



## 4.26. RO – Romania – National legal summary<sup>541</sup>

### 4.26.1. Applicable regulatory framework

Relevant legislation includes the following:

Primary legislation:

- Legea audiovizualului nr. 504/2002<sup>542</sup>, cu modificările și completările aduse prin Legea nr. 190/2022 pentru modificarea și completarea Legii audiovizualului nr. 504/2002, pentru modificarea și completarea Ordonanței Guvernului nr. 39/2005 privind cinematografia, precum și pentru modificarea Legii nr. 41/1994 privind organizarea și funcționarea Societății Române de Radiodifuziune și Societății Române de Televiziune, Monitorul Oficial 651<sup>543</sup> (Law no. 502/2002, as subsequently amended and supplemented by Law no. 190/2022 for the amendment and completion of the Audiovisual Law no. 504/2002, for the amendment and completion of the Government Ordinance no. 39/2005 on cinematography, as well as for the amendment of Law no. 41/1994 on the organisation and functioning of the Romanian Broadcasting Company and the Romanian Television Company) – The Audiovisual Law.
- *Legea nr. 363/2007 privind combaterea practicilor incorecte ale comercianților în relația cu consumatorii*<sup>544</sup> (Law no. 363/2007 on fighting against unfair practices of traders in relation to consumers and on the harmonisation of regulations with the European legislation on consumer protection).
- Legea nr. 158 din 18 iulie 2008 republicată, privind publicitatea înșelătoare și publicitatea comparativă, Monitorul Oficial 45<sup>545</sup> (Law 158/2008, as republished, on misleading advertising and comparative advertising).

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<sup>541</sup> The factsheet on Romania incorporates feedback received from Ruxandra Minea-Cristea, working at the European Relations Union Unit, at the National Audiovisual Council (CNA), during the checking round with the national regulatory authorities.

<sup>542</sup> The consolidated version, as updated at 30 June 2022 (which includes the provisions of the Law 190/2022), <https://www.cna.ro/article12050,12050.html>.

<sup>543</sup> <https://legislatie.just.ro/Public/DetaliiDocument/256901>; The Law came into force on 3<sup>rd</sup> July 2022, amending Law 504/2002.

<sup>544</sup> <https://e-justice.europa.eu/fileDownload.do?id=4cd1400f-4310-4ad1-98ff-cc86f258fcc5>.

<sup>545</sup> <https://legislatie.just.ro/Public/DetaliiDocument/95934>.

English:

<https://www.global-regulation.com/translation/romania/3758119/law-no.-158-of-18-july-2008-%2528republished%2529-on-misleading-and-comparative-advertising.html>.



Secondary legislation:

- *Decizia 220/2011 privind Codul de reglementare a conținutului audiovizual*<sup>546</sup> (Decision no. 220/2011 regarding the Regulatory Code of Audiovisual Content).

Self and co-regulatory mechanisms:

- Consiliul Roman pentru Publicitate Codul de practică în comunicarea comercială<sup>547</sup> (Romanian Advertising Council (RAC) Code of Advertising Practice<sup>548</sup>).

## 4.26.2. Definitions and restrictions regarding commercial communications

This section aims at identifying the relevant definitions related to commercial communications stemming from related laws, rules and current practices, as well as ongoing reforms under the transposition and implementation of the revised AVMS Directive. Please note that this review includes definitions which are part of the revised AVMSD, inclusive of audiovisual commercial communications, advertising, surreptitious commercial communications, sponsorship and product placement, but also the definitions of supplementary and/or related concepts, such as the advertiser, sponsor and sponsored content, as well as misleading commercial communication, for the purpose of providing a comprehensive overview.

### 4.26.2.1. Definitions

**Table 52. Definition of the main concepts related to commercial communications**

Concept	Existence of a definition
Audiovisual commercial communications	Yes.
Television advertising	Yes.
Advertiser	No.
Surreptitious commercial communication	Yes.
Misleading commercial communication	Yes.
Virtual advertising	Yes.
Sponsorship	Yes.

<sup>546</sup> <https://www.cna.ro/DECIZIE-Nr-220-din-24-februarie.html>.

