  - b) filter cigarette - a cigarette, consisting of tobacco part and filter;
  - c) cigar – a cylindrical body, formed of two layers spirally rolled and stuck tobacco leaves, filled evenly with tobacco, chopped into pieces;
  - d) slim cigar – a cylindrical body, formed of one layer spirally rolled tobacco leaf, filled evenly with tobacco, chopped into pieces;
  - e) pipe tobacco – chopped tobacco, worked out of a blend of different types, origins and classes of tobacco, designated for consumption with pipe;

- f) tobacco for chewing – tobacco in the form of rolls, strips or cubes and blocks, which are released for retail selling and have been especially prepared for chewing, but not for smoking;
- g) tobacco for sniffing – tobacco as powder or granules (grains), which has been especially prepared for sniffing, but not for smoking.

We consider that the term “tobacco and tobacco products” is wider and more precise than the term used in the RTA (“cigarette products”).

On the grounds of Art. 90, § 2 of the RTA, persons whose principal activity is the manufacture of cigarettes and other tobacco products may not be sponsors (see the above Part VI, Section a), item 5(iii) (// art. 17 §2 TVWF Directive).

- Medicines /Drugs

Advertising for medicinal products and medical treatment which are available only on medical prescription shall be **prohibited** (// art. 14 §1 TVWF Directive).

On the grounds of Article 90, § 2 of the RTA, persons whose principal activity is the manufacture of medicinal products and the providing of medical treatment which are only available on medical prescription may not be sponsors (see the above Part VI, Section a), item 5(iii) (±// art. 17 §3 TVWF Directive).

Tele-shopping for medicines and medical treatment shall be **prohibited** (// art. 14 §2 TVWF Directive).

There are also special rules, related to the advertising of medicinal products in the Act on the Medicines and the Pharmacies in the Human Medicine (AMPhHM, *Закон за лекарствата и аптеките в хуманната медицина*, promulgated State Gazette No 36/18.04.1995, last amendment State Gazette No 112/23.12.2003) (Articles 86 to 90a). There is a special legal definition of “Advertising of medicinal product” in the Additional Provision, § 1, item 34 of the AMPhHM which says: “Advertising of medicinal product” is every form of information, promotion or proposal, which is intended to stimulate the prescription, the supply or the consumption of a certain medicine.”

Pursuant to the AMPhHM, admissible is only advertising of medicinal products whose use is allowed in Bulgaria.

The content of the advertising of medicinal products is subject prior to its distribution to **approval** by the Executive Agency for the Medicines (which is a state authority within the system of the Ministry of Health) whereas the expenses for this approval are on the account of the applicant.

The control over the advertising of medicines and the distribution of this advertising is carried out by the Executive Agency for the Medicines.

The terms and conditions for the approval are specified in an Ordinance of the Ministry of Health. Such Ordinance has been adopted by the Minister of Health (Ordinance No 13/14.07.2000 on the terms and conditions for the approval of the advertising of medicinal products, *Наредба № 13 от 14.07.2000 г. за условията и реда за одобряване на рекламата на лекарствени продукти*, promulgated State Gazette No 59/21.07.2000, last amendment State Gazette No 63/15.07.2003). The main more important rules in the Ordinance are as follows:

The Ordinance contains also a definition of “Advertising of medicinal product”. In general, the definition is similar to the definition in the AMPHM, but there are some differences. Our opinion is that the existence of different definitions in the Act and the respective Ordinance should be avoided and the definitions should be unified.

The Ordinance explicitly divides the two types of advertising of medicinal products – (i) addressed to the population and (ii) addressed to medical specialists.

The Ordinance explicitly points out the cases which should not be considered as advertising.

The content of the advertising should be in compliance with the short characteristics of the medicinal product, approved by allowing its use, and should present only the indications mentioned by allowing its use.

Advertising of the medicinal product should stimulate its rational use and present it objectively, without using of misleading information.

