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THE LIMITS OF ADVERTISING SELF-REGULATION: LESSONS FROM THE CZECH REPUBLIC

1. THE ARCHITECTURE OF ADVERTISING SELF-REGULATION

Advertising is governed by both public and private law. In addition to statutory regulation, collective self-regulatory frameworks based on codes of conduct voluntarily adopted and observed by the advertising industry play an increasingly important role.

Self-regulation offers greater flexibility in addressing emerging issues — such as taste, decency, gender equality, and sexist content[1] — as well as areas of unclear or underdeveloped legal regulation (grey zones)[2], through a swift[3], informal, and cost-effective procedure. As litigation is generally cost-prohibitive for individual consumers, advertising self-regulatory systems provide an accessible and expe-

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[1] See D.E. Walters, H.J. Wiseman: *Self-Regulation in Emerging and Innovative Industries*, Houston Law Review, Nr. 62, 2025, p. 556, available from https://houstonlawreview.org/article/129432-self-regulation-in-emerging-and-innovative-industries.

[2] On the significance of self-regulation in these "grey zones" in the context of pharmaceutical industry practices, see H. Diener: *Selbstregulierung ist ein kontinuierlicher Prozess, der als Ultima Ratio auch klare Sanktionen erfordert: Erfahrungen der Freiwilligen Selbstkontrolle für die Arzneimittelindustrie (FSA)*, Pharma Recht 2014, pp. 510–516.

[3] A. Lehmann: *Werbeselbstkontrolle in Italien und Deutschland — Vor- und Nachteile der Systeme freiwilliger Selbstregulierung im Vergleich*, GRUR Int. 2006, p. 126. The author notes, for example, that the average duration of proceedings in Italy is 20 days from the filing of a complaint. The speed of the procedure is further enhanced by the reversal of the burden of proof in favour of consumers.

dient mechanism for the protection of audience rights against harmful advertisements[4].

An additional advantage is the predictability of decisions, since most self-regulatory bodies offer a "copy advice service"[5], i.e. a preliminary assessment of advertising before an actual campaign is launched.

Self-regulatory organizations (SRO) not only prevent and reduce negative social impacts, such as misleading or unethical advertising. They also demonstrate that the industry is willing to acknowledge and share responsibility for some of the wider costs produced by its activities, such as social, reputational, or environmental impacts[6].

Depending on their scope, self-regulatory arrangements are classified as either sectoral or centralized. Sectoral self-regulation applies within associations comprising producers of particular goods or providers of specific services. The more general centralized self-regulation (sometimes referred to as concentrated self-regulation[7]) extends to advertising activities at large and is not limited to any single economic sector.

Centralized self-regulation in advertising typically operates within the well-established "club model", in which the industry disciplines itself[8] through collectively agreed standards (codes) and enforcement mechanisms. These codes lay down both substantive and procedural requirements for advertising, which generally form an additional normative layer superimposed upon the statutory law. Compliance with the Code is entrusted to a designated body in which all relevant stakeholders — businesses, media, consumers, and the professional public — are usually represented.

Within Europe, the European Advertising Standards Alliance (EASA) plays a pivotal role in shaping the overarching standards of centralized self-regulation, and the Czech Republic fits squarely within this institutional framework. In line with the EASA model, the Advertising Standards Council (Rada pro reklamu) and its Advertising Code were established in the Czech Republic. Functionally analogous bodies operate in the other Visegrad 4 countries: in Poland (Związek Stowarzyszeń Rada Reklamy), in Hungary (Önszabályozó Reklám Testület) and in Slovakia (Rada pre reklamu).

[4] S. Perelló-Oliver, C. Muela-Molina: *Advertising Self-Regulation (ASR) in Spain: An Analysis of Complaints and Resolutions*, Journal of Marketing Communications 2019, Vol. 25, no. 5, p. 554.

[5] F. Weber: *The Law and Economics of Self-regulation in Advertising*, Journal of European Consumer and Market Law 2014, p. 8.

[6] See also C. Muela-Molina, L. Romero-Rodríguez, A. García-Arranz: *The irresponsible Self-Regulation of Media in Spain: high-Grade Alcoholic Beverage Advertising in Sport Radio Programs*, Journal of Legal Ethical and Regulatory Issues 2020, Vol. 23, Issue 1, p. 2.

