

RESEARCH STUDY



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BUSINESS SELF-REGULATION IN BELARUS: THE CASE OF ADVERTISING BUSINESS – FROM DECLARATION TO IMPLEMENTATION

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Summary

According to recent legislative amendments, the principle of self-regulation is expected to become the foundation for engagement between the state and business in Belarus. However, to ensure a successful implementation of these intentions, it is necessary to complete considerable preparatory work. In this research study, we take the case of advertising business to elaborate an algorithm for the implementation of self-regulation and provide cross-sectoral recommendations for putting this principle in place. Given national characteristics, the ethical model is the most suitable basic option for self-regulation in advertising. To ensure the promotion of self-regulation in the Republic of Belarus as a whole, it is necessary to develop a form of incorporation for the self-regulatory organization (SRO), conduct audits of the functions of state bodies, study the preparedness of industries for SR, and provide a mechanism for initiating business self-regulation.

Introduction

On November 23, 2017, the Decree “On the promotion of entrepreneurship” was signed. It was one of the most anticipated documents in the past few years. The implementation of its provisions should create a framework for the development of business initiative and introduce a number of mechanisms that can ensure a quality improvement in the regulation of business. In particular, this refers to self-regulation (SR) – the principle, upon which engagement between the state and business should be based.

The implementation of SR cannot be automatic and keep to a certain template. Before proceeding to full-scale implementation of SR mechanisms, it is necessary to have solutions to a number of important issues. It is important to find out what role self-regulation can play in the process of interaction between the state and business, taking into account the peculiarities of the Belarusian context. That being said, it is necessary to define the tasks and functions of self-regulation and self-regulatory organizations in Belarus. It is the only way to avoid many mistakes.

Research methodology

Objective: To determine the most effective model for the implementation of self-regulation in Belarus, given the national peculiarities (based on the example of advertising business).

Tasks:

1. To study the theoretical foundations of self-regulation.
2. To get familiar with the experience of SR implementation in Russia and Kazakhstan.
3. To determine the extent to which this issue has been developed in the Republic of Belarus.
4. To highlight the problem area.
5. To develop general and sectoral recommendations.
6. To develop an algorithm for introducing self-regulation in advertising.

Research methods

The following methods were used in the study:

1. Analysis of theoretical concepts and legislation

The method allowed identifying the main approaches to self-regulation, as well as studying the legislative framework of SR in Kazakhstan, the Russian Federation, and the Republic of Belarus.

2. Focus group

The method was used to verify the conclusions and recommendations (general and industry-specific) obtained from the study.

Representatives of the following organizations were involved in the focus group:

- Ministry of Anti-trust Regulation and Trade
- Council for the Development of Entrepreneurship
- Association of Advertising Organizations
- Belarusian Television and Radio Broadcasting Company
- LLC Optimum.by
- Foreign Unitary Enterprise “British American Tobacco Trading Company”
- Association “Brewers’ Guild of Belarus”

The focus group was conducted on November 24, 2017 from 9:00 to 11:00. Written and oral invitations had been sent to the participants. The results of the focus group are provided in Annex 1.

Theoretical aspects

In most countries of the world, SR is understood as a system operating within the framework of “smart regulation”. This system is aimed to:

- either replace some of the state functions of regulation and control of various aspects of entrepreneurial activity by special organizations – SROs; or
- improve the effectiveness of regulation of a particular business sector in the format of co-regulation (joint regulation of an industry by business and the state).

For example, the understanding of self-regulation as a system of state substitution is common for American practice. In its study “Self-Regulation in

Today's Securities Markets: Outdated System or Work in Progress?" the U.S. organization Center for Financial Market Integrity defines self-regulation as "a system that regulates relationships in the entrepreneurial community in order to avoid direct state intervention or regulation." Consequently, the main objective of self-regulation is to achieve such efficiency of regulation in an industry, which would require no or minimum intervention of the state.¹

In European practice, self-regulation is understood as such a model of industry regulation that allows the optimum combination of state and private positions, thereby achieving a balance of interests.² Self-regulation is seen as a mechanism for achieving the most effective regulation of the industry, rather than an instrument to "restrain" the state. As part of this approach, self-regulatory organizations aggregate and articulate the interests of an industry business community with respect to industry regulation issues, develop standards and norms, and monitor compliance.