Article 7 of the Ordinance provides in detail for the obligatory content of the advertising of medicinal products addressed to the population<sup>6</sup>

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<sup>6</sup> **Article 7.**

- (1) **Advertisement of medicinal products targeted at the general population**, including advertising within the premises or the shop windows of pharmacies and drugstores, shall contain:
1. The trade name of the product, as well as its international non-patented name [i.e. the international generic name of the pharmaceutical agent], for products comprised of only a single therapeutic agent;
  2. An explicit statement, that it refers to a medicinal product;
  3. The information necessary for the proper use of the medicinal product;
  4. The age limit of patients, the medicinal product is allowed for use in;
  5. The statement “Read these instructions before starting to use the product!”
  6. The statement "homeopathic drug" - in cases of advertising homeopathic medicinal products;
  7. A reminder for the necessity of re-vaccinations (whenever applicable) - in cases of advertising vaccines;
  8. The referent number and the date of approval of the advertisement by the Executive Agency for the Medicines.

and Art. 15 – for the obligatory content of the advertising of medicinal products addressed to medical specialists<sup>7</sup>. The Ordinance contains as well a detailed list (in 16 items<sup>8</sup>) of the inadmissible advertising of medicinal

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- (2) The Executive Agency for the Medicines may set up a requirement for the advertisement to indicate the components of combined medicinal products.
- (3) In cases of video advertisements the information under subparagraphs 2, 4, 5 and 6 under paragraph 1 above shall be inscribed on a still frame with large, distinct lettering. The same text shall be obligatory read out by a narrator.
- (4) If the objective, pursued by the advertisement is solely to remind of an already known medicinal product, only the trade name and the international non-patented name of the pharmaceutical agent, as well as the name of the manufacturing company and a photographic image of the final package shall be required to be included.

7 Article 15.

- (1) **Advertising medicinal products in published informational editions intended for medical specialists,** shall cover:
  1. Information, corresponding to the data included in the Summary of Product Characteristics, and indicating the date of its last approval by the Minister of Health;
  2. The dispensing procedure for that medicinal product;
  3. The qualitative and quantitative composition, the international non-patented names of the therapeutic agents and of the auxiliary substances, if the above is necessary with respect to the proper use of the medicinal product;
  4. The address of the manufacturer or a person authorised thereby, where at the medical specialists may obtain complete information on the medicinal product advertised.
- (2) The advertisement may also state the price of the medicinal product and the conditions referring to its full or partial reimbursement.
- (3) The information, contained in an advertisement, shall be correct, up to date, complete and checkable, to enable medical specialist to build up their own opinion on the therapeutic significance of the medicinal product.
- (4) Advertisements shall not be allowed to present data from unpublished investigations or such of uncertain clinical significance.
- (5) In the event that an advertisement seeks only to remind of an already known medicinal product, it may state only its trade name and international non-patented name of the therapeutic agent (agents), the manufacturing company and a photographic image of the final package.

8 Article 8. No advertisements shall be allowed, which:

1. May form a belief that the use of the medicinal product leaves out the necessity of medical consultation or surgical intervention (through diagnosing, or offering therapeutic advice by mail, etc.);
2. Suggest that the effects from the use of the medicinal product are guaranteed, and are not accompanied by adverse reactions, or are superior or equal to those, achievable with other treatments, or with other medicinal products;
3. Persuade that general health may be improved through the application of the medicinal product;
4. Persuade that the failure to use the medicinal product may cause health damage; the restriction above shall not apply to the campaigns specified in subparagraph 5 of paragraph 2 under Article 2 of Ordinance No 13 [the campaigns for vaccination of the population carried out by the Ministry of Health when the respective advertising materials do not contain any information about a specific medicinal product];
5. Contain information exclusively, or predominantly designed to attract the attention of children;
6. Contain information making a reference to recommendations by scientists, or medical specialists or other persons, which, for reasons their public fame, may encourage the use of the medicinal product;
7. Persuade that the medicinal product presents a nourishment, a cosmetic preparation or another kind of consumer goods;

products. Pursuant to Article 80, § 5 of the RTA, advertising for medicinal products and for medical treatment shall be inserted in the program service only if they satisfy the requirements of the effective legislation. Therefore, every television advertising should be in compliance with the requirements stated in the Ordinance.

An application for approval of advertising can be submitted only by the owner of the license for the use of the medicinal product or by a person authorized by him. The Ordinance describes in details the rules for submitting applications to the Executive Agency for the Medicines for both types of advertising.

In the mass-media is admissible only advertising of medicinal products which are sold without medical prescription.

