



To: Mr. Igor DODON
President of the Republic of Moldova

TRANSLATION

Mrs. Zinaida GRECEANÎ
President of Parliament of the Republic of Moldova

Mr. Ion CHICU
Prime Minister of the Republic of Moldova

Copy: H.E. Mr. Peter MICHALKO
Ambassador, Head of the European Union Delegation to the Republic of Moldova

H.E. Mr. Dereck J. HOGAN
Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Moldova

H.E. Mr. Oleg VASNETSOV
Ambassador Extraordinary and Plenipotentiary of the Russian Federation to the Republic of Moldova

Mr. William MASSOLIN
Head of Council of Europe Office in the Republic of Moldova

No. 22, 24 February 2020

Ref.: The deficiencies of the amendments to the Audiovisual Media Services Code

Dear Mr. President,
Dear Mrs. President of the Parliament,
Dear Mr. Prime Minister,

The American Chamber of Commerce in Moldova, National Association of ICT Companies, Foreign Investors' Association, which represent the business community of the Republic of Moldova, hereby express their concerns with the major repercussions, for the society and the image of the country, of the implementation of the amendment to the Audiovisual Media Services Code, which took effect on 1 January 2020, imposing on distributors (cable networks operators) the obligation to delete the advertisement and teleshopping from the retransmitted foreign audiovisual media services.

Unfortunately, the cable operators will have no choice than to stop the retransmission, and the Moldovan population risks being left without access to almost 100 channels or up to 50% of some cable operators' grid. These channels enjoy a large audience among the population of the Republic of Moldova.

Although the amendment adopted by the Parliament, initiated by the Chairman of the Commission for Culture, Education, Research, Youth, Sport and Media, has impact both on business and the entire population of the Republic of Moldova, it was not accompanied by a regulatory impact analysis and was not subject to public consultations.

Please note that this amendment breaches the international commitments undertaken by Moldova upon joining the Council of Europe Convention on Transfrontier Television, and namely that to guarantee freedom of reception and not to restrict the retransmission on their territories of program services which comply with the terms of the Convention, a commitment that has the goal of ensuring freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The new provisions impose on cable operators an improper and unfair task that is incompatible with their status of distributor of media services, as it is defined in the Audiovisual Media Services Code in accordance with the named Convention and Audiovisual Media Services Directive.

Pursuant to the Audiovisual Media Services Code, the audiovisual media service is under the exclusive editorial responsibility of the audiovisual media service provider, which exercises the effective control over the selection of the audiovisual contents. The distributors are authorized only to receive and simultaneously deliver the complete and unchanged audiovisual media service. Any interference by any persons (other than media services providers) in the contents, form or in the method of creation and presentation of the audiovisual programs and other elements of the audiovisual media services is prohibited by law. In addition, the contracts between media services providers and distributors require that the TV channels are retransmitted simultaneously upon receipt, in their entirety and without alteration, addition, deletion or delay.

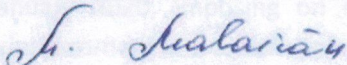
We reiterate that this change in the law will provoke the cessation of the retransmission of a huge number of favorite channels, including almost all channels for kids, majority of sports channels, almost all channels in languages of international circulation, majority of thematic channels, all channels of the interstate company MIR, in which the Republic of Moldova is a founder. This will have an enormous negative impact in the society, for the sector, as well as for the international image of the country.

In addition, we would like to draw your attention that there have been some "falsehoods" published in the press, which aimed to mislead the public opinion on this subject. More details on this subject can be found in the attached information note.

We hope that this problem will be solved in the interests of the population and the country, in accordance with international norms.

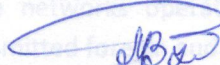
Yours faithfully,

American Chamber of Commerce in Moldova



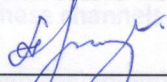
Mila Malairau, Executive Director

National Association of ICT Companies



Marina Bzovii, Executive Director

Foreign Investors' Association



Ana Groza, Executive Director

Information Note

On 19 December 2019, the Moldovan Parliament supplemented the Audiovisual Media Services Code, imposing on distributors (cable networks operators) the obligation to delete the advertisement and teleshopping from the retransmitted foreign audiovisual media services. This amendment was published on 27 December 2019 and took effect on 1 January 2020. Unfortunately, although the relevant draft amendment contained provisions with impact on entrepreneurial activity, it, contrary to the legal requirements, had not been accompanied by a regulatory impact analysis, had not been subject to a public consultation and, presumably, had not been sent for prior review to the Government.

The business community is concerned with the major repercussions that the implementation of this amendment could have for the country.

