

GAP ANALYSIS AND LEGISLATIVE ACTION PLAN – AUDIOVISUAL MEDIA SERVICES DIRECTIVE

1 Introduction

1.1 Document purpose

Annex XXXIII of the Association Agreement cites which parts of EU Legislative need to be implemented in Georgian Law in the field of audio-visual and media. The EU Legislative to be implemented consists of the Directive 2010/13/EU, Audiovisual Media Services Directive (the “AMSD”).

This overview comprises of an analysis of gaps between the currently applicable Georgian law and the parts of the Audiovisual Media Services Directive which, according to the Association Agreement, must be implemented in Georgian law by 1 September 2017 except for Article 23 of the Audiovisual Media Services Directive which shall be implemented by 1 September 2019.

1.2 Scope of review

The review has been conducted for the purposes of performance of consulting services for the project „Georgia - Information Communication Technology Sector Development: Harmonisation of laws, regulation of next generation access and regulatory development“ (the „**Project**“) and is intended to be confidential and covered by the attorney-client privilege, the attorney work product doctrine, and any other applicable privilege and/or protection. All documents prepared in connection with the review, including this document, are intended to be confidential and privileged and are produced for the sole purpose of providing legal advice within the scope of the Project.

This document is provided to and is capable of being relied on exclusively by GNCC and EBRD. The document may not be disclosed to, used by, or relied on by third parties without our explicit written consent, except as otherwise explicitly provided by us within the Project. Even if given, the consent will neither imply nor create any contractual relationship between third parties and us.

We conducted the review under the EU law in the scope stipulated in the Project and based on the English translations of the relevant laws and/or other documents were provided to us by GNCC. We are not qualified to provide legal advice under Georgian law. Unless we state differently in the document, we did not take into account any other law and any other document other than those provided to us by GNCC.

1.3 Association Agreement Requirements

According to the Association Agreement, Georgian Law must be approximated with the AMSD.

1.4 Colour code and document structure:

This overview analyses individual requirements contained in the Accession Agreement in relation to the AMSD and indicates our initial conclusions on the level of harmonisation of the relevant Georgian legislation by the following colour code:

No Gap / Harmonised	Partial Gap / partially harmonised but additional legislative measures are needed	Gap / not yet harmonised	Not applicable

When „No Gap“ is identified, we provide no further comments.

When „Partial Gap“ or „Gap“ is identified, we provide further comments on the nature of the gap and initial recommendations regarding how such gap could be addressed. Our initial recommendations are incorporated in this legislative Action Plan, taking into account also the outcome of our discussions with GNCC.

„Not applicable“ refers to the parts of the AMSD that cannot apply in Georgia because Georgia is not yet a Member State. This would typically include provisions that implement certain competences or coordination roles of the European Commission or other bodies, such as BEREC.

In the last chapter of this document we provide initial guidance on the harmonisation of Georgian law with the remaining parts of the AMSD, which are not included in the Association Agreement.

1.5 Abbreviations and terms used

- BRA – Law of Georgia on Broadcasting,
- AA – Law of Georgia on Advertising,
- AMSD – Audiovisual Media Services Directive,
- PCRS – Protection of Consumer Rights Resolution¹,
- CA – Law of Georgia on Copyright.

2 Executive Summary

We have identified the following main gap areas where Georgian law would have to be further harmonized with the AMSD:

- On-demand services are at present not regulated by Georgian law. We propose that regulation of on-demand services be implemented in the BRA.
- Some of the currently used definitions in the BRA are not aligned with the AMSD and several definitions are missing. Therefore we propose to align the definitions used in the BRA to definitions as used in the AMSD.
- Regulation of surreptitious audiovisual commercial communication required by the AMSD is not currently included in the BRA and we propose to implement it therein along with effective sanctions for its breach.
- The BRA does not clearly define the criteria of its applicability to natural and legal persons residing or established in other countries. We propose that the scope (jurisdictional reach) of the BRA application be clarified in accordance with the AMSD requirements.
- The Georgian laws reviewed do not contain any provisions that would guarantee the freedom of reception and prohibit restrictions on retransmissions of audiovisual services from other EU Member States. We propose that such provisions and related mechanisms be implemented into the BRA.
- Obligations of audiovisual media service providers to inform subscribers about their identity, address, electronic contact and regulatory body, are missing and will be implemented.
- With regard to restrictions on hateful, racial and similar content, the AMSD requires that the Member States ensure compliance by appropriate measures. The BRA provides that these restrictions will be imposed solely by the self-regulatory mechanism anticipated by Article 14(1)

¹ Resolution No. 3 of Georgian National Communications Commission, Tbilisi, 17 March, 2006 Concerning the Approval of the Regulations in respect to the Provision of Services and Protection of Consumer Rights in the Sphere of Electronic Communications.

BRA. We propose that the self-regulatory mechanism is transformed into more effective enforcement measures such as fines for any breach of this obligation in the BRA.

- The BRA requires that Public Broadcaster take into account interests of persons with disabilities in their programmes related to elections, referenda and/or plebiscites. This obligation partially corresponds to the AMSD requirement that (all) media service providers make their services gradually accessible to people with disabilities. The extension of the obligation under the BRA to all broadcasters (not just public broadcasters) and also to other programmes (not only programmes related to voting) is currently under review.
- The AA which anticipates that tobacco products may be advertised through television under some circumstances (as long as the ads are accompanied by the prescribed information about the harm of smoking). This seems to contradict the ban on tobacco advertising stipulated in another provision of the AA and in the AMSD. We recommend that a complete ban on all forms of audiovisual commercial communications for cigarettes and other tobacco products be introduced in the law. We propose that Article 8(9) AA be removed.
- We propose to extend the current ban under the AA on promotion of medical products available only on prescription also to teleshopping.
- The BRA includes a general provision on the promotion of European works as required by the AMSD. Implementation of the obligation on broadcasters to allocate at least 10 % of their transmission time or at least 10 % of their programming budget for European works created by independent producers should be considered in order to further align with the AMSD requirements. We propose that the obligation to allocate the specific amount of transmission time or programming budget either explicitly includes “Georgian works” in addition to “European works” (incl. definition of Georgian works) or that the BRA stipulates that any references to European works include also Georgian works.
- A restriction that isolated advertising and teleshopping spots are transmitted only exceptionally is missing and we propose to implement it into the BRA.
- The AMSD contains general requirements on promotion of all alcoholic beverages, including the list of situations where the alcoholic beverages may not be presented (such as contributing towards social or sexual success, driving etc.). While the AA contains generally corresponding provisions, we propose that the full list of situations in which alcoholic beverages must not be presented be added into the AA.
- The Georgian laws under review do not provide for an obligation that programmes which may have harmful influence on the physical, intellectual and moral development of children must be preceded by an acoustic warning or identified by the presence of a visual symbol. We propose that this obligation be implemented into the BRA.

3 Detailed Gap Analysis

A General provisions

	AMSD		Georgian Legislation	Gap
Recital 23	<p>For the purposes of this Directive, the term ‘audiovisual’ should refer to moving images with or without sound, thus including silent films <u>but not covering audio transmission or radio services</u>. While the principal purpose of an audiovisual media service is the provision of programmes, the definition of such a service should also cover text-based content which accompanies programmes, such as subtitling services and electronic programme guides. Stand-alone text-based services should not fall within the scope of this Directive, which should not affect the freedom of the Member States to regulate such services at national level in accordance with the Treaty on the Functioning of the European Union.</p>	N/A	<p><i>The obligations with respect to on-demand services should be included in all definitions as required by the AMSD and as outlined below in this analysis.</i></p>	
Recital 24	<p>It is characteristic of on-demand audiovisual media services that they are ‘television-like’, i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of ‘programme’ should be interpreted in a dynamic way taking into account developments in television broadcasting.</p>			

Gap 1 – Scope of applicability

The AMSD regulates the provision of television and television-like services, including on-demand audiovisual services. The AMSD does not regulate the provision of radio services.

The BRA, on the other hand, governs television and radio broadcasting and services but not on-demand services.

We assess this as a gap and recommend that on-demand services regulation is included in the BRA.

Action plan

Legislation: BRA

Section: New chapter of BRA governing on-demand services (after the new Chapter on retransmission, i. e. a new Chapter V² will be added (for Articles 47¹ et seq.)

Proposed change: Introduce regulation of on-demand services with all related obligations arising from the AMSD into the BRA.

Notes: In this respect, we acknowledge that the implementation of regulation of on-demand services will be very complex and will require a political consensus on the matter.