Advertising of medicinal products which are sold on medical prescription could be done only in editions addressed to medical specialists.

Advertising of medicinal products with indications and curing effects which are not approved by the allowing of their use shall be prohibited.

The subreption in advertising, included in editions addressed to medical specialists, of contra-indications and serious undesired medicinal reactions shall be prohibited.

Advertising of medicinal products which binds the quantities of ordered and/or bought medicinal products to cash and/or non-cash (object) rewards, additional services and other kinds of bounties, raffled or not through lotteries, games etc., independent of the fact if the value of the reward exceeds or not the price of the advertised medicinal products, shall be prohibited.

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8. Suggest that the safety or the efficacy of a medicinal product is conferred by its natural origin;
  9. Give a description or a detailed account of a case report, which may lead to improper self-diagnosing;
  10. Claim the presence of a therapeutic effect through using improper, threatening or misleading phrasing;
  11. Describe in figurative language and through improper and misleading phrases either the changes in the human body taking place during a given disease or a disorder, or the effect of the medicinal product;
  12. Have an explicit statement that the given medicinal product is licensed for use;
  13. Specifically state definite disorders or symptoms, such as tuberculosis, sexually transmittable diseases, other serious infectious diseases, oncologic conditions, chronic insomnia, diabetes and other metabolic disorders;
  14. Suggest the efficacy of treatment with the medicinal product to be correlated with the length of its use;
  15. State the price of the medicinal product;
  16. Advertise medicinal products for the treatment of nurselings, with the exemption of those for topical application for the following indications: napkin rash, teeth growth and nasal hygiene.

Because of the specific nature of the medicinal products, this rule differs from the similar rule of Article 34, § 6 of the Act on Protection of Competition which is applicable only when the value of the reward significantly exceeds the price of the sold goods or provided services.

Advertising as medicinal products of substances which are not medicinal products in the meaning of the AMPhHM shall be prohibited.

When an infringement of the AMPhHM or the Ordinance under the above item 2.5.4. has been established, the Director of the Executive Agency for the Medicines issues an order on stopping the distribution of the advertisement.

With the order under the previous sentence the Director of the Executive Agency for the Medicines may oblige the advertiser to publish or distribute a concerted with the Executive Agency for the Medicines refutation of the statements in the advertisement through the same media and in the same format and volume.

- Alcoholic beverages

The regulation is in Art. 80, § 3 of the RTA, which states that advertising for alcoholic beverages of all varieties shall conform to the following requirements:

- it shall not be addressed to infants and minors or inserted in broadcasts intended for them (// art. 15 a. TVWF Directive) ;
- it shall not use infants and minors as performers and, in particular, depict infants and minors consuming such beverages (in the Draft of a new RTA the scope of the prohibition is broader – also *persons who look like infants and minors* are included) (// art 15a TVWF Directive);
- the content of advertising shall not link the consumption of alcohol to enhanced sporting and physical performance or to driving of motor vehicles (// art. 15 b. TVWF Directive);
- it shall not create the impression that the consumption of alcohol contributes towards social or sexual success (// art. 15 c. TVWF Directive);
- it shall not claim that alcoholic beverages have therapeutic qualities, or that they are a stimulant, a sedative, or a means of resolving personal problems (// art. 15 d. TVWF Directive);
- it shall not encourage immoderate consumption of alcoholic beverages or present abstinence or moderation in a negative light (// art. 15 e. TVWF Directive);
- it shall not imply that high alcoholic content contributes to the positive quality of alcoholic beverages (// art. 15 f. TVWF Directive) ;

- Minors

The regulation is in Article 76, §s 1, 3, 4 and 5 of the RTA, which state as follows:

Advertising addressed to or using children shall avoid anything likely to impair their physical, mental and moral development (// art. 16 §1 TVWF Directive).

Advertising addressed to minors shall not:

- exhort minors to buy a product or use a service by exploiting their inexperience or credulity (// art. 16 §1 a. TVWF Directive);
- directly encourage infants and minors to persuade their parents or others to purchase the goods or services being advertised (// art. 16 §1 b. TVWF Directive);
- exploit the special trust which minors place in parents, teachers or other persons (// art. 16 §1 c. TVWF Directive);
- show minors in dangerous situations (// art. 16 §1 d. TVWF Directive);

Pursuant to Article 76, § 5 of the RTA, tele-shopping addressed to infants and minors should comply with the requirements under the above item 4.2., and should not exhort minors to contract for the sale or rental of goods and services (// art. 16§2 TVWF Directive).