A similar model was developed in some countries of the Eurasian Economic Union (EEU). In the Russian Federation and the Republic of Kazakhstan, the institution of self-regulation has already been implemented in certain sectors. Self-regulation in those countries is aimed at achieving regulatory efficiency and developing industry standards and requirements for business:

*"Self-regulation is understood as an independent and proactive activity that is carried out by entrepreneurial or professional entities and constitutes the development and establishment of standards and rules for the said activity, as well as monitoring of compliance with the requirements of these standards and rules."*³

Similar characteristics of self-regulation are also envisaged in the applicable Kazakh legislation.⁴

Therefore, it is possible to single out several basic characteristics inherent in self-regulation as a system, regardless of national or regional specific features.

First, there is a consensus of all stakeholders: government agencies, private companies and consumers about the need for self-regulation in an industry.

Second, the establishment of independent SROs.

Third, independent regulation of the industry (the range of regulation can vary substantially) by business entities through the delegation of these powers to a

¹ <http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2007.n7.4819>

² <http://www.easa-alliance.org/sites/default/files/Guide%20to%20Setting%20Up%20an%20SRO%20%282008%29%20-%20Russian%20version.pdf>

³ Federal Law of the Russian Federation dated 01.12.2007 N 315-FZ (as amended on 03.07.2016) "On self-regulatory organizations" (amended and revised as of 01.10.2016).

⁴ Law of the Republic of Kazakhstan dated 12 November 2015 No. 390-V "On self-regulation."

self-regulatory organization.⁵

There are three main models of self-regulation.

Model envisaging full transfer of functions from state bodies to SROs

Within the framework of this model, the functions regulating the industry are transferred from a state body (bodies) to a self-regulatory organization. Furthermore, such an SRO is also entitled to develop standards and regulations for the industry.

Model envisaging partial transfer of functions to SROs

The model assumes a partial transfer of functions (for example, licensing or issuance of special permits) to self-regulatory organizations, which also perform the function of developing internal industry rules and standards. The model is common for the European practice.

“Ethical regulation” model

The model envisions that self-regulatory organizations perform functions to develop ethical norms and standards for doing business in an industry and monitor their implementation.

It should be understood that these models can be inherent in both the national system as a whole and individual industries, depending on the conditions of a specific economy or industry.

When it comes to the implementation of the institute of self-regulation in Belarus, it is necessary to understand that the process is at the initial stage. No goals, tasks, model, or actors of self-regulation have been identified. This means that the effective implementation of the principle of self-regulation declared in the Decree “On the promotion of entrepreneurship” calls for a number of preparatory arrangements. They will allow determining the optimum characteristics for the Belarusian model of self-regulation, identifying industries that are ready for this system, and codifying the functionality of self-regulatory organizations, etc. They will also help channel the efforts of all stakeholders in the right direction.

Self-regulation in Russia and Kazakhstan: the example of two implementation models

The experience of the Russian Federation shows that the lack of elaborated mechanisms for introducing SR into practice can lead to significant problems and the need for fundamental changes in the medium term.

⁵ The implementation of the self-regulatory system can be both static (initially selected and persisting model) and dynamic (development is accompanied by a transition from one model of self-regulation to another).

The SRO institute was codified in the Russian Federation on December 1, 2007, although this term was first fixed in the legislation on the securities market back in 1996. The first business areas with mandatory membership were arbitration managers, valuation activities, and professional activities in the securities market.

However, as early as 2014, it was decided that significant changes in the system of self-regulation were needed, alongside the development of a concept for improving self-regulation. The move was prompted by the problems that manifested themselves during the development process. The main purpose of the introduction of self-regulation in Russia was the transfer of licensable activities to the self-regulatory domain. It was assumed that this function of state agencies could be completely transferred to SROs. The business community became the main initiator of the process. At the same time, some issues had not been considered as thoroughly as they should have been, including the transparency of the operation of these organizations, the mechanism for assessing the need for the transfer of state functions to SROs, preparatory arrangements for the introduction of self-regulation. As a result, SROs became commercialized (in fact, the operation of many SROs was reduced to selling permits and licenses), and goals and objectives of self-regulation were deformed.⁶ Therefore, instead of improving the effectiveness of industry regulation, SROs started to be created and operated with the sole purpose of strengthening the position of individual market players, as well as introducing measures to mitigate competition and boost profits.