[7] A.T. Plaza: *The New System of Advertising Self-control in Spain*, GRUR Int. 1999, p. 853.

[8] D. Jimenez, E.C. Dittmar, J.P. Vargas Portillo: *Self-regulation of Sexist Digital Advertising: From Ethics to Law*, Journal of Business Ethics 2021, no. 171, p. 709.

EASA is not, however, the drafter of a single, unified substantive advertising code[9]; rather, it endorses the ICC Advertising and Marketing Communications Code of the International Chamber of Commerce as the normative template upon which national codes are to be based. The ICC Code serves as the cornerstone of most self-regulatory advertising systems worldwide[10], and the Czech Advertising Code (CAC) is no exception. The ICC Code has not only provided a model for the drafters of the CAC, but it also operates as a subsidiary source in the adjudication of individual cases[11].

2. NEGATIVE ASPECTS RELATED TO SELF-REGULATION IN ADVERTISING

Self-regulation is neither a panacea nor a complete substitute for other forms of regulation. Its scope is limited, its reach is incomplete, and its methods are only partially effective[12]. It can lead to fragmentation of regulation and to a certain hollowing-out of the law through "ritualized staging"[13] and a "pretense of law".

The principal weakness and systemic risk of self-regulatory Codes is that their often inadequate or unbalanced solutions do not arise from a democratic legislative process, but from intra-industry deliberations or transnational templates such as the ICC Code. Funding also plays a significant role: a relevant and consistent system requires adequate financial resources, and answering the question "Who pays?" is perhaps the ultimate assignment of responsibility for self-regulation[14].

Another problem concerns the very content of the code. Where the interests of industry and the wider public are misaligned, a Code may be normatively redundant (merely restating statutory rules) or, conversely, "over-effective", if by imposing obligations significantly exceeding legal standards (for example via disproportionate restrictions on certain forms of advertising) it effectively functions as an instrument of "ethical" cartelization[15].

[9] The activities of EASA partially overlap with those of the International Council for Ad Self-Regulation (ICAS), which operates globally and whose members include self-regulatory bodies from a number of European countries. Like EASA, ICAS does not issue its own model code (for further detail see J.L. Koch, *Europäische Werberegulierungssysteme am Beispiel geschlechterdiskriminierender Wirtschaftswerbung*, Freiburg, Nomos Verlag 2022, p. 152).

[10] Available fromf https://iccwbo.org/business-solutions/the-icc-advertising-and-marketing-communications-code/.

[11] Pursuant to Article 3.8 CAC, the Council for Advertising may, in addition to the CAC itself, apply the principles and provisions contained in the ICC Code.

[12] J.J. Boddewyn: *Adverising Self-Regulations: True Purpose and Limits*, Journal of Advertising 1989, Vol. 18, No. 2, p. 23.

[13] B.C. Reichelt: *Verhaltenskodizes im Recht des unlauteren Wettbweberbs*, Tectum Verlag 2017, p. 8.

[14] S. Dickinson-Delaporte, K. Mortimer, G. Kerr, D.S. Waller, A. Kendrick: *Power and Responsibility: Advertising Self-Regulation and Consumer Protection in a Digital World*, Journal of Consumer Affairs 2020, Vol. 54, no. 2 (June), p. 693.

[15] In the decision-making practice of the Czech competition authority "Úřad pro ochranu hospodářské soutěže" (Office for the Protection of Competition), there are several cases in which a code of ethics or a similar regulation

Crucial is the relationship to law: departures from statutory regulation are legitimate only insofar as they primarily serve the genuinely ethical, not competition-oriented, purpose of self-regulation. Further weaknesses include the risk of public confusion, where lay audiences mistake a self-regulatory code for binding legislation and thus gain a false sense of legal protection, the higher likelihood of non-compliance compared to state-enforced norms, and deficits in transparency, which undermine the predictability and credibility of the self-regulatory system[16].