Art 1/1/a	<p>'audiovisual media service' means:</p> <p>(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;</p> <p>(ii) audiovisual commercial communication;</p>	N/A	
		Art 2/z ³ BRA	<p>advertisement – a commercial, social or pre-election advertisement, except for an announcement made by a broadcaster regarding its own or an independent programme, representing information disseminated by any means and in any form about a natural or legal person, goods, services, work, idea and undertaking, which is targeted for the general public and is intended to form and maintain interest in a natural or legal person, goods, services, work, ideas and undertakings, and to facilitate the sale of goods, services, work, ideas and undertakings</p>

Art 1/1/b	<p>'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;</p>	Art 2/z ¹ BRA	<p>programme – a TV or radio product transmitted live or recorded</p>	
Art 1/1/c	<p>'editorial responsibility' means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;</p>	N/A		
Art 1/1/d	<p>'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;</p>	Art 2/s BRA	<p>broadcaster - a Public Broadcaster, Ajara TV and Radio of a Public Broadcaster, a person holding a licence or an authorised person, who carries out TV and/or radio broadcasting on the basis of this law;</p>	
		Art 2/s ² BRA	<p>TV broadcaster - a Public Broadcaster, Ajara TV and Radio of a Public Broadcaster, an authorised person who transmits, under sole editorial responsibility, audio and visual products provided for by the personal broadcasting grid, so that at specified times allowed by the broadcasting grid, they are simultaneously available to viewers;</p>	
Art 1/1/e	<p>'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual</p>	Art 2/k	<p>private broadcasting - broadcasting which is neither public nor community broadcasting and which is carried out by a</p>	

	media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;	BRA	commercial or non-commercial entity under private law as determined by this Law;	
		Art 2/z ⁶ BRA	general broadcasting - broadcasting of programmes involving at least two topics, including news and social and political topics;	
		Art 2/z ¹⁵ BRA	specialised broadcasting - broadcasting of programmes typically of one topic (except for news and social and political topics);	
Art 1/1/f	'broadcaster' means a media service provider of television broadcasts;	Art 2/s BRA	broadcaster - a Public Broadcaster, Ajara TV and Radio of a Public Broadcaster, a person holding a licence or an authorised person, who carries out TV and/or radio broadcasting on the basis of this law	
Art 1/1/g	'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;	N/A		
Art 1/1/h	'audiovisual commercial communication' means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity . Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product	Art 2/m BRA	commercial advertisement - information about a natural person and/or legal entity, goods, services, works, ideas and/or undertakings that is disseminated by any means and in any form in return for payment or for other economic profit, and that is intended for the general public and is used to form and maintain interest with respect to a natural person and/or legal entity, goods, services, works, ideas and/or undertakings, and which facilitates the sale of goods, an idea and/or undertaking	

	placement;			
Art 1/2/i	'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional 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 or services , including immovable property, rights and obligations, in return for payment;	Art 2/z ³ BRA	advertisement – a commercial, social or pre-election advertisement, except for an announcement made by a broadcaster regarding its own or an independent programme, representing information disseminated by any means and in any form about a natural or legal person, goods, services, work, idea and undertaking , which is targeted for the general public and is intended to form and maintain interest in a natural or legal person, goods, services, work, ideas and undertakings, and to facilitate the sale of goods, services, work, ideas and undertakings;	
		Art 3/15 AA	Broadcast advertising - commercial, social or pre-election advertisement disseminated (broadcasted) by a broadcaster, except for statements made by a broadcaster with respect to its own or an independent programme, which is the information on natural or legal persons, goods, services, works, ideas and initiatives and is disseminated by any means and in any form; it is intended for an unlimited group of persons and serves to form and maintain interest towards natural and legal persons, goods, services, works, ideas or initiatives, and facilitates sales of goods, services, works, ideas and initiatives	
Art 1/2/j	'surreptitious audiovisual commercial communication' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes 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	Art 3/6 AA	Misleading advertising – advertisement by which an advertising customer (a producer and/or a disseminator of advertisement) intentionally misleads consumers of advertisement and which may harm a competitor;	

	return for payment or for similar consideration;			
Art 1/2/k	‘sponsorship’ means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;	Art 2/z ¹⁶ BRA	sponsorship - direct or indirect financing or co-financing of the process of preparing or broadcasting a programme by a person in order to promote his/her name, trademark, image, or activities	
Art 1/2/l	‘teleshopping’ means direct offers broadcast to the public with a view to the supply of goods or services , including immovable property, rights and obligations, in return for payment;	Art 2/z ¹⁷ BRA	teleshopping - a direct offer of any rights, obligations, goods, services or work in return for payment. Teleshopping may be placed as a broadcasting programme (Teleshopping Window) for at least 15 minutes, or may be integrated into a commercial break as a broadcast advertising (Teleshopping Spot)	
Art 1/2/m	‘product placement’ means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;	Art 2/z ²⁴ BRA	product (goods and/or services) placement in the programme (Product Placement) - dissemination of information about a product in any form in return for payment or for similar consideration, resulting in the integration of a product into the programme , and the indication to a product and/or to a service and trademark	
Art 1/2/n	‘European works’ means the following: (i) works originating in Member States; (ii) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 3; (iii) works co-produced within the framework of agreements	Art 2/g BRA	European product - a product made in a European country, where the European Convention on Transfrontier Television is in force, or a product made in Georgia, or a product the copyright holder of which is a natural person or a legal entity that is a resident of this country or of Georgia	

	related to the audiovisual sector concluded between the Union and third countries and fulfilling the conditions defined in each of those agreements.			
Gap 2 – Definition				
The AMSD applies to persons providing audiovisual media services (“AMS”) which include television broadcast and an on-demand service. By contracts, Georgian laws at present do not include the definition of, and do not regulate, on-demand services. We recommend that regulation of on-demand services is implemented in the BRA. The same applies to surreptitious audiovisual commercial communication, currently not included in the BRA. Finally, some of the existing definitions in the BRA such as programme, misleading advertising or European product should be aligned with the definitions in the AMSD.				
Action plan				
Legislation:	BRA			
Section:	2/g, 2/k, 2/m, 2/s, 2/s ² , 2/z ¹ , 2/z ³ , 2/z ⁶ , 2/z ¹⁵ , 2/z ¹⁶ , 2/z ¹⁷ , 2/z ²⁴ , 3/6, 3/15			
Proposed change:	Change the following definitions to align them with the AMSD: <ul style="list-style-type: none"> - programme, broadcaster, misleading advertising, and European works. Add the following definitions into the BRA to align with the AMSD: <ul style="list-style-type: none"> - audiovisual media service, editorial responsibility, media service provider, and on-demand audiovisual media service. 			
Notes:	/			
Art 2/1	Each Member State shall ensure that all audiovisual media services transmitted by media service providers <u>under its jurisdiction</u> comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State.	Art 70/1 BRA	A broadcaster shall ensure the compliance of broadcast programmes, advertisements and information about sponsors with the legislation of Georgia and licence and/or authorisation provisions.	
Art 2/2	For the purposes of this Directive, the media service providers under the jurisdiction of a Member State are any of the following:	Art 2/s BRA	broadcaster - a Public Broadcaster, Ajara TV and Radio of a Public Broadcaster, a person holding a licence or an authorised person , who carries out TV and/or radio	

	<p>(a) those established in that Member State in accordance with paragraph 3;</p> <p>(b) those to whom paragraph 4 applies</p>		<p>broadcasting on the basis of this law;</p>
Art 2/3	<p>For the purposes of this Directive, a media service provider shall be deemed to be established in a Member State in the following cases:</p> <p>(a) the media service provider has its head office in that Member State and the editorial decisions about the audiovisual media service are taken in that Member State;</p> <p>(b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;</p> <p>(c) if a media service provider has its head office in a Member State but decisions on the audiovisual media</p>	Art 3/3 BRA	<p>Citizens and legal persons of foreign countries, and persons without citizenship of Georgia shall enjoy the rights and obligations determined by this Law for citizens and business entities of Georgia, unless otherwise provided for by the legislation of Georgia.</p>

	service are taken in a third country , or vice versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State			
Art 2/4	Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases: (a) they use a satellite up-link situated in that Member State; (b) although they do not use a satellite up-link situated in that Member State, they use satellite capacity appertaining to that Member State.			
Art 2/5	If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the media service provider is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.			
Art 2/6	This Directive does not apply to audiovisual media services intended exclusively for reception in third countries and which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States	N/A		

Gap 3 – Territorial applicability

The AMSD contains clear rules on the territorial, material and personal applicability (jurisdiction). By contrast, the BRA, while providing that it applies to

citizens from and legal persons established both in Georgia and in foreign countries, does not elaborate on the criteria of its applicability to natural and legal persons residing or established in other countries. Further, the BRA does not provide for the exclusion from its applicability services intended exclusively for reception in third countries.

We assess the lack of clear applicability (jurisdictional) criteria as a gap and recommend that they are specified in the BRA in a way that mirrors the AMSD requirements.

Action plan

Legislation: BRA

Section: 2/2, 2/3

Proposed change: We propose that the territorial applicability of obligations arising from the BRA be extended also to natural and legal persons residing or established in other countries. Further, services intended exclusively for reception in third countries should be excluded from the applicability of the BRA.