For example, in the construction industry, Russian researchers identified the following challenges that were observed in the development of SR⁷:

- 1) creation of barriers to entry into the industry;
- 2) lack of trust of society in the ability of professional associations to independently ensure the regulation of the construction industry and effectively monitor compliance with the established standards and rules;
- 3) increase in the volume of reporting for SRO participants;
- 4) unwillingness of construction organizations to send their most competent and active employees to work for SROs;
- 5) contradictions between the mission to protect the interests of SRO members and the need to act in the interests of the population of the Russian Federation.

⁶ http://www.info.e-c-m.ru/magazine/63/eau_63_46.htm

⁷ I.V. Drozdova. Problems of Self-regulatory Organizations (SROs) in Construction // PSE. 2012. No. 1. URL: <http://cyberleninka.ru/article/n/problemy-samoreguliruemyh-organizatsiy-sro-v-stroitelstve> (available as of: 19.11.2017).

A different situation was observed in Kazakhstan. When self regulation was introduced and developed, the focus was on the transfer of state functions (not only as far as the licensing system is concerned). Therefore, the original plan was to delegate a broader range of powers to self-regulation. For this purpose, the mechanism for their transfer, as well as the operation of SROs, was elaborated in more detail. The move to introduce self-regulation had been initiated by certain state agencies.

Business self-regulation became part of the official agenda in the Republic of Kazakhstan following the preparation and presentation of the action plan “100 Steps to 5 Institutional Reforms.” Step 97 of this plan envisages that the transfer of state functions to the competitive environment and self-regulatory organizations will be carried out annually, through the following stage-by-stage activities:

Stage 1 – stock-taking of functions;

Stage 2 – posting of the list of functions on the website and public hearings;

Stage 3 – analysis of market preparedness;

Stage 4 – review of the list of functions at a meeting of the standing commission (SC);

Stage 5 – transfer of functions to the competitive environment.

In addition to the detailed regulation of the mechanism ensuring the transfer of functions, Kazakhstan’s legislation also established the gradual, time-phased introduction of self-regulation. According to the law of the Republic of Kazakhstan “On self-regulation,” which came into effect in 2016, the primary functions of self-regulatory organizations include the development and approval of rules and standards binding for SROs members (participants), monitoring of compliance by SROs members with these rules and standards, as well as terms and conditions of SROs membership. The law also defines two types of self-regulation: self-regulation based on voluntary membership and compulsory membership self-regulation.

At the same time, self-regulation based on mandatory membership is established in the business areas associated with the implementation of state functions or the need to delegate functions performed by state agencies.

As for the results of the annual operation of self-regulation in Kazakhstan, the following issue arose and should be considered:

- 1) Lack of interest of state authorities in delegating their functions to self-regulation;
- 2) The state is still undecided on the limits of interference in the socioeconomic sphere;

3) The prevalence of traditional methods for the implementation of state policy, reluctance of local officials to adjust the established regulation model, and fear of losing state control.⁸

As you can see, the lack of consensus concerning the role and functionality of SROs, along with the fear of local officials of losing their power have reduced the effectiveness of self-regulation in Kazakhstan.

Therefore, the cases of Russia and Kazakhstan represent two different approaches to the introduction of self-regulation, which is what makes them interesting to Belarus. In Russia, the main initiator was the business community; however, there was no elaboration of the institutional foundations for the operation of such a system, which led to a deformity of self-regulation. In Kazakhstan, though, where the move was initiated by individual state organizations, the main issue was the lack of consensus on the operation of SROs in the system of public administration as a whole.

Consequently, taking into account the experience of Kazakhstan and the Russian Federation, it is possible to formulate several challenges that should be in the focus when implementing self-regulation:

- It is necessary to provide a toolkit that can ensure the independence of the operation of self-regulatory organizations.
- It is important to prevent the commercialization of their activities.
- It is necessary to avoid the formalization of the activities of self-regulatory organizations.
- Consensus of all parties is required – the state, business, and consumers of services.
- It is necessary to develop a mechanism that allows businesses to initiate SR implementation in an industry.