In this paper, I will focus on two issues that effectively illustrate the main shortcomings of advertisement self-regulation (not only) in the Czech Republic, and which, I hope, will be of interest to Polish readers due to their general nature:

- First, I will examine the **tensions** between the Code and legal rules — situations in which the Code conflicts with statutory provisions or produces unintended negative effects from both legal and marketing perspectives. I will illustrate and assess the consequences of three typical types of conflict: (a) direct contradiction between the soft law Code and the hard law; (b) divergence from the objectives of the statutory framework; and (c) controversial restrictions on certain types of advertising content.
- In the second part, I will focus on how self-regulatory rules are **enforced** in practice. I will also discuss how the rules on unfair commercial practices help support their enforcement. As the European Unfair Commercial Practices Directive (UCPD) bans misleading claims about compliance with codes of conduct, I will examine when advertising codes fall under the scope of the UCPD.

3. SELF-REGULATORY STRUCTURES IN CONFLICT WITH LEGAL REGULATION

Codes of conduct typically establish norms that reach beyond legal requirements, encompassing ethical reflections alongside statutory mandates. Although this seems self-evident, it is often overlooked that legal rules define the minimum threshold for ethical behavior[17]. Any inconsistency with statutory provisions exposes self-regulation to serious reputational risks and may harm those who relied on the assumption that the code's content would comply with existing law.

adopted by an association of undertakings has been assessed as a prohibited cartel agreement. This includes, for example, decisions file No. S0569/2015/KD, file No. S0238/2023/KD, and file No. S0212/2023/K. In its guidance documents on restrictive agreements and associations of undertakings, the Czech competition authority states that internal rules such as statutes, internal regulations, or codes of ethics may also be regarded as prohibited decisions of associations of undertakings, if they have an impact on the competitive conduct of their members.

[16] A negative example in this respect was self-regulation in Spain, *cf.* A.T. Plaza: *Das neue System zur Selbstkontrolle der Werbung in Spanien*, GRUR Int. 1999, s. 853 an.

[17] D. Jimenez, E.C. Dittmar, J.P. Vargas Portillo: *Self-regulation of Sexist Digital Advertising: From Ethics to Law*, Journal of Business Ethics 2021, no. 171, p. 712.

A. DIRECT CONTRADICTION BETWEEN THE CODE AND THE LAW

Examples of a direct conflict between a code and the law will be rare in practice. The law should represent the minimum standard, which self-regulatory rules then supplement with ethical norms.

Nevertheless, the Czech Advertising Council's rules conflicted with the legal framework on unsolicited advertising. Until 2023, the Czech Advertising Code allowed advertising to be sent via SMS and MMS until the recipient objected, placing it in clear conflict with several legal provisions prohibiting unsolicited commercial communications, as well as with the ePrivacy Directive. In practice, however, these provisions on unsolicited communications (like spam) were never the subject of complaints, as consumers naturally turned instead to legal remedies for protection.

The real problem lies in the confusion that a more lenient code may create among the wider public. In the Czech Republic, consumers may mistake the SRO for a public authority because of its official-sounding name ("Rada"), which can foster a false sense of legal protection and full compliance when, in fact, the practice complies only with the code but not with the law.

The same applies to businesses, which may legitimately expect that a self-regulatory body will not adopt rules that contradict the law. Spain provides a negative example, where similar confusion and a lack of transparency have given rise to numerous problems[18]. This kind of direct (and easily recognizable) conflict, however, is now a thing of the past[19].

B. DISRUPTION OF THE OBJECTIVES OF LEGAL REGULATION

In practice, indirect conflicts will be far more frequent, where the rules of the code do not directly contradict the law but nonetheless undermine its regulatory objectives, typically of a competitive nature. Excessive requirements, such as overly restrictive limitations on certain forms of advertising, may even operate as a tool of "ethical" cartelization, without delivering any real benefit to the wider public.

This risk is inherently greater in sector-specific self-regulatory frameworks, which present more opportunities (and temptations) to restrict competition under the disguise of "ethical" standards, but it can also be encountered in centralized self-regulation. The Code is formally binding only upon its members, yet, because

[18] A.T. Plaza: *The New System of Advertising Self-control in Spain*, GRUR Int. 1999, p. 853.