Notes: /

Art 3/1	Member States shall ensure <u>freedom of reception</u> and shall not restrict <u>retransmissions</u> on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.	N/A	
Art 3/2	In respect of television broadcasting, Member States may provisionally derogate from paragraph 1 if the following conditions are fulfilled: (a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 27(1) or (2) and/or Article 6; (b) during the previous 12 months, the broadcaster has	N/A	

	<p>infringed the provision(s) referred to in point (a) on at least two prior occasions;</p> <p>(c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;</p> <p>(d) consultations with the transmitting Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in point (c), and the alleged infringement persists.</p> <p>The Commission shall, within 2 months following notification of the measures taken by the Member State, take a decision on whether the measures are compatible with Union law. If it decides that they are not, the Member State will be required to put an end to the measures in question as a matter of urgency.</p>			
Art 3/3	Paragraph 2 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned.	N/A		

Gap 4 – Reception and retransmissions of audiovisual services

The AMSD provides for freedom of reception and prohibits restrictions on retransmissions of audiovisual services from other EU Member States. The BRA contains no such corresponding provision. We assess this as a gap and recommend such provision is included in the BRA.

Action plan

Legislation: BRA

Section: New chapter for free reception and retransmissions of audiovisual services will be added into the BRA – Chapter V¹ after Article

		46 BRA (i.e. Article 46 ¹ et seq. BRA)	
Proposed change:		Introduce provisions stipulating freedom of reception and prohibiting restrictions on retransmissions of audiovisual services from other EU Member States.	
Notes:		Consider the implementation of a mechanism that would allow the GNCC (preferably) to provisionally derogate from these obligations when the conditions of Article 3(2) AMSD are met. We believe that the BRA should only create a legal basis for such mechanism which will enable the GNCC to take interim measures for provisional derogation of the obligations above.	
Art 3/4	<p>In respect of on-demand audiovisual media services, Member States may take measures to derogate from paragraph 1 in respect of a given service if the following conditions are fulfilled:</p> <p>(a) the measures are:</p> <p>(i) necessary for one of the following reasons:</p> <ul style="list-style-type: none"> - public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons, - the protection of public health, - public security, including the safeguarding of national security and defence, - the protection of consumers, including investors; <p>(ii) taken against an on-demand audiovisual media service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;</p>	N/A	

	<p>(iii) proportionate to those objectives;</p> <p>(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:</p> <p>(i) asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate;</p> <p>(ii) notified the Commission and the Member State under whose jurisdiction the media service provider falls of its intention to take such measures.</p>			
Art 3/5	<p>Member States may, in urgent cases, derogate from the conditions laid down in point (b) of paragraph 4. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency.</p>	N/A		
Art 3/6	<p>Member States may, in urgent cases, derogate from the conditions laid down in point (b) of paragraph 4. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency.</p>	N/A		

Gap 5 – Reception and retransmissions of on-demand services

The AMSD provides for certain derogations from the rules on the freedom of reception and on the ban of restrictions on retransmissions with respect to on-

demand services. The BRA contains no such corresponding provision. We assess this as a gap and recommend such provisions on-demand services be included in the BRA.

Action plan

Legislation: BRA

Section: New chapter of the BRA governing on-demand services (after the new Chapter on retransmission, i. e. new Chapter V² will be added (for Articles 47¹ et seq.)

Proposed change: Introduce regulation of on-demand services with all related obligations arising from the AMSD into the BRA.
Introduce mechanism which will enable (preferably) the GNCC to take interim measures for provisional derogation of the obligations related to freedom of reception and restrictions on retransmission.

Notes: In this respect, we acknowledge that the implementation of regulation of on-demand services will be very complex and will require a political consensus on the matter.

Art 4/1	Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Union law.	N/A	<i>Any of the requirements that will be stipulated in Georgian legislation may be stricter than the requirements required by the AMSD.</i>	
Art 4/2	In cases where a Member State: (a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and (b) assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory; it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by	N/A		

	<p>the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within 2 months. Either Member State may invite the contact committee established pursuant to Article 29 to examine the case.</p>			
Art 4/3	<p>The first Member State may adopt appropriate measures against the broadcaster concerned where it assesses that:</p> <p>(a) the results achieved through the application of paragraph 2 are not satisfactory; and</p> <p>(b) the broadcaster in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established in the first Member State.</p> <p>Such measures shall be objectively necessary, applied in a non-discriminatory manner and proportionate to the objectives which they pursue.</p>	N/A		
Art 4/4	<p>A Member State may take measures pursuant to paragraph 3 only if the following conditions are met:</p> <p>(a) it has notified the Commission and the Member State in which the broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment; and</p> <p>(b) the Commission has decided that the measures are compatible with Union law, and in particular that</p>	N/A		

	assessments made by the Member State taking those measures under paragraphs 2 and 3 are correctly founded.			
Art 4/5	The Commission shall decide within 3 months following the notification provided for in point (a) of paragraph 4. If the Commission decides that the measures are incompatible with Union law, the Member State in question shall refrain from taking the proposed measures.	N/A		
<u>Comment – Stricter rules</u>				
The AMSD provides that implementing national legislation may provide for more detailed or stricter rules applicable to media service providers. Any such rules must be notified to the European Commission.				
Art 4/6	Member States shall, by appropriate means , ensure, within the framework of their legislation, that media service providers under their jurisdiction effectively comply with the provisions of this Directive.	Art 5/3/f BRA	The functions of the Commission in the field of broadcasting are to: f) supervise and control the performance of provisions of legislation in the field of broadcasting; impose appropriate sanctions in case of violations of these provisions;	
		Art 71 BRA	1. If a broadcaster violates the legislation of Georgia or fails to fulfil a decision of the Commission or violates the licence and/or authorisation provisions, the Commission shall review the appropriate matter. In the case the fact of violation is confirmed the Commission shall give the broadcaster a written warning thereof. The purpose of imposing a sanction by the Commission on the broadcaster shall be the elimination or the prevention of the violation. The Commission shall define a reasonable period of time for the broadcaster to carry out measures for the elimination or prevention of the violation. 2. The Commission shall impose a fine on a broadcaster if the latter fails to eliminate the violation referred to in the	

			<p>warning under paragraph 1 of this article or if it fails to fulfil the decision of the Commission within the period of time specified in the warning, also if it commits violations anew within one year after receiving the above warning.</p> <p>3. Only the Commission may suspend a licence and/or an authorisation or revoke a licence and/or an authorisation.</p>
		Art 72 BRA	<p>1. In the case provided for by Article 71 of this Law, the Commission may impose a fine on a broadcaster in an amount not exceeding 0.5% of the broadcaster's annual income, but not less than GEL 2 500.</p> <p>2. If after imposing a fine a broadcaster continues to repeatedly commit violations and/or if it commits any new one-off violation within one year after being fined, the Commission may impose a fine of 1% of its annual income but not less than GEL 5 000 on the broadcaster or initiate public administrative proceedings for suspension of the licence and/or authorisation.</p> <p>3. If a broadcaster continues to repeatedly commit violations after being fined for a second time and/or if a broadcaster commits any new one-off violation within one year after being fined for the second time, the Commission may impose a fine of 3% of its annual income but not less than GEL 10 000 on the broadcaster or initiate public administrative proceedings for suspension of the licence and/or authorisation.</p>
		Art 17 ¹ AA	<p>Control over the advertisement timing, placement forms (venue) and the means used in the field of broadcast advertising, as well as control of compliance with the restrictions established by the disseminator of broadcast advertisement under the Law of Georgia on Broadcasting, the Law of Georgia on Advertising and other legislative acts of</p>

			<p>Georgia shall only be exercised by the Georgian National Communication Commission, which shall, within its scope of competence:</p> <p>a) make a decision to partially or fully suspend improper advertising or to apply counter advertising;</p> <p>b) be authorised, under the procedure established by law, to impose sanctions defined by the Law of Georgia on Broadcasting on violators of the Laws of Georgia on Broadcasting and on Advertising, and other legislative acts;</p> <p>c) be authorised to apply to appropriate bodies for commencement of criminal prosecution.</p>
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Comment – Enforcement and sanctions

No gap in respect of enforcement and sanctions provided for under Georgian law has been identified. The enforcement measures and sanctions in the BRA seem a sufficient guarantee that media service providers will effectively comply with the provisions of the law.

Art 4/7	Member States shall encourage co-regulation and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement.	Art 2 BRA	code of conduct - a normative act adopted by the Commission based on this Law that defines the rules of providing services by the broadcasters;
		Art 14/1 BRA	A broadcaster shall, on the basis of the code of conduct, establish an effective mechanism for self-regulation that will make it possible to review and provide timely and justified responses to complaints.

Comment – Co-regulation and self-regulation

The AMSD encourages co-regulation and self-regulation. The BRA anticipates that the GNCC will adopt a code of conduct based on which the broadcasters are obliged to establish their own mechanisms for self-regulation.

To be considered whether code of conducts for other providers (of on-demand services) should also be encouraged.