Status quo in Belarus: elaboration of the topic in question

In the Republic of Belarus, the issue of business self-regulation is not a new one despite relatively rare references in the media and in official rhetoric. However, in terms of the level of elaboration and the depth of the research of the topic concerned, Belarus clearly lags behind Kazakhstan and Russia. One of the features of the evolution of self-regulation in Belarus is the significant role of external factors.

⁸ <http://atameken.kz/ru/news/25682-samoregulirovanie-v-kazahstane-byt-ili-ne-byt>

The “pilot version” of the SRO in Belarus is probably the Association of International Road Carriers (BAMAP), which back in 1998 was delegated the function of issuing TIR carnets (documents entitling their holders to transport goods across state borders under the simplified procedure) for carriers from the Ministry of Transport pursuant to a resolution of the Council of Ministers. The reason for such a move was the need to ensure the implementation in the country of the Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) dated November 14, 1975.⁹

Similar situations were observed in a number of subsequent events associated with the legal implementation of SR in Belarus. In general, in our opinion, the process of the introduction of self-regulation into legal practice can be divided into two phases: concept preparation (general regulation) and transition to sectoral SR implementation (industry regulation).

The commencement of the first stage was marked by the signing of Resolution of the Council of the Interparliamentary Assembly of the CIS Member Nations dated October 31, 2007 No. 29-7 “On the model law ‘On Self-Regulatory Organizations’”. That document declared the need for the development of business self-regulation in the CIS and also codified the basic principles for the development of this system. However, at the national level, the initiative to promote self-regulation was first mentioned only as late as 2011 in Resolution of the Board of the National Bank of the Republic of Belarus No. 73 “On the approval of the strategy for the development of the banking sector of the economy of the Republic of Belarus for 2011-2015.” The document included initiatives to develop self-regulation within the framework of banking activities, without any indication of specific details. It was assumed that the mechanisms of self-regulation would be approved in more detail in the relevant law, which started to be drafted by the state authorities in 2011. The proposed version of the law did not suit a portion of the business community and the government machine. As a result, the document was never implemented.

In 2012, the Council of Ministers of the Republic of Belarus adopted the resolution “On the program of state support for small and medium-sized entrepreneurship in the Republic of Belarus for 2013-2015,” approved arrangements for the development and publication of scientific and practical manuals, and methodological materials on the development of self-regulation mechanisms in foreign countries. The final phase of that stage was the preparation of a draft concept of self-regulation. The demand to develop such a document was contained in Decree of the President of the Republic of Belarus dated January 3, 2013 No. 1 “On the approval of the plan for drafting bills for 2013.” The corresponding concept was prepared, but it was not promoted any further.

⁹ Resolution of the Council of Ministers of the Republic of Belarus dated 29.12.1998 No. 1996 “On arrangements to implement the Customs Convention on the International Transport of Goods under Cover of TIR Carnets.”

One can assume that one of the reasons for abandoning the concept was the general nature of its provisions, as well as the lack of development of industry implementation. In the future, the uniform self-regulation model (implied by the concept) was rejected in favor of sectoral phased implementation.

The second stage of the legal implementation of SR started 2014, when the Decree of the Interparliamentary Assembly of the Eurasian Economic Community¹⁰ recommended that all member states develop and adopt the Law “On self-regulatory organizations.” During that period, the topic of self-regulation became increasingly relevant at the level of the CIS Executive Office. In 2015, the CIS Interparliamentary Assembly developed a number of model laws: “On entrepreneurship”, “On auditing”, “On the new version of the model law ‘On tourist activities’”, etc., which contained provisions for the development of self-regulation in the core segments.

Despite the initiation by the CIS and the EurAsEC, the provisions on self-regulation appeared in Belarus as late as in the Law “On securities market”, which for the first time in the Belarusian legislative practice introduced the definition of the self-regulatory organization.¹¹ The document also had it that the provision of tax consulting services would be performed based on the principles of self-regulation. The highlight of that period was the approval of the declaration on the need to develop business self-regulation in Belarus in Presidential Decree No. 7 dated November 23, 2017 “On the promotion of entrepreneurship.”