First, by this amendment the Republic of Moldova breaches its international commitments undertaken upon joining the Council of Europe Convention on Transfrontier Television, and namely that to guarantee freedom of reception and not to restrict the retransmission on their territories of program services which comply with the terms of the Convention, a commitment that has the goal of ensuring freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

According to the Explanatory Report to this Convention, the notion of program service relates to all the items within a given service, including advertising and tele-shopping, and a Party to this Convention is not entitled to rely on the specific provisions of its domestic broadcasting legislation in areas covered by the Convention, including advertising and tele-shopping, to restrict reception or to prevent the retransmission, on its territory, of a program service transmitted from another Party which complies with the provisions of the Convention.

Second, cable networks operators were imposed an improper and unjust task that is incompatible with their status of distributor of media services, as it is defined in the Audiovisual Media Services Code in accordance with the named Convention and Audiovisual Media Services Directive.

Pursuant to the Audiovisual Media Services Code, the audiovisual media service is under the exclusive editorial responsibility of the audiovisual media service provider, which exercises the effective control over the selection of the audiovisual contents of the audiovisual media service. The media services distributors are authorized only to receive and simultaneously or quasi simultaneously deliver the complete and unchanged audiovisual media service. Any interference by any persons (other than media services providers) in the contents, form or in the method of creation and presentation of the audiovisual programs and other elements of the audiovisual media services is prohibited by law. In addition, the contracts between media services providers and distributors require that the TV channels are retransmitted simultaneously upon receipt, in their entirety and without alteration, addition, deletion or delay. Also, many channels do not allow the contents of the retransmitted channels to be recorded.

The cable operators do not have the technical capability to record and/or edit properly the contents of the retransmitted audiovisual media services, not they intend to invest in the creation of such capabilities, because such investments are not viable from the economic point of view and cannot guarantee the total deletion of advertisement and teleshopping from the retransmitted channels.

Following the adoption of the above amendment, the cable operators sent a query to the providers of foreign media services containing advertisement or teleshopping or to their authorized persons in Moldova to find out if they could make available the respective media services in real time, but without advertisement and teleshopping. Distributors are still waiting for responses to this query, but some providers, which are under the jurisdiction of the parties to the above referenced Convention, have already complained about the illegality of such measure. Many providers, which have answered to this query, confirmed that they could not offer the channels in such conditions.

Consequently, the cable operators will have no choice than to stop the retransmission, and the Moldovan population risks being left without access to a huge number of favorite channels, including almost all channels for kids, majority of sports channels, almost all channels in languages of international circulation, majority of thematic channels, all channels of the interstate company MIR, in which the Republic of Moldova is a founder (in total, 97 channels or up to 50% of some cable operators' grid, the full list is enclosed). This will have an enormous negative impact in the society and upon the sector, as well as for the image of the country.

We note that there have been a number of cases when false information was given in the press, aimed at misleading the public opinion regarding this subject.

The first false information is that there used to be an identical legal provision, which was implemented by cable operators independently or with the support of third parties. In fact, the previous provision did not require the distributors to delete the advertisement and teleshopping from the retransmitted media services, but only prohibited them to retransmit foreign media services containing advertisement or teleshopping. However, this legal provision has never been enforced, for the same reasons that are mentioned above. Moreover, the Audiovisual Coordinating Council was mandated by another legal provision to publish a list of foreign program services permitted for retransmission in the Republic of Moldova, in which it included all channels transmitted from the participating countries to the Council of Europe Convention on Transfrontier Television.

The second false information relates to the fact that the EU Audiovisual Media Services Directive, which was transposed into the Moldovan Audiovisual Media Services Code, contains a similar obligation for distributors, which had the purpose of preventing „penetrating advertisement”. In reality, this Directive does not contain such provision. On the contrary, it encourages the free provision (circulation) of audiovisual media services between member states.

Another false information, which, regretfully, was taken over by the author of the draft amendment, is that distributors place independently advertisement and teleshopping, which affects the capacity of media services providers under the jurisdiction of the Republic of Moldova to attract revenues from placement of advertisement and teleshopping, which are necessary for the creation of their own audiovisual content and development of the domestic media services providers. Cable operators have never placed advertisement and teleshopping in the retransmitted audiovisual media services, because according to article 62 of the Audiovisual Media Services Code, the right to broadcast audiovisual commercial communications in exchange for a fee or similar remuneration belongs exclusively to the media services providers.

We understand the willingness of the author of the draft amendment to support the domestic media services providers by measures aimed at increasing their advertising revenues, although we have doubts that such goal could be achieved thanks to the recently enacted amendment. Still, we believe that such objective should not be pursued though violation of the international commitments of our country and

imposition of an improper and unfair obligation or restriction for companies from another sector of the economy (cable operators), to the detriment of the legitimate interests of the population.