Art 4/8	Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between a provision of Directive 2000/31/EC and a provision of this Directive, the provisions of this Directive shall prevail, unless otherwise provided for in this Directive.	N/A	
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B Provisions applicable to all audiovisual media services

	AMSD		Georgian Legislation	Gap
Art 5	Member States shall ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information : (a) the name of the media service provider; (b) the geographical address at which the media service provider is established; (c) the details of the media service provider, including its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner; (d) where applicable, the competent regulatory or supervisory bodies.	Art 3/1/f PCRS	“ Service provider ” means an operator of an electronic-communication network or an authorized person having access to the relevant elements or resources thereof, who intends or carries on the provision of electronic-communication service by means of these elements or resources of the said network.	
		Art 3/1/fff PCRS	“ Identification information ” means information concerning the organizational and legal form, title and address of the service provider.	
		Art 4/2/b PCRS	In order to adequately provide consumers with relevant information, service provider shall: (b) make available for consumers his identification and contact information to facilitate the liaison with him.	

Gap 6 – Information to subscribers

The AMSD requires that audiovisual media service providers inform subscribers about the identity, address, electronic contact and regulatory body. A similar information obligation is imposed by the GNCC resolution (PCRS) on service providers in the electronic communications. No corresponding obligation is, however, provided for broadcasters and/or other audiovisual service providers. We assess this as a gap and recommend that this information obligation is implemented.

Action plan

Legislation: BRA

Section: 16

Proposed change: Introduce obligation on audiovisual media service providers to inform subscribers about the identity, address, electronic contact

and regulatory body.				
Notes: /				
Art 6	Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.			
	<table border="1"> <tr> <td style="vertical-align: top;">Art 56 BRA</td> <td> <ol style="list-style-type: none"> 1. Any type of war propaganda is prohibited. 2. Broadcasting of programmes containing the apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group, is prohibited. 3. Broadcasting of programmes intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, are prohibited, except when this is necessary due to the content of a programme and when it is targeted to illustrate existing hatred. </td> </tr> <tr> <td style="vertical-align: top;">Art 59¹ BRA</td> <td> <ol style="list-style-type: none"> 1. Response measures for the violation of the norms under Articles 52, 54, 56 and 59 of this Law, and of the ethical norms and professional standards determined by the Code of Conduct, may be carried out <u>only</u> within the self-regulation mechanism defined by Article 14(1) of this Law. 2. Issues related to the interpretation of the norms under Articles 52, 54, 56 and 59 of this Law, and the ethical norms and professional standards determined by the Code of Conduct, as well as decisions made within the self-regulation mechanism defined by Article 14(1) of this Law may not be appealed to a court, the Commission or to any other administrative authority. </td> </tr> </table>	Art 56 BRA	<ol style="list-style-type: none"> 1. Any type of war propaganda is prohibited. 2. Broadcasting of programmes containing the apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group, is prohibited. 3. Broadcasting of programmes intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, are prohibited, except when this is necessary due to the content of a programme and when it is targeted to illustrate existing hatred. 	Art 59 ¹ BRA
Art 56 BRA	<ol style="list-style-type: none"> 1. Any type of war propaganda is prohibited. 2. Broadcasting of programmes containing the apparent and direct threat of inciting racial, ethnic, religious or other hatred in any form and the threat of encouraging discrimination or violence toward any group, is prohibited. 3. Broadcasting of programmes intended to abuse or discriminate against any person or group on the basis of disability, ethnic origin, religion, opinion, gender, sexual orientation or on the basis of any other feature or status, or which are intended to highlight this feature or status, are prohibited, except when this is necessary due to the content of a programme and when it is targeted to illustrate existing hatred. 			
Art 59 ¹ BRA	<ol style="list-style-type: none"> 1. Response measures for the violation of the norms under Articles 52, 54, 56 and 59 of this Law, and of the ethical norms and professional standards determined by the Code of Conduct, may be carried out <u>only</u> within the self-regulation mechanism defined by Article 14(1) of this Law. 2. Issues related to the interpretation of the norms under Articles 52, 54, 56 and 59 of this Law, and the ethical norms and professional standards determined by the Code of Conduct, as well as decisions made within the self-regulation mechanism defined by Article 14(1) of this Law may not be appealed to a court, the Commission or to any other administrative authority. 			

Gap 7 – Restrictions on hateful, racial and similar content

The Georgian law is compliant with the AMSD requirements concerning restrictions on hateful, racial and similar content. The AMSD further requires that the Member States shall ensure the compliance by appropriate measures. The BRA, however, provides that these restrictions will be imposed solely by the self-regulatory mechanism anticipated by Article 14(1) BRA. We consider this to be a partial gap and recommend that more effective enforcement measures appropriate to Georgian market (such as fines for any breach of this obligation) be added into the BRA.

The same restriction should extend to on-demand services once these are implemented in the law.

Action plan

Legislation: BRA

Section: 59¹

New chapter for on-demand services (after the new Chapter on retransmission, i. e. a new Chapter V² will be added (for Articles 47¹ et seq.)

Proposed change: We propose that the currently used self-regulatory mechanism be transferred into GNCC's competence, allowing it to (i) sanction media services providers who provide audiovisual media services containing any incitement to hatred based on race, sex, religion or nationality; or (ii) to prohibit provision of such services.

Notes: Some EU jurisdictions impose sanctions for breach of this obligation. For example, the regulatory body in the Czech Republic may (i) impose a sanction for breaches of this obligations, and (ii) refuse to prolong a license for broadcasting in case that the provider committed a severe breach related to provision of programmes containing incitements to hatred.

Art 7 Member States **shall encourage** media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a **visual or hearing** disability.

Art 16/j
BRA

The **Public Broadcaster** shall
j) **take into account the interests of persons with disabilities** and provide sign language interpretation in their programmes **related to elections and/or referenda and/or plebiscites**, which are broadcast during electoral campaigns and referenda and/or plebiscites;

Gap 8 – Access by people with a visual or hearing disability

The BRA requires Public Broadcaster to take into account interests of persons with disabilities in their programmes related to elections, referenda and/or plebiscites. This obligation partially corresponds to the AMSD requirement that (all) media service providers make their services gradually accessible to people with disabilities. The extension of the obligation under the BRA to all broadcasters (not just public broadcasters) and also to other programmes (not only programmes related to voting) should be considered.

Action plan

Legislation: BRA

Section: /

Proposed change: /

Notes: According to the information provided by the GNCC, the scope of this obligation is currently under review and amendment to the BRA is being prepared.

Art 8	Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.	N/A	<p><u><i>There is a judgment issued by national courts acknowledging GNCC's competence to review copyright issues concerning broadcasters.</i></u></p> <p><i>According to the information provided by the GNCC, the broadcasters must provide the GNCC with all agreements and rights that they acquired to the programmes they broadcast. The GNCC reviews the compliance of the agreements with copyright laws.</i></p>
		Art 3 CA	The legislation in the field of broadcasting comprises the Constitution of Georgia, international agreements of Georgia, the Organic Law of Georgia - the Election Code of Georgia, this Law, the Law of Georgia on National Regulatory Bodies and the Law of Georgia on Copyright and Related Rights, and other legislative acts and subordinate normative acts.

		Art 47/4 CA	Concluding an agreement between a performer and a broadcasting organisation concerning the broadcast over the air or by cable of a performance leads to transfer of the right to record the performance, transmit it further and reproduce the recording by the performer only in the case where it is expressly provided in the contract. In the case of such use, the amount of the royalties payable shall be determined under such agreement.	
		Art 47/5 CA	Concluding an agreement between a performer and a producer of an audiovisual work concerning the creation of an audiovisual work leads to the transfer of the rights provided in paragraph 2 of this article by the performer, unless otherwise provided by the agreement. Transfer of such rights by a performer shall be limited to the use of audiovisual works, and if not otherwise provided in the agreement, does not imply the right to separately use sounds and images fixated in audiovisual works.	
<p><u>Comment – Restriction to transmit cinematographic works</u></p> <p>The AMSD provides for a restriction to transmit cinematographic works outside periods agreed with the rights holders. The BRA does not include any such provision; however, the CA requires that the use of any cinematographic works be compliant with the copyright law. Further, national courts have ruled that the GNCC is empowered to assess compliance of the broadcasters with the copyright law. The GNCC thus monitors whether the broadcasters' use of cinematographic works is within the limits of the agreements concluded with the right holders.</p> <p>No gap was identified.</p>				
Art 9/1	Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:	Art 63/1 BRA	The procedures determined by the Law of Georgia on Advertising (“AA”) shall apply to advertising, unless otherwise provided for by this Law.	
		Art 2/8 AA	Broadcast advertising and sponsorship issues are regulated by the Law on Broadcasting whilst general requirements to advertising, the advertising of alcoholic	

			beverages and tobacco products, sex-related products, medical products (services), artificial baby-food, weapons, securities as well as the protection of minors from harmful influence in the production, placement and distribution of advertising are regulated by this Law.	
Art 9/1/a	audiovisual commercial communications shall be readily recognisable as such . Surreptitious audiovisual commercial communication shall be prohibited;	Art 63/4 BRA	Advertisement and teleshopping shall be clearly identifiable and clearly distinguished from programmes.	
<p><u>Gap 9 – Prohibition of surreptitious communication</u></p> <p>The ASMD prohibits surreptitious audiovisual commercial communication. The BRA contains no such corresponding provision. We assess it as a gap and recommend that a prohibition on surreptitious audiovisual commercial communication is explicitly included in the BRA.</p>				
<p><u>Action plan</u></p> <p>Legislation: BRA</p> <p>Section: 63/4 BRA</p> <p>Proposed change: Introduce obligation that audiovisual commercial communications must be readily recognisable as such and that surreptitious audiovisual commercial communications is prohibited.</p> <p>We propose that breach of this obligation be subject to effective sanctions – preferably monetary.</p> <p>Notes: /</p>				
Art 9/1/b	(b) audiovisual commercial communications shall not use subliminal techniques;	Article 57 BRA	Broadcasters are not allowed to broadcast programmes that transmit information or influence the opinions of listeners or viewers by affecting their subconsciousness using technical audio and visual editing, in the shortest period of time or in any other way, so that they are not fully or partially aware of such influence.	