[19] For a more detailed discussion of other problematic aspects of the previous version of the CAC, see D. Ondrejová: *Etická regulace reklamy aneb soft law contra hard law*, Obchodněprávní revue 2020, Vol. 12, no. 2, pp. 106–112.

the major media companies are among its members, its influence is quickly felt throughout society. What begins as an exclusive club rule can easily become a general restriction with effects that rightly belong to the domain of statutory law.

An example of such an indirect conflict with the law can be found in the Czech Advertising Code, specifically in the section on comparative advertising.

The treatment of comparative advertising in European law has changed significantly. It is now broadly permitted, subject to conditions laid down in Directive 2006/114/EC[20], which is implemented in Czech law mainly through Section 2980 of the Civil Code.

The European framework aims to enable comparative advertising, but Czech self-regulation adds stricter interpretative and formal requirements that are not required by EU law. These additional restrictions reduce flexibility, create legal uncertainty, and may unjustifiably restrict competition by limiting the effective use of comparative advertising.

Article 12.2 of the Code stipulates that "advertising must not diminish the value of products of other advertisers, either directly or indirectly. Advertisements are particularly prohibited from selecting a single product for adverse comparison".

The latter requirement is outdated and inconsistent with the Directive and the Czech Civil Code. The applicable law imposes no restriction on selecting a single specific product as the object of comparison. The ICC Model Code also contains no prohibition of so-called "single-criterion" comparisons[21].

In many instances, such a limitation would, in practice, make comparative advertising impossible, for example, when grocery retailers promote a standard product and price constitutes the sole distinguishing factor among competitors. The rules of the Code are thus purposeless and indefensible; they would force advertisers to artificially identify "another" product to compare simply to comply with self-regulatory rules.

The Code naturally contains rules that go beyond the requirements of statutory law. However, it differs fundamentally from the legislative approach, as it sets unjustified and overly strict standards for comparative advertising. This creates conflict with competition law, as the Code introduces anti-competitive and protectionist elements that run counter to the objectives of statutory regulation and diminish the informational benefits of comparative advertising for consumers.

[20] Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.

[21] The cited provision of ICC Code Art. 11 merely states that "marketing communications containing comparisons should be carefully designed so as not to mislead and should comply with the principles of fair competition. Points of comparison should be based on verifiable facts. Product or price advantages that are demonstrable per se should not be exaggerated or overdramatized. Comparisons should be clear as to whether they relate to a competitor's product or to another version of the same product".

C. CONTROVERSIAL RESTRICTION OF CERTAIN ADVERTISING CONTENT

The third category of undesirable departures from statutory regulation covers situations in which the solution adopted in the Code is formally consistent with the law yet imposes unnecessary constraints on the advertising industry.

A prominent example concerns highly controversial (and publicly attractive) advertising that uses photographs or caricatures of politicians. This does not include cases where a politician voluntarily participates in a commercial campaign, as such conduct is generally prohibited in the Czech Republic[22].

The focus here is on a different type of advertising, in which images of politicians or other public figures are used for promotional purposes with an ironic or critical undertone. Such advertising draws attention to the shortcomings of politicians, such as corruption, arrogance, ignorance, racism, xenophobia, abuse of office, or other forms of misconduct.

Attempts to use photographs of politicians in Czech advertising have appeared since the 1990s, but the Czech Advertising Council has consistently taken a negative stance towards them. The strict, prohibitive approach of the Czech Advertising Code stands in marked contrast to the way German law deals with advertising involving political figures.

In Germany, the car rental company SIXT is a leading example of provocative advertising that highlights the lapses of politicians. SIXT's campaigns frequently combine marketing messages with political satire, entertaining the public and attracting significant (secondary) attention.

Notably, SIXT can rely on its victory in a well-known dispute with Oskar Lafontaine (former Minister-President of Saarland, Minister of Finance, and Chairman of the SPD)[23]. Another well-known case concerns Claus Weselsky, chairman of the German Train Drivers' Union (Gewerkschaft Deutscher Lokomotivführer, GDL). In 2014 and 2015, the union called and successfully organized a series of prolonged strikes, which made both the union and its leader widely known to the general public and led to increased demand for car rentals, greatly benefiting SIXT. In response, SIXT ran billboard advertisements featuring a large photograph of

[22] Act No. 159/2006 Coll., on Conflict of Interest, stipulates in Section 3(3) that a public official must not endanger the public interest, including by "granting, for payment or other advantage, permission for the use of their name, or names and surnames, or permission for their likeness in connection with the position they hold for commercial advertising purposes".