In our opinion, the measure adopted by the relevant amendment is obviously disproportionate to the pursued goal. From a legal point of view, a distributor that interferes with the audiovisual contents of a retransmitted audiovisual media service ceases to be a distributor and becomes a media services provider and, therefore, is required to obtain a broadcasting license for the broadcasted channel and to comply with the provisions governing the structure (contents) thereof imposed by the Code. In addition, the abovementioned Convention provides for mechanisms for fighting the abuses („penetrating advertisement”), when a media services provider established in one country targets entirely or partially the territory (that is consumers) of the other country. The adoption of such amendment has created a dangerous precedent, because under the pretext of fighting the penetrating advertising, there could be, at some point in time, attempts to limit access to the internet, of which weight on the advertising market is constantly growing.

On 24 January 2020, cable operators sent a letter on this subject to the author of the draft, who is, concurrently, the Chairman of the Commission for Culture, Education, Research, Youth, Sport and Media of the Moldovan Parliament. Unfortunately, no response to this letter has been given yet.

Meanwhile, on 13 February 2020, the Audiovisual Council imposed penalties on the largest distributors for their failure to comply with the above obligation, ordering them to ensure such compliance within two weeks or face new penalties up to suspension of the authorization for retransmission.

In this context, we respectfully request ordering a moratorium on the enforcement of the relevant amendment and organization of a public debate on the platform of the interested Parliamentary Commissions (or other suitable platform) in order to identify fair, adequate and proportionate solutions to the concerns of the author of the amendment.

Notice

**The given list is relevant on 21.02.2020 and results from the responses received from the channel providers, as well as from the channel list identified by the CA. The list can be updated as a result of responses from all foreign media service providers.*

**List of foreign TV channels containing advertisement or teleshopping
in the grids of Moldovan distributors
(fall under the scope of Law no. 171 din 19 December 2019)**

- | | | |
|-------------------------|--------------------------|----------------------|
| 1. 1+1 International | 34. RAI 3 | 67. Индийское кино |
| 2. BBC World News | 35. România TV | 68. История |
| 3. Balkanika MTV | 36. RTL | 69. Кинокомедия |
| 4. Bolt | 37. Setanta Sports | 70. Киномикс |
| 5. Boomerang | 38. RTVi | 71. Киносерия |
| 6. Cartoon Network (RO) | 39. Sport 1 | 72. Киносвидание |
| 7. Cinema | 40. Sport 2 | 73. Кино ТВ |
| 8. CNN International | 41. Taraf | 74. Кухня ТВ |
| 9. Digi 24 | 42. Tisa 1 | 75. КХЛ |
| 10. Disney Channel | 43. Travel Channel | 76. Мама |
| 11. Drive TV | 44. Travel Mix | 77. МИР |
| 12. Euronews RU | 45. TV 1000 | 78. МИР 24 |
| 13. Eurosport 1 | 46. TV 1000 Action | 79. МИР Premium HD |
| 14. Eurosport 2 | 47. TV 1000 Balkan (RO) | 80. Моя Планета |
| 15. Etno TV | 48. TV 1000 Русское Кино | 81. Мульт |
| 16. Favorit TV | 49. TV 5 Monde | 82. Наука 2.0 |
| 17. France 2 | 50. TV Paprika | 83. Наше Новое Кино |
| 18. France 24 FR | 51. TV XXI | 84. Ностальгия |
| 19. France 24 EN | 52. Viasat Explore | 85. Шансон |
| 20. Fine Living | 53. Viasat History | 86. Охота и Рыбалка |
| 21. Fenix Кино | 54. Viasat Nature | 87. Родное Кино |
| 22. FEN TV | 55. Zee TV | 88. Ретро ТВ |
| 23. FenFolk TV | 56. U TV | 89. Русский Иллюзион |
| 24. KazakhTV | 57. Авто 24 | 90. Сарафан |
| 25. Minimax | 58. Авто Плюс | 91. Усадьба |
| 26. Național TV | 59. Драйв | 92. Успех |
| 27. National 24 Plus | 60. Еврокино | 93. Доктор |
| 28. News 24 | 61. Жара | 94. Детский |
| 29. Nicktoons Romania | 62. Живая Планета | 95. ТНТ Music |
| 30. Pro 2 | 63. Живи | 96. Любимое кино |
| 31. Pro GOLD | 64. Здоровое ТВ | 97. Bucuresti TV |
| 32. RAI 1 | 65. Иллюзион + | |
| 33. RAI 2 | 66. Интер + | |

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