Comment – Subliminal techniques

The ASMD prohibits the use of subliminal techniques. The BRA is fully compliant with this requirement. No gap was identified.

Art 9/1/c	<p>(c) audiovisual commercial communications shall not:</p> <p>(i) prejudice respect for human dignity;</p> <p>(ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;</p> <p>(iii) encourage behaviour prejudicial to health or safety;</p> <p>(iv) encourage behaviour grossly prejudicial to the protection of the environment;</p>	Art 63/2 BRA	The placement of improper, unfair, unreliable, unethical and clearly false advertisements or teleshopping is prohibited .			
		Art 3/2 AA	Improper advertising – unfair, unreliable, unethical, misleading or other advertisement that violates the requirements for content, timing, placement and dissemination established by the legislation of Georgia;			
		Art 3/3 AA	Unfair advertising – advertisement which includes inappropriate comparison of the advertised goods with goods of other natural and legal persons, also expressions denigrating the name, dignity and reputation of a competitor or a third party, or which discredits natural and legal persons that do not use the advertised goods; and an advertisement that misleads consumers about the qualities of the advertised goods by abusing their confidence, lack of knowledge and experience;			
		Art 3/4 AA	Unreliable advertising – advertisement that contains untrue data about an advertising customer, qualities of goods, ingredients, also the place, way and date of production, the purpose, consumer properties, conditions for use, certification marks, compliance with state standards, quantity, availability of products on the market, the possibility of purchasing the stated amount at a specific place and within a specific period of time; and the cost (price) of the product at the time of advertising, additional terms of payment, delivery, return, repair, warranty obligations, and the best before period, the right to use state symbols (flag, coat of arms, and anthem), official recognition (commendations, prizes, diplomas, and other awards), the results of a product investigation and tests, and the actual			

			demand for the product;	
		Art 3/5 AA	Unethical advertising – advertisement that violates universally recognised human and ethical norms by using abusive words and comparisons in relation to nationality, race, profession, social origin, age, gender, language, religion, political and philosophical beliefs of natural persons, and that infringes on objects of art and historical and architectural monuments included in the list of national and world cultural heritage, discredits state symbols (flag, coat of arms, anthem), national currency of Georgia or of any other state, religious symbols, natural and legal persons, their activity, profession or goods;	
		Art 4/8 AA	Placement and dissemination of improper advertisements shall be prohibited . They shall entail liability under the legislation of Georgia that is commensurate with the action committed, the degree of public hazard and its nature.	
		Art 4/11 AA	An advertisement must not incite citizens to violence, aggression or chaos , and must not urge them to commit dangerous actions that may harm human health or threaten his/her safety .	
<u>Comment – Restrictions of audiovisual commercial communications</u>				
The restriction on improper, unethical etc. advertising under largely correspond to the restrictions under the ASMD. No gap was identified. The same restriction should extend to on-demand services once implemented .				
Art 9/1/d	(d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;	Art 8/7 AA	Advertising of strong spirit drinks and tobacco products through radio and television , or on the front pages of newspapers and magazine covers <u>shall be prohibited</u> .	
		Art 8/9 AA	When advertising tobacco products through radio and television , information about the harm of smoking approved by the Ministry of Labour, Health and Social Affairs of Georgia	

must be voiced.

Gap 10 – Promotion of tobacco products

The prohibition to advertise cigarettes and other tobacco products through television, as required by the AMSD, is implemented in the AA. However, Article 8(9) AA seems to contradict this very ban when it says that tobacco products may be advertised through television as long as the ads are accompanied by the prescribed information about the harm of smoking. We assess this contradiction as a gap and recommend that a complete ban on all forms of audiovisual commercial communications for cigarettes and other tobacco products be introduced in the law. Specifically, we recommend that Article 8(9) AA be removed from the AA.

The same restriction should extend to on-demand services once these are implemented in the law.

Action plan

Legislation: AA

Section: 8/9

New chapter for on-demand services (after the new Chapter on retransmission, i. e. a new Chapter V² will be added (for Articles 47¹ et seq.)

Proposed change: Article 8/9 AA shall be removed.

Notes: /

Art 9/1/e audiovisual commercial communications for **alcoholic beverages shall not be aimed specifically at minors** and shall **not encourage immoderate consumption of such beverages**;

Art 8/1
AA

Advertising of alcoholic beverages and tobacco products, irrespective of their method of dissemination, **must not create an impression that consumption of alcohol** or tobacco products contributes to the **improvement** of physical and mental states, or to the success in public life or in sport.

Art 8/4
AA

Addressing the advertisement of alcoholic beverages and tobacco products **directly to minors**, and dissemination of such advertisements in any form in a cinema and video halls, or radio and television programmes and print publications

			intended for minors, shall be prohibited.	
Gap 11 – Promotion of alcoholic beverages				
<p>The obligation not to target advertisement for alcoholic beverages specifically at minors, required by the ASMD, is fully transposed into the AA. However, the AA does not contain a general prohibition that the ads do not encourage immoderate consumption of alcoholic beverages (although the existing ban in the AA on creating positive impressions about alcohol consumption does address this partially). We consider this to be a partial gap in Georgian laws and therefore recommend amending the AA in this respect.</p>				
Action plan				
Legislation: AA				
Section: 8/1				
Proposed change: Introduce a general obligation into the AA that advertisements must not encourage immoderate consumption of alcoholic beverages.				
Notes: /				
Art 9/1/f	audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited ;	Art 9/2 AA	Advertising of pharmaceutical products subject to special control (contained in group I), pharmaceutical products contained in group II and of pharmaceutical products that have no right to be present at Georgian market shall be prohibited.	
		Art 9/3 AA	Advertising of pharmaceutical products contained in group III shall be permitted on the basis of prior agreement of the advertisement text with a competent body under the Ministry of Labour, Health and Social Affairs of Georgia, and in compliance with the following conditions: a) if advertisements of pharmaceutical products are disseminated in printed form, they must contain the following warning: 'Read the instructions before use. Consult your doctor for detailed information on the side effects';	

			<p>b) if advertisements of pharmaceutical products are disseminated in non-printed form, the warning information must be voiced;</p> <p>c) if pharmaceutical products are advertised on television, where the advertisement can be both visually perceived and voiced, the warning text must be visible (readable) for at least three seconds and must also be voiced;</p>	
<p><u>Comment – Promotion of medicinal products</u></p> <p>The AMSD requires that advertisements do not promote any medicinal products available only on prescription. Groups I and II of pharmaceutical products referred to in the AA include medical products available only on prescription. The ads for products in groups I and II are fully prohibited, in alignment with the AMSD. No gap was identified.</p>				
Art 9/1/g	<p>audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.</p>	Art 63/6 BRA	<p>Advertisements targeted to children, or in which children are participating, shall not abuse their interests.</p>	
		Art 14 AA	<p>To protect minors from manipulation due to their credulity and inexperience during the production, placement and dissemination of advertisements, the following shall be prohibited:</p> <p>a) convincing minors to persuade their parents and other persons to buy advertised goods;</p> <p>b) drawing attention of minors to the fact that owning advertised goods will grant them privilege over other minors, and not owning the goods will have the opposite effect;</p> <p>c) using in advertisements of the text or audio and video information that displays minors in dangerous places and circumstances;</p> <p>d) not considering the necessary level of skills needed for minors to use the goods. In addition, if the results of the use</p>	

			<p>of the goods are demonstrated or described, the advertisement must provide information on what can actually be achieved for the minors of a target age group;</p> <p>e) creating unrealistic (distorted) impressions regarding the cost (price) of goods on minors, in particular by using the words like 'only', 'just', etc., and by direct or indirect indication that any family can afford the goods advertised.</p>	
<p><u>Comment – Child protection</u></p> <p>The provisions of the BRA and AA protecting children, including a demonstrative list of undesirable ads showing children in unacceptable situations, are fully aligned with the requirements of the AMSD. No gap was identified and no further action is needed.</p>				
Art 9/2	<p>Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.</p>	Art 2 BRA	code of conduct - a normative act adopted by the Commission based on this Law that defines the rules of providing services by the broadcasters;	
		Art 14/1 BRA	A broadcaster shall, on the basis of the code of conduct, establish an effective mechanism for self-regulation that will make it possible to review and provide timely and justified responses to complaints.	
		Art 50 BRA	The Commission shall adopt a Code of Conduct through public administrative procedures on the basis of consultations with licence holders and public representatives.	
<p><u>Comment – Codes of conduct</u></p> <p>The AMSD requires that media service providers be encouraged to adopt their own codes of conduct. According to the BRA, the Code of Conduct is to be adopted by the GNCC and broadcasters shall further establish their own effective mechanism for self-regulation based on it. No gap was identified.</p>				
Art 10/1	<p>Audiovisual media services or programmes that are sponsored shall meet the following requirements:</p>	Art 67/2 BRA	<p>Programmes may not be sponsored by natural or legal persons, whose main activity is the production of products or provision of services, the advertising of which is prohibited by the Law of Georgia on Advertising.</p>	