As we have already mentioned in the above Part VIII, advertising of an *erotic content* using or addressed to infants and minors shall be inadmissible.

- Other products / services categories subject to a specific regime:

There are also other provisions in the Bulgarian legislation related to advertising of specific products (goods or services). The more important of them are as follows:

1. **Goods and services whose production or trade requires special authorization** - Pursuant to Art. 80, § 1 of the RTA, advertising for goods and services whose production or trade requires special authorization (e.g. trade with firearms) may be inserted in the program services of television operators solely upon presentation of the necessary permit by the advertiser.
2. **Foods** - In the Act on the Foods (*Закон за храните*, promulgated State Gazette No 90/15.10.1999, last amendment State Gazette No 102/21.11.2003), Art. 9, § 3 is stated that the advertising of foods shall not mislead the consumers with respect to the characteristics of the foods, determined from their nature, origin, identity, qualities, ingredients, expiry term, method of production and use.

3. **Gambling** – Pursuant to the Act on the Gambling (*Закон за хазарта*, promulgated State Gazette No 51/04.06.1999, last amendment State Gazette No 31/04.04.2003), Art. 10, the direct advertising of gambling games (games of luck) through the mass media shall be prohibited. Admissible shall be: the announcement of the order and the way of participation and the conditions of holding lotteries "Bingo" and "Keno", toto and lotto games, as well as betting on sport competitions, betting on chance events and for guessing facts and events and the results from them, as well as the broadcasting of the drawings by the television.
4. **Legal services provided by attorneys-at-law** – Pursuant to the Bar Act (*Закон за адвокатурата*, promulgated State Gazette No 80/27.09.1991, last amendment State Gazette No 84/23.09.2003), Art. 28, the attorney-at-law may not use for his activity commercial advertising.
5. **Services provided by pension-insurance companies** – Pursuant to the Code on the Social Insurance (*Кодекс за социалното осигуряване*, promulgated State Gazette No 110/17.12.1999, last amendment State Gazette No 114/30.12.2003), Art. 123i. there are some special requirements regarding the advertising of the activities of a pension-insurance company. This company shall not:
  - (i) advertise products and services which it does not provide at the moment as well as future profitability of the investments;
  - (ii) conceal facts of big importance and circumstances and shall not include in its advertising unclear formulations of the results achieved, incorrect or misleading data;
  - (iii) organize lotteries.
6. **Products for Plants' Protection** – respective provisions are included in the Act on the Plants' Protection (*Закон за защита на растенията*, promulgated State Gazette No 91/10.10.1997, last amendment State Gazette No 96/09.11.2001). Pursuant to Article 21, the advertising of a product for plants' protection may be carried out only in compliance with the data and the conditions under which it has been registered in the Republic Bulgaria.

Pursuant to Article 22, every advertising of a product for plants' protection which has not been registered for use in Bulgaria shall be prohibited.
7. **Blood** - According to Art. 9 of the Act on the Blood, the Blood Donation and the Blood Transfusion (*Закон за кръвта, кръводаряването и кръвопреливането*, promulgated State Gazette No 102/21.11.2003), advertising of blood or blood components shall be prohibited.

8. **Films** – Art. 41, § 2 of the Act on the Film Industry (*Закон за филмовата индустрия*, promulgated State Gazette No 105/02.12.2003) contains the requirement that all announcements and advertising materials for the distribution and/or presentation of a film should include inscriptions referring to the category which the film has received (A, C, D or X, depending on the age for which the film has been allowed).

**b. Conclusion**

- Tobacco products:

The prohibition of advertising and tele-shopping for tobacco products in the RTA (Art. 80, § 2 and Art. 74, § 1) is in general in compliance with the Directive TVWF (Art. 13).

However, the different scope of the products under the respective text of the RTA (“cigarette products and tobacco smoking”) compared to the Directive (“cigarettes and other tobacco products”) should be pointed out. On the one hand, in the scope of the prohibition under the RTA are included only “cigarette products”. Thus, the RTA appears to be less restrictive than the Directive. On the other hand, the RTA explicitly prohibits the advertising of “tobacco smoking”. Such a rule is not included in the Directive.