Therefore, there is an obvious interest of the state in the system of business self-regulation, as well as in the formation of some of the fundamental aspects of this institution. However, despite this, to date, the issues related to the methods and mechanisms for the implementation of this system have not been worked out. That is, the opinion about the need for the development of the system of self-regulation in Belarus has been formed and codified at the legislative level; legislative options have been put forward; however, an important element is missing – the technical aspects of implementation. Without their elaboration, there is a risk of codifying SR as a mere declaration or failing to achieve the goals and objectives of self-regulation.

¹⁰ Resolution of the Interparliamentary Assembly of the Eurasian Economic Community dated 17 April 2014 No. 16-12 “On recommendations to harmonize the national legislation of the EurAsEC member-states in advertising (based on the comparative legal analysis of the national legislations)”

¹¹ Non-profit organization established in accordance with the legislation of the Republic of Belarus as an association (union), based upon membership and bringing together professional securities market players on a voluntary basis.

SR challenges in Belarus

Therefore, based on the examined experience of the introduction of self-regulation in the Russian Federation and Kazakhstan, as well as the implementation of SR in the Republic of Belarus, a number of challenges can be identified.

1. Distortion of the understanding of self-regulation

One of the fundamental issues is the understanding of self-regulation as an additional function of business unions and associations. However, this understanding contradicts both the main goal of self-regulation – effective industry regulation – and the principle of this system – the independence of its operation. The main task of business unions and associations is to represent and assert interests of business, build a dialogue between state bodies and entrepreneurs (which is essentially the lobbying of interests). The aim of self-regulatory organizations, on the other hand, is not to represent interests, but to ensure the most effective regulation in an industry, and as a result, to increase the welfare of society. Furthermore, in its activities, an SRO should be as independent of all stakeholders – the state, business, and consumers – as possible. This allows achieving the balance of public and private interests in industry regulation. If business unions and associations are given the functions of self-regulation, conflicts of interest and the deformation of regulatory independence will be inevitable at the level of the legal nature of non-profit associations.

2. Preparedness of business sectors for self-regulation has not been examined

The opinion of business regarding the necessity of the implementation of self-regulation has not been studied yet, which makes it impossible to determine the level of support for this aspect by the business community. In addition, for the same reason, it is impossible to draw a conclusion about the industries that appear to be better prepared for self-regulation. In conditions of directive initiation of self-regulation¹², these factors cause increased risks (non-acceptance of self-regulation by business, inefficiency / low efficiency of SROs, lack of confidence in decisions made by SROs, failure of the industry regulation process) that will negatively impact the implementation of self-regulation in practice.

3. Belarusian legislation does not provide for any procedure to initiate self-regulation by business

As the research study by the “Liberal Club” “Dialogue between the state and business: in search of balance”¹³ showed, the existing instruments of interaction

¹² The mechanism for initiating self-regulation by business entities is not codified in the national legislation.

¹³ <http://liberalclub.biz/%D0%B4%D0%B8%D0%B0%D0%BB%D0%BE%D0%B3-%D0%B3%D0%BE%D1%81%D1%83%D0%B4%D0%B0%D1%80%D1%81%D1%82%D0%B2%D0%B0-%D0%B8-%D0%B1%D0%B8%D0%B7%D0%BD%D0%B5%D1%81%D0%B0-%D0%B2-%D0%BF%D0%BE%D0%B8%D1%81%D0%BA%D0%B0-2/>

between these actors are ineffective, which narrows business opportunities for communicating opinions to state agencies. This complicates the possibility for the business community to initiate industry self-regulation. Furthermore, there is no established algorithm of actions and neither is there a list of requirements for such an initiative. Therefore, in the absence of a clear and understandable procedure, there is no alternative to directive initiation in Belarus. This state of affairs is a significant hindrance to the development of a system, in which the opinion and the desire of business play a critical role.

4. Audit functions are missing

To determine the operational model – which functions of state agencies could possibly be delegated to SROs in the long run – it is necessary to audit functions. This procedure will determine which powers of state bodies will work more effectively within the framework of self-regulation. Its absence dooms SR to operate exclusively within the limits of the ethical model.