Art 10/1/a	their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;	Art 69/1 BRA	A sponsor or a provider of advertisement may not influence the content and duration of a programme financed by him/her or to interfere in the editorial independence of a broadcaster.	
Art 10/1/b	they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;	Art 67/3 BRA	In the case of sponsorship, it shall be inadmissible to directly appeal to the acquisition, supply and consumption of goods/services by a specific reference to those goods and/or services.	
Art 10/1/c	viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or at the end of the programmes.	Art 68 BRA	Sponsors are clearly indicated in programmes partially or fully financed by sponsors by using their names , trade or identification marks at the beginning , in the middle and/or at the end of the programme.	
Art 10/2	Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.	Art 13 AA	Sponsorship by tobacco producers, importers and traders, directly and/or indirectly, or through other natural or legal persons, shall be prohibited .	
Art 10/3	The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.	Art 9/2 AA	Advertising of pharmaceutical products subject to special control (contained in group I), pharmaceutical products contained in group II and of pharmaceutical products that have no right to be present at Georgian market shall be prohibited .	

Art 10/4	News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.	Art 69/2 BRA	Prohibition of influence of a sponsor and provider of advertisement on the content and length of the programme The following programmes may not be sponsored : a) news programmes (except for sports round-ups and weather forecasts if they are broadcast as separate parts of programmes); b) programmes on political topics; c) programmes on consumer rights, electoral programmes or programmes directly related to electoral campaigns.	
<p><u>Comment – Sponsored programs</u></p> <p>The ASMD provides for specific requirements on sponsored programs, including their content and information that has to be provided to the viewers. These requirements are fully transposed into the BRA and AA. No gap was identified.</p> <p>The AMSD soft recommendation to prohibit sponsorship logos appearing in additional types of programmes such as children's programmes, documentaries and religious programmes, is to be considered.</p>				
Art 11/1	Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.	N/A		
Art 11/2	Product placement shall be prohibited .	Art 69 ¹ /1 BRA	Products (goods/services) may not be placed in programmes , <u>except in</u> :	
Art 11/3	By way of <u>derogation from paragraph 2</u> , product placement shall be admissible in the following cases unless a Member State decides otherwise : (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes; (b) where there is no payment but only the provision of	Art 69 ¹ /1 BRA	Products (goods/services) may not be placed in programmes , <u>except in</u> : a) feature films, television films, serials, series of a film (except for a documentary), sports and entertainment programmes (except for children's programmes); b) lotteries, and gambling and profitable games, when the goods/services are provided as a prize, without consideration	

<p>certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.</p> <p>The derogation provided for in point (a) shall not apply to children's programmes.</p>		<p>or other economic benefit in return.</p>	
<p>Programmes that contain product placement shall meet at least all of the following requirements:</p> <p>(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;</p> <p>(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;</p> <p>(c) they shall not give undue prominence to the product in question;</p> <p>(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.</p>	<p>Art 69¹/2 BRA</p>	<p>Products (goods/services) shall be placed in a programme so that they do not:</p> <p>a) influence the content of the programme, including the editorial independence of the broadcaster;</p> <p>b) contain a direct appeal to purchase the product;</p> <p>c) exaggerate the importance of the product.</p>	
	<p>Art 69¹/3 BRA</p>	<p>The placement of products (goods/services) in a programme shall be clearly identifiable. The placement of products (goods/services) shall be clearly indicated at the beginning and the end of the programme, and after each advertisement break or other breaks, in which products (goods/services) are placed.</p> <p>This requirement does not apply to <u>independent</u> programmes hosted by a broadcaster within a broadcasting network.</p>	
<p>By way of exception, Member States may choose to waive the requirements set out in point (d) provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.</p>	<p>Art 2/f BRA</p>	<p>independent programme - a programme in relation to which there is no interdependence between the copyright holder and a broadcaster</p>	

Comment – Product placement

Product placement is generally prohibited by the BRA in line with the requirements of the AMSD. The exceptions from the general ban, stipulated by the

AMSD, are also included in the BRA. No gap was identified.

Art 11/4	<p>In any event programmes shall not contain product placement of:</p> <p>(a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;</p> <p>(b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.</p>	<p>Art 69^{1/4} BRA</p> <p>Art 8/7 AA</p>	<p>Medicines and medical products that are dispensed on prescription may not be placed in programmes.</p> <p>Advertising of strong spirit drinks and tobacco products through radio and television, or on the front pages of newspapers and magazine covers shall be prohibited.</p>
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Comment – Product placement restriction

Pursuant to the BRA and the AA, medicinal products available only on prescription as well as tobacco products may not be advertised within product placement. Such ban is fully aligned with requirements of the AMSD. No gap was identified.

C Provisions applicable only to on-demand audiovisual media services

	AMSD		Georgian Legislation	Gap
Art 12	Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might <u>seriously impair the physical, mental or moral development of minors</u> are only made available in such a way as to ensure that minors will not normally hear or see such on-demand audiovisual media services.	N/A		
Art 13	Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote , where practicable and by appropriate means, the production of and access to European works . Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.	N/A		

Gap 12 – On-demand services

There is a gap concerning the absence of any provisions on on-demand services. We recommend that the corresponding provisions on the protection of minors and on the promotion of European works are adopted specifically for on-demand services once these are introduced in the law.

Action plan

Legislation: BRA

Section: New chapter of the BRA governing on-demand services (after the new Chapter on retransmission, i. e. new Chapter V² will be added (for Articles 47¹ et seq.)

Proposed change: Introduce regulation of on-demand services with all related obligations arising from the AMSD into the BRA.

Notes: In this respect, we acknowledge that the implementation of regulation of on-demand services will be very complex and will require a political consensus on the matter.

D Provisions concerning exclusive rights and short news reports in television broadcasting

	AMSD		Georgian Legislation	Gap
Art 14/1	Each Member State may take measures in accordance with Union law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events , national or non-national, which it considers to be of major importance for society . It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.	Art 58 BRA	<p>1. The Commission shall determine a list of major events on the basis of a public opinion poll and through public administrative procedures and shall publish it once every three years.</p> <p>2. Only broadcasters licenced and/or authorised in accordance with this Law may broadcast major events in the official language (languages) of Georgia on an exclusive basis.</p> <p>3. Exclusive broadcasting of major events shall be inadmissible, except for broadcasting of sports events, international festivals and contests. In these cases, exclusive broadcasting of major events is carried out by over-the-air broadcaster, the broadcasting network of which is available to at least 90% of the population of Georgia free of charge.</p>	
Art 14/2	Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of 3 months from the notification, the Commission shall verify that such measures are compatible with Union law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 29. It shall forthwith publish the measures taken in the Official Journal of the European Union and at least once a year the consolidated list of the measures taken by Member States.	N/A		

Art 14/3	Member States shall ensure, by appropriate means within the framework of their legislation, that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters after 18 December 2007 in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.	N/A	
<p><u>Comment – Broadcasting of major events</u></p> <p>The AMSD requires that events of major importance for society are not broadcasted on an exclusive basis in such a way as to deprive a substantial proportion of the public of the possibility to follow such events by live coverage or deferred coverage on free television.</p> <p>According to the BRA, exclusive broadcasting of major events is generally inadmissible. Exclusive broadcasting is only admissible in case of sports events, international festivals and contests. These must be available free of charge and at least for 90 % of population of Georgia.</p> <p>No gap was identified and no further action is required.</p>			
Art 15/1	Member States shall ensure that for the purpose of short news reports , any broadcaster established in the Union has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.	N/A	

Art 15/2	If another broadcaster established in the same Member State as the broadcaster seeking access has acquired exclusive rights to the event of high interest to the public, access shall be sought from that broadcaster.	N/A		
Art 15/3	Member States shall ensure that such access is guaranteed by allowing broadcasters to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.	N/A		
Art 15/4	As an alternative to paragraph 3, Member States may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.	N/A		
Art 15/5	Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.	N/A		
Art 15/6	Without prejudice to paragraphs 1 to 5, Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined, in particular, with respect to any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission. Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access.	N/A		

Gap 13 – Access to exclusive content

The AMSD provides that for the purpose of short news reports, any broadcaster with access to events of high interest to the public which are transmitted

by the broadcaster on an exclusive basis must be provided to other broadcasters on a fair, reasonable and non-discriminatory basis. The right to require access to such events extends to both undertakings from the same country as well as from other Member States.