In our opinion, the text of Article 80, § 2 of the RTA is not correct enough. On the one hand, the idea is the advertising of all tobacco products to be prohibited (such are the relevant provisions of the Directive and of the Convention “Transfrontier Television”, Art. 15, § 1, which is part of the internal Bulgarian legislation). Such is also the rule of Article 55 of the APH. On the other hand, we deem that “tobacco smoking” can not be advertised, advertised can be only the tobacco products which are sold.

Therefore, it is recommendable the respective text of the RTA (Art. 80, § 2) to be accordingly amended in compliance with the Directive and the Convention “Transfrontier Television”.

In the Draft of a new RTA the prohibition refers to advertising for “tobacco products and tobacco smoking”.

Based on the operative legislation we could make the conclusion that, since the legal definition of tobacco products is provided in the Act on the Tobacco and Tobacco Products and since this Act prohibits any advertisement of such products outside the enterprises where they are produced and outside the sites where they are sold, then there is general prohibition for advertisement of tobacco products under the more broad meaning of the Act on the Tobacco and Tobacco Products including also TV advertising.

With respect to the above, the rule in the Act on the Tobacco and Tobacco Products, explicitly prohibiting also the advertising of *tobacco* should be mentioned as well, having wider scope than the rule of the Directive and appearing thus to be **more restrictive** than the Directive.

The prohibition for persons whose principal activity is the manufacture of cigarettes and other tobacco products to be sponsors is in compliance with Art. 17, § 2 of the Directive. It should be noted, however, that the prohibition under the Directive for being sponsors refers also to undertakings whose principal activity is the *sale* of cigarettes and other tobacco products (and not only the manufacture), which makes the rule of the Directive **more restrictive** in this direction (see also the above Part VI, Section b), items 4.2. and 4.2.1.).

- Medicines / Drugs:

1. The prohibition regarding the advertising for medicinal products and medical treatment which are available only on medical prescription is in compliance with Art. 14, § 1 of the Directive (of course, the rule in the RTA refers only to medicinal products and medical treatment which are available only on medical prescription *in Bulgaria* and not in the Member States).
2. As mentioned, the RTA contains the explicit requirement that advertising for medicinal products and for medical treatment shall be inserted in the program service only if they satisfy the requirements of the effective legislation (Art. 80, § 5, 1<sup>st</sup> sentence).

The respective regulations and requirements are stated in the Act on the Medicines and the Pharmacies in the Human Medicine and in Ordinance No 13/14.07.2000 on the terms and conditions for the approval of the advertising of medicinal products (described in details in the above Section a), item 2.5.) and should be applied towards the television advertising of medicines and other medicinal products (e.g. the requirements related to the inadmissible advertising of medicinal products).

3. There is no such a referring rule in the Directive as the rule of Art. 80, § 5, 1<sup>st</sup> sentence of the RTA, nor there is such a detailed regulation of the advertising of medicinal products as in the AMPhHM and Ordinance No 13. Therefore, the Bulgarian legislation contains **more restrictions** in this direction than the Directive. This regulation complies the new European Code for Medicine for human use (Directive 2001/83/EC)

4. The prohibition in the RTA referring to **tele-shopping** for medicines [and medical treatment] (Art. 80, § 6) is **more restrictive** than the respective rule of the Directive (Art. 14, § 2), because the text of the Directive refers only to the medicinal products, which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC of 26 January 1965 [and to medical treatment].
5. As mentioned, on the grounds of Art. 90, § 2 of the RTA, persons whose principal activity is the manufacture of medicinal products and the providing of medical treatment which are only available on medical prescription may not be sponsors (see the above Part VI, Section a), item 5(iii)). There is no such a prohibition in the Directive and therefore the RTA appears to be **more restrictive** in this direction.

- Alcoholic beverages:

The regulation in Article 80, § 3 of the RTA is in compliance with the Directive.

The following minor differences should be pointed out:

In the RTA it is explicitly stated that the advertising of alcoholic beverages shall not be addressed to *infants* and minors. The rule of the Directive refers only to minors but we deem that *per argumentum a fortiori* the rule of the Directive is applicable towards infants too.