5. Form of incorporation for SROs has not been elaborated

The Belarusian legislation does not provide for any form of incorporation suitable for the functionality of a self-regulatory organization. According to the Civil Code of the Republic of Belarus, public associations, unions and associations can operate as organizations with voluntary or compulsory membership. Only associations of citizens, but not legal entities can operate as public associations, which is unacceptable for a self-regulatory organization. According to the applicable law, associations and business unions are established “for the purpose of coordinating their activities, representing and asserting common interests,” which does not correspond to the purpose, tasks, and functions of an SRO. Therefore, the implementation of the system of self-regulation is possible after appropriate amendments have been made to the Civil Code.

Algorithm for the implementation of self-regulation in advertising

Given the existing problems, the research study has developed an algorithm for implementing self-regulation in advertising activities. In our opinion, the implementation of the measures envisaged in the algorithm will enhance the efficiency of the implementation and operation of SROs, as well as reduce the impact of negative factors.

Block 1. Auditing the functions of a state body

It is planned to audit the functions of a state body (bodies) that is (are) responsible for the regulation of the industry, which is designated for the introduction of self-regulation. The audit of public functions is a package of arrangements to analyze the powers of a state body that are put in place with a view to ensuring the optimization of these powers. This process will make it possible to determine the correspondence of functions with the goals and tasks of the government body in question, as well as the effectiveness of their implementation.

As a result of such an audit, two groups of functions will be distinguished:

- 1) functions assigned to a state authority;
- 2) functions that can be transferred to the competitive environment or cancelled.

In order to identify the functions that can be delegated to an SRO, it is proposed to conduct a Regulatory Impact Assessment (RIA) of the second group of functions to identify the effectiveness of such a transfer and the consequences for the industry. This way, the RIA will justify the delegation of functions to the SR domain.

One example of audit methodology is Order of the Minister of the National Economy of the Republic of Kazakhstan No. 84 dated February 27, 2017 “On the approval of the methodology for conducting sectoral (industry) functional reviews of government agencies.” The document outlines the stages, participants, and ways of the implementation of the procedure.

Arrangements that need to be put in place within the framework of the block:

Step 1. Audit of functions of a state authority.

Step 2. Stock taking of functions: what relations and subjects are affected by its operation, the identification of those responsible for implementation, and a detailed description.

Step 3. Assessment of the regulatory impact of functions.

Block 2. Coordinating interests

This stage is aimed at determining the interests and preparedness of a respective state body, business, and society for the implementation of self-regulation in an industry. It is proposed to hold meetings of public advisory councils (under respective state authorities), public hearings, and sessions of working groups in order to have opinions and proposals of the main stakeholders. This information will allow assessing the level of consolidation of opinions and interest in self-regulation of a state body, business and society.

Furthermore, at this stage, it is necessary to develop criteria for an industry's preparedness for self-regulation. For example, self-regulation in an industry can be implemented provided that a certain proportion of companies join industry unions (associations). Also at this stage, the bodies of the future SRO, financing and reporting methods, as well as other important aspects of the establishment and operation should be considered.

Arrangements that need to be put in place within the framework of the block:

Step 4. Publication of the findings of the audit and RIA of functions. Organization of sessions of public advisory councils and public hearings.

Step 5. Assessment of the preparedness of the market for SR. This stage envisages the formation of readiness criteria, analysis of the compliance of the market with the established criteria, assessment of the level of consolidation of all entities (based on the results of the previous step) with regard to the need for self-regulation.

Step 6. Formation of the SRO structure. The business community in association with the respective state authority prepares a draft structure of the organization, financing, and reporting methods, and other important aspects of the organization and operation of an SRO.

Block 3. Developing a draft regulatory legal act. The draft should provide additions to the fundamental industry legislation. In our case, it can take the form of a new chapter in the Law "On advertising", which will ultimately codify the concept, role, and place of the SRO with respect to the state, business, and society. The project preparation process must take into account the results of the previous steps and be as transparent as possible.

Arrangements that need to be put in place within the framework of the block:

Step 7. Preparation of a draft regulatory legal act.

Conclusions

Given the existing framework, it is only possible to consider the directive method of initiating self-regulation in the Republic of Belarus. It envisages not only the dominant role of the state in the initiation and subsequent implementation of the system, but also the significant dependence of the future development of the system on the interest of the state. One of the factors contributing to the development of this interest is the process of the streamlining of the machinery of government. If this process enters the active phase, which consists not only in reducing the size of the administration, but also in delegating functions to the competitive environment, self-regulation can develop in Belarus.