We consider the absence of a corresponding right in the BRA to be a gap and recommend that the right to access to events of high interest to the public which are transmitted on an exclusive basis for the purpose of short news reports be included into the BRA.

Action plan

Legislation: BRA

Section: 58

Proposed change: We propose that the right to access to events of high interest to the public which are transmitted on an exclusive basis for the purpose of short news reports be included into the BRA.

Notes: /

E Promotion of distribution and production of television programmes

	AMSD		Georgian Legislation	Gap
Art 16/1	Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.	Art 51	A broadcaster shall, where possible, allot a part of television time (except for the time allotted for news, sports events and games, advertisement, teletext and teleshopping) for European products. This part of time allotted for European products shall be used progressively, on the basis of relevant criteria by taking into account the informational, educational, entertainment and cultural obligations of the broadcaster towards its audience.	Gap
Art 16/2	Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned. However, in respect of Greece and Portugal, the year 1988 shall be replaced by the year 1990.		Gap	
Art 16/3	Member States shall provide the Commission every 2 years, starting from 3 October 1991, with a report on the application of this Article and Article 17. That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 17 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it. The Commission shall inform the other Member States and the European Parliament of the reports, which shall be			

	<p>accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 17 in accordance with the provisions of the Treaty on the Functioning of the European Union. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.</p>			
Art 17	<p>Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria. It must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within 5 years of their production.</p>			
Art 18	<p>This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network.</p>			

Gap 14 – Promotion of European works

The AMSD requires that Member States reserve a major part of their transmission time for European works in order for informational, educational, cultural and entertainment purposes. The BRA is fully aligned with this requirement.

The AMSD further elaborates on this requirement by requiring that broadcasters, where practicable and by appropriate means, reserve at least 10 % of their transmission time or alternately, at the discretion of the Member State, at least 10 % of their programming budget for European works created by producers who are independent of broadcasters. No such specific obligation is imposed on broadcasters under the BRA. We assess this as a partial gap and recommend that the obligation to devote at least 10 % of transmission time or programming budget to European works of independent producers be considered to be added into the BRA.

Action plan

Legislation: BRA

Section: 51

Proposed change: We propose to amend the current wording of Article 51 BRA, aiming at promotion of European works (products), by adding the obligation to allocate at least 10 % of transmission time or programming budget to European works and/or local Georgian works of independent producers.

In this respect, we propose that the obligation to allocate the specific amount of transmission time or programming budget either explicitly includes “Georgian works“ in addition to “European works” (incl. definition of Georgian works) or that the BRA stipulates that any references to European works include also Georgian works.

Notes: Since there is already a general obligation to promote European works under the BRA already in place and since Georgia is not, in the strictly geographical sense, a European country, the obligations imposed on Georgia may in effect be more onerous compared to the other EU member states.

F Television advertising and teleshopping

	AMSD		Georgian Legislation	Gap
Art 19/1	Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping <u>shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.</u>	Art 63/4 BRA	Advertisement and teleshopping shall be clearly identifiable and clearly distinguished from programmes.	
		Art 64/3 BRA	On a broadcaster's channel, except for specialised advertising channels and/or teleshopping channels, at least 15 continuous minutes shall be allotted to a teleshopping window, which is transmitted in the form of a broadcasting programme. Teleshopping window shall be clearly identifiable and distinguished from other programmes.	

Gap 15 – Identificaton of ads and teleshopping

The BRA provides that the ads and teleshopping must be clearly identifiable and distinguished from programmes, which is compliant with the AMSD. The AMSD also requires an explicit obligation to keep the distinction by optical and/or acoustic and/or spatial means; such specific obligation is not in the BRA.

We assess this as a partial gap and recommend adding the explicit obligation to keep ads and teleshopping distinct form other parts by optical and/or acoustic and/or spatial means into the BRA.

Action plan

Legislation: BRA

Section: 63/4

Proposed change: We propose to supplement the wording of Article 63/4 BRA as follows:

Advertisement and teleshopping shall be clearly identifiable and clearly distinguished from programmes. **The advertising and teleshopping shall be kept quite distinct from other parts of a programme by optical, acoustic and/or spatial means.**

Notes: /			
Art 19/2	Isolated advertising and teleshopping spots , other than in transmissions of sports events, shall remain the exception .	N/A	
Gap 16 – Teleshopping as an exception			
<p>The AMSD further stipulates that isolated advertising and teleshopping spots (other than during transmission of sport events) must be an exception. No such obligation is provided for in the BRA.</p> <p>We consider this to be a gap and recommend that the obligation to transmit the isolated advertising and teleshopping spots only exceptionally be included in the BRA.</p>			
Action plan			
Legislation:	BRA		
Section:	64		
Proposed change:	We propose to include in the BRA the restriction that isolated advertising and teleshopping spots may be transmitted only exceptionally.		
Notes: /			
Art 20/1	Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.	Art 63/10 BRA	Advertisement or teleshopping may be broadcast on a broadcaster's channel between programmes , except on specialised advertising and teleshopping channels. Advertisement may also be placed within a programme as determined by this Law, so as to preserve the value of the programme.
Art 20/2	The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television	Art 63/11 BRA	11. Transmission of the following events and programmes may not be interrupted with advertisements and teleshopping : a) official state events, official statements of highest political

<p>advertising and/or teleshopping once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.</p>		<p>and public officials;</p> <p>b) religious ceremonies;</p> <p>c) programmes, including public and political, religious, and pre-election debate programmes, or documentaries that last less than 15 minutes.</p>	
	Art 63/12 BRA	In sports or artistic representations with natural breaks and in programmes dedicated to events conducted analogically, advertisements or teleshopping may be placed during natural breaks only.	
	Art 63/13 BRA	A news programme may be interrupted with advertisement or teleshopping not more than once every 30 minutes. (Shall enter into force from 17 January 2017)]	
	Art 63/14 BRA	Children's programmes that last less than 30 minutes may not be interrupted with advertisement or teleshopping, whereas children's programmes that last more than 30 minutes may be interrupted with advertisement once every 30 minutes .	
	Art 63/15 BRA	A feature film or television film or a series of a film (except for TV serials and documentaries) that last more than 30 minutes may be interrupted with advertisement or teleshopping not more than once every 30 minutes .	

Comment – Advertising during programmes

The AMSD requires that advertising and teleshopping inserted during programmes must not prejudice the integrity of the programmes. Further, according to the AMSD, transmission of films may be interrupted once for each scheduled period of at least 30 minutes. The relevant provisions of the BRA and the AA are aligned with these requirements and go even beyond them. No gap was identified.

Art 21	Teleshopping for medicinal products which are subject to a marketing authorisation within the meaning of Directive 2001/83/EC [on medicinal products for human use], as well as teleshopping for medical treatment, shall be prohibited.	Art 9/2 AA	Advertising of pharmaceutical products subject to special control (contained in group I), pharmaceutical products contained in group II and of pharmaceutical products that have no right to be present at Georgian market shall be prohibited .	
		Art 9/3 AA	<p>Advertising of pharmaceutical products contained in group III shall be permitted on the basis of prior agreement of the advertisement text with a competent body under the Ministry of Labour, Health and Social Affairs of Georgia, and in compliance with the following conditions:</p> <p>a) if advertisements of pharmaceutical products are disseminated in printed form, they must contain the following warning: 'Read the instructions before use. Consult your doctor for detailed information on the side effects';</p> <p>b) if advertisements of pharmaceutical products are disseminated in non-printed form, the warning information must be voiced;</p> <p>c) if pharmaceutical products are advertised on television, where the advertisement can be both visually perceived and voiced, the warning text must be visible (readable) for at least three seconds and must also be voiced;</p>	

Gap 17 – Promotion of medical products

Under EU law, advertisements must not promote any medicinal products that would be available only on prescription. Groups I and II of pharmaceutical products referred to in the AA include medicinal products available on prescription only, teleshopping for such products should be fully prohibited. Further, the AA only refers to advertising; the ban should be explicitly extended to teleshopping, and should cover the teleshopping for both the medicinal products and medical treatment.

Action plan				
Legislation:	AA			
Section:	9/2			
Proposed change:	Extend the current prohibition to promote the products in groups I and II to teleshopping, too.			
Notes:	/			
Art 22	Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:	Art 8/7 AA	Advertising of strong spirit drinks and tobacco products through radio and television, or on the front pages of newspapers and magazine covers shall be prohibited .	
Art 22/a	it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;	Art 8/4 AA	Addressing the advertisement of alcoholic beverages and tobacco products directly to minors , and dissemination of such advertisements in any form in a cinema and video halls, or radio and television programmes and print publications intended for minors, shall be prohibited .	
Art 22/b	it shall not link the consumption of alcohol to enhanced physical performance or to driving ;	Art 8/1 AA	Advertising of alcoholic beverages and tobacco products, irrespective of their method of dissemination, must not create an impression that consumption of alcohol or tobacco products contributes to the improvement of physical and mental states, or to the success in public life or in sport .	
Art 22/c	it shall not create the impression that the consumption of alcohol contributes towards social or sexual success ;			
Art 22/d	it shall not claim that alcohol has therapeutic qualities or that it is a stimulant , a sedative or a means of resolving personal conflicts;			
Art 22/e	it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;	Art 8/2 AA	Advertising must not discredit the abstinence from consuming alcohol or tobacco products. In addition, it must exclude information on their positive curative qualities .	
Art 22/f	it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.	Art 8/1 AA	Advertising of strong spirit drinks and tobacco products through radio and television, or on the front pages of newspapers and magazine covers shall be prohibited .	