<sup>547</sup> <https://www.rac.ro/ro/cod/codul-de-practic%C4%82-%C3%8En-comunicarea-comercial%C4%82>.

<sup>548</sup> <https://www.rac.ro/en/cod/the-code-of-advertising-practice>.



<b>Sponsor</b>	No.
<b>Sponsored content</b>	No.
<b>Product placement</b>	Yes.

Source: Romanian response to European Audiovisual Observatory standardised survey

#### 4.26.2.1.1. Audiovisual commercial communications

Following the adoption of Law no. 190/2022, the law amending the Audiovisual Law, in Article 1(1) point 15 defines audiovisual commercial communications, by transposing the revised AVMSD verbatim, as follows:

*...images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal person pursuing an economic activity, such images accompany or are included in, a programme or user-generated video in return for payment or for similar consideration or for self-promotional purpose. Forms of audiovisual commercial communication include, inter alia, radio or television advertising, sponsorship, teleshopping and product placement.*

#### 4.26.2.1.2. Television advertising

Amended Audiovisual Law, in Article 1.17, defines television advertising by transposing the text of the revised AVMSD verbatim:

*television advertising - any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotion purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment.*

#### 4.26.2.1.3. Advertiser

There is no definition of advertiser.

#### 4.26.2.1.4. Surreptitious commercial communication

Article 1.16 of the amended Audiovisual Law defines surreptitious commercial communication:

*surreptitious audiovisual commercial communication means the representation in words or pictures of goods, services, the name, the trademark or the activities of a producer of goods or a provider of services in programs when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration.*



#### 4.26.2.1.5. Misleading commercial communication

Article 3 (b) of the Law 158/2008, as republished, on misleading advertising and comparative advertising defines misleading advertising as:

*advertising which, in any way, including by way of presentation, induces or may mislead the persons to whom it is addressed or who make contact with it and which, because of the misleading character, may affect their economic behaviour or which, for that reason, prejudices or may harm a competitor.*

#### 4.26.2.1.6. Virtual advertising

Article 1.25 of the amended Audiovisual Law provides a definition of virtual advertising:

*virtual advertising - broadcasting technique for television advertising which allows image processing, during broadcast of some events, by replacing images of the advertising on the panels inside the place where the events unfold, with advertising messages introduced by broadcasters, or by overlapping new images with such messages in any part of the image transmitted.*

#### 4.26.2.1.7. Sponsorship

Article 1.19 of the amended Audiovisual Law defines sponsorship by transposing the text of the revised AVMSD verbatim as follows:

*any contribution made by public or private legal persons or by natural persons not engaged in providing audiovisual media services or video-sharing platform services or in producing audiovisual works to the financing of audiovisual media services, video-sharing platform services, user-generated videos or programmes, with a view to promoting their name, trade mark, image, activities or products.*

#### 4.26.2.1.8. Sponsor

There is no definition of sponsor.

#### 4.26.2.1.9. Sponsored content

There is no definition of sponsored content.

#### 4.26.2.1.10. Product placement

Article 1.21 of the amended Audiovisual Law provides for the definition of product placement, by transposing the text of the revised AVMSD:



*any of the audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trademarks thereof so that it is featured within a program or a user-generated video in return for payment or for similar consideration.*

#### 4.26.2.1.11. Other definitions

N/A.

#### 4.26.2.2. Restrictions regarding commercial communications

The revised AVMSD introduces obligations for video-sharing platforms (VSPs) to, *inter alia*, respect certain requirements regarding commercial communications and this section aims at updating the information relative to these obligations and measures imposed under national legislation on media service providers, including VSP providers related to commercial communications.

The Law 190/2022 (Article 42<sup>8</sup>) amending the Audiovisual Law introduced the legal basis for the provisions applying to VSPs in Chapter III, as well as specific requirements, inclusive of the obligation to respect the restrictions and prohibitions vis-à-vis commercial communications from Article 29 of the Audiovisual Law, which are elaborated further below.