Figure 1. Algorithm for the implementation of self-regulation in advertising

Further, the effective development of this system calls for a number of preconditions. First and foremost, it is important to develop and put in place a number of preparatory measures (arrangements) capable of channeling the process of SR implementation in the right direction. In our opinion, the abandonment of the standardized model in favor of that sectoral (which can be observed in the latest initiatives of the state) is the most acceptable option for the development of events.

Sectoral SR development in the framework of the ethical model with the possibility of further transition to other models will make it possible to gradually establish a system that would take into account all of the national characteristics and interests of all stakeholders. Today it is inadvisable to consider the possibility of delegating state functions to self-regulatory organizations for a number of reasons. First, at the moment, no audit of the functions of state agencies has been carried out. It is therefore not clear which powers of state authorities should

be transferred to the competitive environment, in particular to SROs. Second, the sectors, in which it is currently possible to promote self-regulation, have not been defined. Third, the form of incorporation suitable for the self-regulatory organization has not been identified and approved yet. Fourth, in conditions when self-regulation is introduced “from the top-down” and there is no toolkit for identifying private initiative in establishing SROs, it is inefficient and risky to transfer government functions.

Given that the introduction of SR is still at the level of concept and has not been properly worked out, these conclusions can be applied to the advertising sector. At the same time, the process of SR implementation in advertising call for addressing more specific issues. These include, among others:

- Membership
- Functionality
- Ensuring the independence from the state and the business community

Recommendations

General

- 1) Use the sectoral approach as the fundamental principle for the implementation and operation of self-regulation in the Republic of Belarus. This mechanism envisages the rejection of standardized practices for all industries in favor of determining the proper model and characteristics of self-regulatory organizations for each specific area. This is justified by the various degree of readiness of business sectors for self-regulation (presence of a consolidated opinion, activity of business unions and associations, level of engagement between business and state structures).
- 2) Intensify the process of the auditing of the functions of state bodies, taking into account the SR capacity. Without the identification of the functions of state agencies that can be delegated to the competitive environment and their subsequent transfer, the evolution of the SR system will be impossible.
- 3) Conduct a study of business sectors, as well as industry departments to identify their readiness for self-regulation.¹⁴
- 4) Develop and codify in the applicable legislation the mechanism for initiating the introduction of self-regulation by the sectoral business community. This will help identify initiatives for the implementation of SR coming directly from

¹⁴ Below are SR preparedness criteria for an industry.

business, which reduces the risks of directive implementation. At the same time, business unions, associations and state authorities need to make efforts to popularize self-regulation. The findings of the study showed that today the level of awareness of the essence of SROs is extremely low.

- 5) To create a new form of incorporation entitled the “self-regulatory organization” by introducing amendments to the Civil Code of the Republic of Belarus and vest in SROs the exceptional power to exercise sectoral SR functions.
- 6) Sectoral implementation of SROs should be based on the rejection of the framework law. This will make it possible for the legislative act to factor in all features, individual characteristics, and prospects for the development of SROs in a specific industry. This will also contribute to the quality of the implemented arrangements, as well as the stability of legislation.

Sectoral

- 1) Given the lack of certainty with respect to the transfer of functions of state bodies (audit of these functions has not yet been conducted), the basic ethical model of self-regulation should be used. It will allow implementing SR with the least negative consequences (conflict of interest, organizational weakness, and corruption component) and pave the way for further development of this form of smart regulation in a specific industry and in Belarus.
- 2) Give up on mandatory membership in favor of voluntary engagement for the purpose of shaping a positive image of self-regulation among business entities. In conditions of the low awareness of the essence of SROs and benefits of self-regulation, mandatory self-regulation can be perceived extremely negatively by the business community.
- 3) Introduce the newly established self-regulatory organization in the interagency advertising council, as well as the respective public advisory council. This move will facilitate the integration of its structure into the decision-making process within the framework of industry regulation, which will have a positive impact on both the quality of decisions made by the state and the status and level of awareness of SROs.
- 4) Refrain from including representatives of government bodies, representatives of business and core business associations in the management of newly established self-regulatory organizations. This will enhance the independence of decisions made by an SRO.
- 5) When implementing SR, include the algorithm developed within the framework of the study.