In addition to that, the RTA contains the explicit requirement that the advertising of alcoholic beverages shall not be inserted in broadcasts intended for infants and minors (in our opinion this rule is covered by the prohibition for interruption by advertising of children's broadcasts under Art. 83, § 2 of the RTA, see also the above Part III, Section a), item 2.4.) ( $\neq$  art. 15 TVWF Directive).

Such an explicit rule is not included in the Directive and thus it appears to be an **additional restriction**, contained in the RTA.

It is our opinion that the rules of the RTA related to the alcoholic beverages and the protection of infants and minors in this regard are not only **more restrictive but also more precise** than the respective rules of the Directive.

In item 3 of Art. 80, § 3 of the RTA is stated that the content of advertising shall not link the consumption of alcohol to enhanced *sporting* and physical performance. The reference to *sporting* performance is not explicitly included in the respective text of the Directive (Art. 15, item (b)), but in our opinion the *sporting* performance could be deemed as covered by the physical performance mentioned in the Directive.

- Minors:

As mentioned, pursuant to the RTA (Art. 76, § 3) advertising addressed to or using children shall avoid anything likely to impair their physical, mental and moral development. With respect to this rule several issues should be pointed out:

There is no definition of a “*child*” in the RTA. As we have pointed above, there is a definition of a “child” in the Act on the Child’s Protection (“every natural person until 18 years of age”, see the above Part III, Section a), the Note under item 2.4.). The Directive uses in the respective text (Art. 16, § 1) the term “*minors*”. We deem that the use of “minors” is more correct because it is in compliance with the other rules related to the protection of children, where the terms infants and minors are used (e.g. the rule of the next § 4 of Art. 76 of the RTA, which regulates the requirements towards advertising addressed to *minors*).

Compared with the Directive, the RTA contains an **additional requirement** - advertising shall avoid anything likely to impair the *mental* development of the children.

The first item of § 4 of Art. 76 of the RTA does not contain the additional requirement (as per the Directive) the exhorting of minors to buy a product or use a service to be *direct*. Thus, in our view, the prohibition under the RTA has a broader scope (prohibited is the direct and also the indirect exhorting) and is **more restrictive** than the Directive in this direction.

Another rule of the RTA which is **more restrictive** than the Directive is the rule of Art. 76, § 4, item 3, which prohibits advertising which shows minors in dangerous situations. The Directive prohibits the *unreasonably* showing of minors in dangerous situations. Of course, it should be taken into consideration that, as mentioned, the restrictions under Art. 16 of the Directive refer to each television advertising and those under Art. 76, § 4 of the RTA – only to advertising addressed to minors.

As we have already mentioned in the above Part VIII, , there is no explicit rule in the Directive, prohibiting the advertising of an *erotic content* with

the participation of infants and minors or addressed to them, such as the rule of Art. 76, § 1, second sentence of the RTA. This is an **additional restriction** contained in the RTA in comparison with the Directive.

On the other hand, the text of Art. 16, § 1 of the Directive refers to television advertising, whereas the text of Art. 76, § 3 of the RTA refers only to advertising addressed to or using children. Therefore, this rule of the Directive has a broader scope and thus the Directive is **more restrictive** than the RTA in this aspect.

As mentioned, Art. 76, § 4 of the RTA regulates the requirements towards advertising addressed to minors. With this respect our comments under the previous item 4.1.3. should be taken into consideration because the

respective rule of the Directive (Art. 16, § 1) refers to television advertising in general.

Besides, Article 76, § 5 of the RTA says that the requirements under § 4 of Art. 76 should be accordingly applied towards tele-shopping, excluding that way the requirements under § 3 of Article 76 (related to minors' moral and physical protection) whilst the Directive explicitly includes these rules (Art. 16, § 2, referring to § 1). This regulation appears to be **less restrictive** than the Directive but we deem that on the grounds of the general rule of Article 74, § 1 of the RTA, Art. 76, § 3 shall be applicable towards tele-shopping too.

- Other product / services categories subject to a specific regime:

The Bulgarian legislation contains additional requirements and restrictions related to advertising of specific products (goods and services) which are not included in the Directive (see the above Section a), item 6).

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