Gap 18 – Advertisements on strong spirit drinks

The advertisements on strong spirit drinks (alcoholic beverages having high alcoholic content) are fully prohibited under the AA. Such ban is beyond requirements of the AMSD and thus compliant (as the AMSD provides only for minimum harmonisation). The AMSD further elaborates on the general requirements by specifying the context in which alcoholic beverages must not be promoted (creating an impression that they contribute towards social or sexual success, driving etc.). While the AA does address this partially (when referring to improvement of physical and mental state, success in public life or sport), we recommend that the specific situations are fully aligned with those listed in the AMSD.

Action plan

Legislation: AA

Section: 8/1

Proposed change: We propose that the wording of Article 8/1 AA is supplemented as follows:

Advertising of alcoholic beverages and tobacco products, irrespective of their method of dissemination, must not create an impression that consumption of alcohol or tobacco products contributes to the improvement of physical and mental states, or to the success in public life or in sport.

Advertising of alcoholic beverages shall not link the consumption of alcohol in particular to enhanced physical performance or to driving, create the impression that the consumption of alcohol contributes towards social or sexual success and shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts.

Notes: /

Art 23/1 The proportion of television advertising spots and teleshopping spots within a given **clock hour** shall **not exceed 20 %**.

Art 64/2
BRA

On a broadcaster's channel, except for specialised advertising channels and/or teleshopping channels, commercial advertisements and/or teleshopping spots shall be placed in the advertisement breaks so that their volume during the

Art 23/2	Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.		broadcasting hour does not exceed 20% . This restriction does not apply to statements of the broadcaster that are made with regard to its own and/or independent programmes, to products resulting from such programme or directly related thereto, or to sponsorship announcements and placement of a product (goods/service) in the programme.	
<p><u>Comment – Maximum amount of advertising spots</u></p> <p>Requirements of Article 23 AMSD shall be implemented into Georgian law by 1 September 2019. The BRA is fully compliant with the AMSD and no further action is thus needed.</p>				
Art 24	Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes .	Art 64/3 BRA	On a broadcaster's channel, except for specialised advertising channels and/or teleshopping channels, at least 15 continuous minutes shall be allotted to a teleshopping window, which is transmitted in the form of a broadcasting programme. Teleshopping window shall be clearly identifiable and distinguished from other programmes.	
Art 25	This Directive shall apply <i>mutatis mutandis</i> to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion.	Art 63/10 BRA	Advertisement or teleshopping may be broadcast on a broadcaster's channel between programmes, except on specialised advertising and teleshopping channels . Advertisement may also be placed within a programme as determined by this Law, so as to preserve the value of the programme.	
		Art 64/2 BRA	On a broadcaster's channel, except for specialised advertising channels and/or teleshopping channels , commercial advertisements and/or teleshopping spots shall be placed in the advertisement breaks so that their volume during the broadcasting hour does not exceed 20%. This restriction does not apply to statements of the broadcaster that are made with regard to its own and/or independent programmes, to products resulting from such programme or directly related thereto, or to sponsorship announcements and placement of a	

			product (goods/service) in the programme.	
Art 25	However, Chapter VI (Promotion of Distribution and Production of Television Programmes [Articles 16 – 18 AMSD]) as well as Articles 20 and 23 shall not apply to these channels.	Art 51 BRA	A broadcaster shall, where possible, allot a part of television time (<u>except for the time allotted for news, sports events and games, advertisement, teletext and teleshopping</u>) for European products	
Art 26	Without prejudice to Article 4, Member States may, with due regard for Union law, lay down conditions other than those laid down in Article 20(2) and Article 23 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.		<i>Public Broadcasters and Ajara TV, being a public TV, being intended solely for the national territory does not have to be obliged to meet requirements under Article 20(2) and 23 AMSD – requirements on lengths of programmes and proportion of advertising and teleshopping.</i>	
		e.g. Art 63/8 BRA	Teleshopping may not be broadcast on channels of the Public Broadcaster and the Ajara TV and Radio of the Public Broadcaster, whereas sponsorship and commercial advertisement may be broadcast only in exceptional cases as defined by Article 64 of this Law	

Comment – Teleshopping identification

The AMSD requirements for advertising and teleshopping contained in Articles 24 through 25 are fully reflected in the BRA. No gap was identified.

G Protection of minors in television broadcasting

	AMSD		Georgian Legislation	Gap
Art 27/1	Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.	Art 56/4 BRA	Broadcasting of pornography and programmes or advertisements abusing a citizen's and a person's dignity and his/her fundamental rights and that contain obscenity , are prohibited.	
Art 27/2	The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is <u>ensured, by selecting the time of the broadcast or by any technical measure</u> , that minors in the area of transmission will not normally hear or see such broadcasts.	Art 56/5 BRA	Broadcasting of programmes having harmful influence on the physical, intellectual and moral development of children and adolescents at times when they are most likely to be viewed or listened to , are prohibited.	
Art 27/3	In addition, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.	Art 56/6 BRA	Programmes or advertisements under paragraph 4 of this article (except for programmes or advertisement abusing fundamental human rights and freedoms) may be broadcast only in an encrypted form, on the basis of individual contracts with customers.	

Gap 19 – Protection of minors in television broadcasting

The AMSD provisions aimed at protection of minors are generally sufficiently reflected in the BRA; a minor supplement of the current wording of Article 56(4) BRA, specifically including a reference to gratuitous violence, should be considered.

The BRA does not explicitly require that programmes having harmful influence on the physical, intellectual and moral development of children and adolescents be preceded by an acoustic warning or identified by the presence of a visual symbol throughout their duration. We consider this a partial gap and recommend that the specific requirement that (unencoded) programmes with harmful influence are preceded by an acoustic warning or are identified by a visual symbol during their duration be added into the BRA.

Action plan

Legislation: BRA

Section: 56/6

Proposed change: Introduce an obligation that programmes which have harmful influence on the physical, intellectual and moral development of children and adolescents must be preceded by an acoustic warning or identified by the presence of a visual symbol throughout their duration into the BRA.

Notes: /

H Right of reply in television broadcasting

	AMSD		Georgian Legislation	Gap
Art 28/1	Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies . Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers .	Art 52/2 BRA	A person concerned, within 10 days after making an initial statement , including after giving facts , may request the respective broadcaster to correct or rebut untrue facts given in the initial statement using the <u>same means and format, which shall be of the same duration as the initial statement</u> and shall be made <u>nearly at the same time</u> as the initial statement was made.	
Art 28/2	A right of reply or equivalent remedies shall exist in relation to <u>all broadcasters</u> under the jurisdiction of a Member State.	Art 52/1 BRA	Broadcasters are committed to taking all necessary measures to achieve due accuracy of facts stated in programmes and to correct mistakes in a timely manner .	
Art 28/3	Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.	Art 52/2 BRA	A person concerned, within 10 days after making an initial statement , including after giving facts , may request the respective broadcaster to correct or rebut untrue facts given in the initial statement using the <u>same means and format, which shall be of the same duration as the initial statement</u> and shall be made <u>nearly at the same time</u> as the initial statement was made.	
Art 28/4	An application for exercise of the right of reply or the	Art 52/3	The right to correction and rebuttal shall not exist if:	

	equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil-law proceedings or would transgress standards of public decency.	BRA	<p>a) the request for correction or rebuttal is not submitted within 10 days after the initial statement has been made;</p> <p>b) the initial statement concerns a group of unidentified people or it does not allow direct identification of the complainant;</p> <p>c) correction or rebuttal is not directly related to the initial statement or the length, format and content of correction or rebuttal exceeds the limits that are necessary to correct or rebut the facts given in the initial statement through equal means and format, or the opinion, rather than the facts expressed in the initial statement, is corrected or rebutted;</p> <p>d) correction or rebuttal involves defamation or appeal prohibited by Article 24(4) or Article 26(3) of the Constitution of Georgia;</p> <p>e) correction or rebuttal unreasonably concerns a third party;</p> <p>f) the complainant fails to justify his/her/its legal interest.</p>
Art 28/5	Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review .	Art 52/4 BRA	The refusal of a broadcaster to correct or rebut untrue facts given in an initial statement through equal means and format may be appealed to the Commission or to a court .

Comment – Right of reply in television broadcasting

No gap has been identified regarding the right of reply in television broadcasting.

In addition, Article 52(3) BRA stipulates specific conditions when a right of reply does not apply. It might be taken into consideration whether Article 52(3)(a) BRA is not too restrictive. However, such time limits may be deemed necessary for legal certainty and may be also justified under the legal principle *vigilantibus non dormientibus jura inveniunt* (the law aids to those who are vigilant).

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