[23] German Federal Court of Justice (BGH), judgment of 26 October 2006, case I ZR 182/04. The case arose from a SIXT advertisement that ironically referred to Oskar Lafontaine's short spell in government by crossing out his photograph on the cabinet roster with a red "X" and adding the tagline: "Cars for lease, even for employees on probation". After initially succeeding before the lower courts, Lafontaine ultimately lost before the BGH, which prioritized freedom of expression — in particular political satire, even when used in a commercial message — over his personality rights.

Weselsky with the ironic caption "Mitarbeiter des Monats" (Employee of the Month).

In the subsequent dispute, Weselsky was unsuccessful. German courts prioritized freedom of expression over Weselsky's personality rights, particularly since the advertisement contained evaluative and opinion-forming content ("meinungsbildenden Inhalt") and was closely tied to the railway strikes[24]. As a result of the strikes, Weselsky had become a public figure, attracted significant media attention, appeared on talk shows, gave numerous interviews, and angered millions of commuters. He was therefore required to tolerate his engagement in the advertisement[25].

The German self-regulatory body (Deutscher Werberat) has repeatedly received complaints about advertising campaigns in which celebrities — particularly politicians — were clearly depicted for commercial purposes without their knowledge or consent. Deutscher Werberat, however, has found a very peculiar way of "not dealing with" this issue within the self-regulatory framework. As its statement explains, "since these complaints allege a breach of legal provisions, and as the self-regulatory body of the German advertising industry is not authorized to prosecute legal violations, the German Advertising Council is unable to pursue the complaints"[26].

In the Czech Republic, advertising featuring political figures is very rare, and there have not yet been any court decisions addressing the conflict between (commercial) freedom of expression and politicians' personality rights. Paradoxically, the main obstacle lies in the self-regulatory provisions of the CAC.

Article 15 of CAC ("Protection of Privacy and Misuse of Individuals") prohibits depicting any living person or referring to any living person in any manner unless that person has given explicit prior consent. Advertising must not employ public authorities (such as politicians or representatives of professional, medical, or other organizations) for its purposes, even if such individuals themselves consent — whether for remuneration or free of charge — to participation in the advertisement. The CAC follows the ICC Code in this respect, which contains a similar prohibition in Article 14[27].

[24] For details, see M.T. Tinnefeld, T. Knieper: *Karikaturen im Spiegel digitaler Meinungs-, Presse- und Religionsfreiheit — "Quid leges sine moribus?"*, MMR — Journal for IT Law and Law of Digitalisation 2016, p. 156.

[25] Judgment of Higher Regional Court — OLG — Dresden, judgment of 21 August 2018, case No. 4 U 1822/18; Supreme Federal Court (BGH), judgment of 24 January 2019, case No. I ZR 155/18; Federal Constitutional Court, judgment of 22 January 01.2020, case 1 BvR 556/19).

[26] See the statement of *Deutscher Werberat* available from https://werberat.de/leitfaden-zum-werbekodex-des-deutschen-werberats/werbung-mit-prominenten/.

[27] Article 14 of ICC Code: Marketing communications should not portray or refer to any persons, whether in a private or a public capacity, unless prior permission has been obtained; nor should marketing communications without prior permission depict or refer to any person's property in a way likely to convey the impression of a personal endorsement of the product or organization involved.

Self-regulation thus prohibits advertisements that use photographs or even caricatures of politicians for marketing purposes. An illustrative example is a campaign by the Bernard brewery, which featured caricatures of former President Václav Klaus and clearly referred to his highly controversial amnesty at the end of his term[28].



The Bernard brewery, in its response to the complaint, argued that the campaign was not intended to exploit the President's likeness but to draw attention to the abuse of office and the controversial amnesty granted by Václav Klaus. This argument failed, as the Czech Advertising Council found a breach of the Code and ordered the advertisement to be withdrawn[29].