Article 42<sup>8</sup>:

*(1) The providers of video-sharing platforms under the jurisdiction of Romania have the obligation to take measures in order to comply with the provisions of Art. 29 para (1) and (2), both with regard to audiovisual commercial communications that are promoted, marketed or organised by those video-sharing platform providers, and with regard to audiovisual commercial communications that are not promoted, marketed or organised by them, taking into account the limited control exercised by the respective video-sharing platforms over these audiovisual commercial communications.*

*(2) The providers of video-sharing platforms have the obligation to take measures in order to clearly inform the users when the programs and videos generated by the users contain audiovisual commercial communications, provided that these communications are declared, according to para (7) lit. c), or if the provider is aware of this.*

However, there are a few provisions introduced as amendments to the Audiovisual Law with no clear indication if their scope includes the VSPs (e.g. Art 31.1 concerning product placement), or their scope will remain limited, as under current legislation.

Besides, VSPs, in relation with commercial communications, must respect general obligations pertaining to respect of morality, religious and political beliefs (see amended Article 29 (1), in conjunction with Article 42<sup>8</sup> (Law 190/2022)). Finally, Article 42<sup>7</sup> paragraphs b) and c) provides the obligation to protect the general public from incitement to violence or hatred and from public instigation to crimes.



4.26.2.2.1. Audiovisual commercial communications for alcoholic beverages and tobacco and tobacco-related products, including electronic cigarettes and refill containers

Article 29 paragraph 5 of the amended Audiovisual Law provides for the prohibition of encouraging excessive consumption of alcohol, as follows: Audiovisual commercial communications for alcoholic beverages may not encourage excessive consumption of those beverages and may not specifically target minors.

In relation to cigarettes and tobacco-related products, Article 29 paragraph 6 of the amended Audiovisual Law provides for the prohibition as follows: All forms of audiovisual commercial communication for cigarettes and other tobacco products, including electronic cigarettes and refill bottles, are prohibited.

4.26.2.2.2. Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the member state

Article 29 paragraph 7 of the amended Audiovisual Law prohibits audiovisual commercial communications for medicinal products, as follows: Audiovisual commercial communications concerning medicines or medical treatments, available in Romania only on the basis of a medical prescription, are prohibited.

4.26.2.2.3. Surreptitious audiovisual commercial communications

Article 29 paragraph 3 of the amended Audiovisual Law prohibits surreptitious audiovisual commercial communications: “Audiovisual commercial communications with hidden commercial content are prohibited.”

Article 29 paragraph 1 (a) of the amended Audiovisual Law stipulates that audiovisual commercial communications broadcast by audiovisual media service providers must: “a) be readily recognisable as such, and surreptitious audiovisual communications shall be prohibited.”

4.26.2.2.4. Subliminal techniques in commercial communications

Article 29 paragraph 1 (b) of the amended Audiovisual Law stipulates that audiovisual commercial communications broadcast by audiovisual media service providers must: “b) not use subliminal techniques”.

4.26.2.2.5. Prejudice with regard to human dignity

Article 29 paragraph 1 (c) of the amended Audiovisual Law obliges audiovisual commercial communications to: “c) to respect human dignity”.



4.26.2.2.6. Inclusion or promotion of any discrimination (on the grounds of e.g., sex, racial or ethnic origin, nationality, religion, etc.)

Article 29 paragraph 1 (d) of the amended Audiovisual law stipulates that audiovisual commercial communications: “d) not include or promote acts of discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.”

4.26.2.2.7. Encouragement of behaviour prejudicial to health or safety

Article 29 paragraph 1 (f) of the amended Audiovisual law provides the obligation for audiovisual commercial communications: “f) not encourage behaviour that is harmful to public health or safety.”

4.26.2.2.8. Encouragement of behaviour grossly prejudicial to the protection of the environment

Audiovisual commercial communications are, according to Article 29 paragraph 1 (g) of the amended Audiovisual law: “g) not encourage behaviour that is grossly prejudicial to the protection of the environment”.