ANNEX 1. Results of the focus group

Participants in the focus group were asked nine questions related to the implementation and operation of self-regulation. The questions were ranked from general (self-regulation in general) to specific (advertising industry issues). The goal of the focus group was to verify the conclusions and recommendations generated as a result of the study.

When asked about the **understanding of self-regulation** the majority of participants in the focus group gave the opinion that SR is independent regulation by business of its respective industry, based upon the principle of responsibility for decisions taken and their implementation.

According to the respondents, the rules for the operation of the industry should ideally be formed by the business community, not by the state. Nevertheless, as participants in the focus group noted, it is possible to achieve this only in the medium or long term – Belarus will see true self-regulation a lot later. To implement the self-regulation system, three conditions must be met:

1. The state can delegate its powers.
2. The state must recognize the decisions taken by business within the framework of self-regulation.
3. Business is ready to take responsibility and independently regulate the respective industry.

When it comes to the **orientation of self-regulation** (whether regulation implemented by an SRO should be broad or narrow), most of the focus group agreed that the state should regulate general matters. Branch-specific standards and rules should be the domain of self-regulatory organizations. These standards must be stipulated in special industry rules. According to one of the respondents, experience shows that it is business that can create high-quality rules and norms. The question is how to involve it in this process, and it is self-regulation that can become a tool for this.

Asked about the **criteria for an industry's readiness for self-regulation**, the respondents identified the following aspects:

- Availability of an efficient and effective platform for dialogue between business and the state, making it possible to communicate the opinion of business to the state. This factor attests to the readiness of these actors to perceive each other's proposals and problems, and – consequently – the level of confidence in regulatory issues.
- Excessive regulation in the industry, in which the state is unable to fully exercise its powers. This situation demonstrates the need and, possibly, the willingness of the state to have its functions “privatized.”

- The degree of public hazard. If the subject of regulation is socially hazardous relations / goods / services, the sphere should be unfailingly regulated by the state.
- The ability of a significant number of private players to independently develop, establish, monitor, and comply with norms and standards.
- Existence of effective informal organizations with a broad representation: associations and business unions. This shows the ability of business in the industry in question to consolidate its views and interests, as well as its participation.
- Presence of opinion leaders in the industry, who esteemed by both the state and the business community.
- The existence of a shaped initiative from business. The state, according to respondents, should receive a signal from the business about the readiness to assume responsibility for regulation by the industry.

The participants expressed a consolidated opinion about the **need for sectoral implementation of self-regulation (a separate legislative act for each industry that will individually regulate the implementation process and the basic rules of self-regulation)**. As a supplement, one of the respondents noted that the development of a separate general law was also indispensable, because it would become a “signal” for all sectors and consolidate the framework conditions for the development of self-regulation.

When asked about the **need to create a mechanism for initiating self-regulation by the business community**, all of the respondents responded positively. The mechanism will allow businesses to understand which way to go and how to achieve their goal. This will create clear and understandable requirements. With such a mechanism, the authorities will be unable to reject a consolidated business initiative. In turn, the business community will show readiness to take responsibility for the regulation of its industry.

The respondents were divided on the **need for the new form of incorporation – “self-regulatory organization.”** Most of the participants had a negative attitude to the concept, because self-regulation could develop without it.

When asked **“What powers do you think can be given to SROs in the advertising sector?”** the participants provided the following answers:

- Regulation of ethical norms and rules.
- Development of rules and monitoring the norms of ethical behavior in the market.
- Work with citizens’ appeals as the first instance.

- Filtering of advertising content, which consists in screening out content that does not comply with legal requirements.

According to one of the participants, the delegation of state functions to SR in the current framework will lead to the bureaucratization and commercialization of self-regulatory organizations.

When answering the question **“Is it necessary to conduct an audit of the functions of state agencies in order to determine which functions can potentially be transferred, and can this audit of functions encourage business to come up with an SRO initiative?”** the respondents shared their positive views about the need for such an arrangement for the future promotion of self-regulation. Such actions will allow defining the boundaries of responsibility for an SRO, business, advertiser, etc. One of the respondents noted that even now some of the functions of state bodies can be cancelled, but not transferred to business; however, it is necessary to increase the importance of ethical frameworks and boundaries in advertising activities. This is what self-regulation is about.

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