4.26.2.2.9. Causing physical, mental or moral detriment to minors

According to Article 29 paragraph 2 of the amended Audiovisual Law, audiovisual commercial communication must not cause any moral, physical or mental harm to minors and, in particular:

- a) not directly exhort minors to buy or rent a product or service, by exploiting their lack of experience or credulity;*
- b) not directly encourage minors to persuade their parents or other persons to buy the goods or services that are the subject of advertising;*
- c) not exploit the special trust that minors have in parents, teachers or other persons;*
- d) not unreasonably show minors in dangerous situations.*

Article 42<sup>7</sup> (Law 190/2022) presents the obligation of the VSPs to take appropriate measure to protect:

- a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development, and in particular from programmes containing gratuitous violence and pornography, in accordance with Article 39(1).*

4.26.2.2.10. Other

N/A.



### 4.26.3. Sponsorship and product placement

Certain obligations stem from the revised AVMSD vis-à-vis sponsorship and product placement and these parts aims at identifying the rules and practices pertaining to these two specific categories of commercial communications.

#### 4.26.3.1. Sponsorship

Article 34 sets conditions for sponsored programmes.

#### 4.26.3.2. Product placement

At present, Article 31 paragraphs 1 and 2 of the amended Audiovisual Law, establishes rules on product placement for audiovisual media services for programmes produced after 19 December 2009 and containing product placement. However, it is yet unclear whether it applies or not to VSPs.

### 4.26.4. Obligations regarding (v)blogs and (v)blogging

(V)blogs and (v)bloggers are not mentioned in the legal texts, as of yet.

### 4.26.5. Other relevant information

N/A.

### 4.26.6. Content-related rules regarding commercial communications for VSP providers

While certain restrictions regarding the content of commercial communications stem from the revised AVMSD and relate to issues connected to the protection of minors and restrictions on the advertising of certain products and services, this part deals with less explored notions, such as rules pertaining to gambling, environmental claims vis-à-vis products and services, etc.





#### 4.26.6.1. Advertising of, or on behalf of, associations that are wholly or mainly concerned with religion, faith and other belief systems

No specific provisions deal with this issue.

#### 4.26.6.2. Gambling, betting, betting tipsters, etc.

No specific provisions deal with this issue.

#### 4.26.6.3. Environmental or “green” claims for products

There is a reference in Article 29 paragraph 1 (g) of the amended Audiovisual Law not to stimulate behaviours that seriously harm the protection of the environment, applicable to VSPs in conjunction with Article 42<sup>8</sup> paragraph 1 (Law 190/2022).

#### 4.26.6.4. Other

N/A.

### 4.26.7. Self- and co-regulation and enforcement

This section aims at identifying the legal framework and practice for self- or co-regulatory schemes and measures regarding commercial communications on VSPs, including the identification of the body or bodies in charge of self- and co-regulation and enforcement powers with regard to commercial communications and VSPs, as well as the scope of their activities with regard to commercial communications and VSPs

#### 4.26.7.1. Self- and co-regulatory bodies

##### 4.26.7.1.1. Context of establishment and legal background

Since the update of the Audiovisual Law in 2022, self- and co-regulatory measures have not been implemented yet.

Article 6.1 of the Law 190/2022 refers to self-regulation for all AV media services:

*Co-regulation and self-regulation shall be encouraged and considered necessary in the field of audiovisual media services, and shall be implemented through codes of conduct adopted at the national level, as provided for by this Law and in compliance with its provisions. Those codes of conduct shall be developed in cooperation between audiovisual media service providers, video-sharing platform service providers or the organisations representing them and the representatives of other sectors concerned.*



Also, Article 42<sup>8</sup> paragraph 3 of the Law 190/2022 (Chapter III<sup>6</sup> of the amended Audiovisual Law) refers to self and co-regulation for VSP services:

*(3) In the field of video-sharing platforms, the use of co-regulation and self-regulation shall be encouraged through codes of conduct in order to effectively reduce the exposure of children to audiovisual commercial communications for foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular fat, trans-fatty acids, salt or sodium and sugars, of which excessive intakes in the overall diet are not recommended.*

#### 4.26.7.1.2. Stakeholders involved

The Romanian Advertising Council (RAC) is the self-regulatory organization in charge of advertising.

#### 4.26.7.1.3. Scope and objectives

Article 42<sup>10</sup> of Law 190/2022 provides that the CNA “encourages the use of co-regulation and self-regulation.”

Self-regulatory instruments include rules on ACCs for HFSS foods and beverages, inappropriate ACCs for alcoholic beverages and ACCs which encourage behaviours grossly prejudicial to the protection of the environment.

#### 4.26.7.1.4. Code(s) of conduct

Law 190/2022 refers to codes of conduct in order, for instance, to reduce children’s exposure to audiovisual commercial communications on foods and beverages containing fats, trans fatty acids, salt or sodium and sugars (Article 42<sup>8</sup> paragraph 3). Also, Article 39.3 refers to codes of conduct of the European Union on systems that describe the potentially harmful nature of the content of an audiovisual media service.

The Code of Advertising Practice, as developed by the RAC is applicable to the members of the organisation and represents a set of ethical rules to be observed by all those involved in advertising and in any form of commercial communication, in order to provide proper, honest and decent communication observing the law and practice principles in advertising and commercial communication.

#### 4.26.7.1.5. Role of the (self-)regulatory bodies

N/A.



#### 4.26.7.1.6. Period of activity (if limited)

N/A.

#### 4.26.7.1.7. Role of the regulatory authority in a co-regulatory system

##### 4.26.7.1.7.1. Regulatory body

According to Law 190/2022, in Article 42<sup>10</sup> the CNA encourages self and co-regulation and evaluates the measures taken by VSPs to respect legal obligations: “(1) For the purpose of implementing the measures provided in Article 42<sup>7</sup> and 42<sup>8</sup> para (6) - (8), the Council encourages the use of co-regulation and self-regulation.”

Further, Article 42<sup>10</sup> provides:

*(2) The Council shall establish, by means of decisions, the necessary mechanisms to assess the appropriateness of the measures referred to in Articles 42<sup>7</sup> and 42<sup>8</sup> para (6) - (8), implemented by video-sharing platform providers.*

For the purpose of implementing the measures provided in Article 42<sup>9</sup>, para (6) in the same Article 42<sup>9</sup> states the role of the CNA:

*(65) The full mechanisms of the implementing measures will be established by the Council. These mechanisms should be easy to access and use and allow for the transmission of notifications by electronic means.*

##### 4.26.7.1.7.2. Co-regulatory scheme

See under 4.26.7.1.1.

##### 4.26.7.1.7.3. Relationship and roles of stakeholders

N/A.

#### 4.26.7.2. Monitoring/evaluation, compliance and sanctioning powers

Law 190/2022, in Article 42<sup>9</sup>, paragraphs 1-3 on enforcement and sanctions stipulates:

*(1) Where the content of a video-sharing platform infringes Articles 42<sup>7</sup> and 42<sup>8</sup> and no other effective means are available to enforce those provisions and avoid the risk of serious harm to the collective interests of the public or the legitimate interests of a person, the National Audiovisual Council shall request:*

*(a) the video-sharing platform providers to remove or restrict access to illegal content, or to display a warning to users when accessing such content, or to disable the user's account for a period of up to 12 months;*

*(b) the data storage providers providing storage space for the video-sharing platforms to remove, disable or restrict access to a video-sharing platform;*



*(c) the registrars that allocate domain names to video-sharing platforms to remove the domain name of the video-sharing platform.*

Article 42<sup>9</sup> paragraphs 2-3 stipulates that the CNA may act based on a decision, which needs to be “sufficiently precise and duly reasoned”.

#### 4.26.8. Cross-sector and cross-border collaboration

Law 190/2022, in Article 42<sup>9</sup> paragraph 5 on enforcement and sanctions, stipulates that the CNA, in the activity of supervision and control, may request of the National Institute for Research and Development in Informatics – ICI Bucharest, in the case of the registering of domains and subdomains in the “.ro” area, data related to the service provider (audiovisual services, VSPs or user-generated content). It can consult with the National Authority for Protection of Consumers and the Ministry of Finance with regard to misleading advertising.

#### 4.26.9. Update on plans and practices related to new obligations of VSPs

N/A.

#### 4.26.10. Studies, reports and research

N/A.

#### 4.26.11. Data compilation

This factsheet is based on data compiled by Dr. Manuela Preoteasa, Associate Professor, Faculty of Journalism and Communication Sciences, University of Bucharest.