Unless the Code is amended, similar advertisements — and the interesting legal disputes that would require courts to balance freedom of expression against politicians' personality rights — are unlikely to arise in the Czech Republic.

The drafters of the Czech Code (and the ICC Code) evidently assumed that advertising would exploit the popularity of politicians rather than criticize their misconduct. Although the prohibition is framed as protecting the personality rights of individuals depicted in advertising, it overlooks both the lower level of protection afforded by politicians and the need for criticism of politicians and their public accountability[30].

The ban on using photographs and caricatures of politicians is manifestly excessive. It disregards contemporary advertising trends, which increasingly employ elements addressing social, political, and cultural phenomena that resonate strongly

[28] Picture available from https://www.bernard.cz/cs/v-akci/reklamni-kampane/4.shtml.

[29] Arbitration Committee of Advertising Council, Decision No. 006/2013/STÍŽ.

[30] More on this in A. Wandtke: *Persönlichkeitsschutz versus Internet*, MMR — Journal for IT Law and Law of Digitalisation 2019, p. 142.

with the broader public. Advertisers influence society, and changes in society influence advertisers[31].

Prohibiting political criticism in advertising impoverishes the public media space and constitutes an example of overly strict self-regulatory prohibition. While this is not strictly contrary to the law or its objectives, it is an unnecessarily rigid restriction that deprives courts of the opportunity to develop a balanced approach in concrete cases.

4. LIMITS OF ENFORCEABILITY AND LEGAL BACKING OF CODES

A key advantage of a self-regulatory system is its voluntary nature, which makes it easier to implement in practice and to secure compliance without the need for intervention by public authorities[32]. The number of cases directly reflects the effectiveness of self-regulation and its reputation.

A. UNDERUSED BUT EFFECTIVE: SELF-REGULATION IN THE CZECH REPUBLIC

Data presented in the annual reports of the EASA indicate a significant disparity in the number of cases between the "old" and "new" EU member states. The success of self-regulatory instruments in advertising regulation is undeniable, but this applies to "traditional" advertising self-regulation countries, namely the United Kingdom[33], Germany, and the Netherlands, where self-regulation plays a vital role in consumer protection (for example, in the UK, up to 95% of complaints are filed by consumers or consumer associations[34]).

In comparison with the "traditional" countries possessing a long-standing culture of self-regulation, the practice in Poland, the Czech Republic, Hungary, and Slovakia remains comparatively modest in scope. The number of cases, when adjusted for population, corresponds roughly to the position held by the self-regulatory entity in Germany during the 1980s[35].

[31] See R.E. McDonald, D.A. Laverie, K.T. Manis: *The Interplay between Advertising and Society: An Historical Analysis*, Journal of Macromarketing 2021, Vol. 41, No. 4, p. 586. The authors focus on changes in advertising content in connection with shifts in three areas of social interest: race (primarily African Americans), LGBTQ issues, and the portrayal of women's roles in advertising.

[32] A.T. Plaza: *Das neue System zur Selbstkontrolle der Werbung in Spanien*, GRUR Int. 1999, p. 853.

[33] In the UK, however, the self-regulatory entity (ASA) has a specific status that resembles that of a public authority.

[34] F. Weber: *The Law and Economics of Self-regulation in Advertising*, Journal of European Consumer and Market Law 2014, 1: 5–16.

[35] Data from E. Burleton: *The Self-regulation of Advertising in Europe*, Journal of Advertising 1982, p. 338.

Complaints per country from 2020 to 2024[36]

Country (SRO)	2024	2023	2022
UK (Advertising Standards Authority)	37,028	39,427	33,324
Germany (Deutscher Werberat, WBZ)	5,641	6,827	6,008
Netherlands (Stichting Reclame Code)	4,957	4,866	4,198
Poland (Rada Reklamy)	207	240	165
Slovakia (Rada pre reklamu)	43	108	59
Czechia (Rada pro reklamu)	33	22	15
Hungary (Önszabályozó Reklám Testület)	15	8	13

The reasons for this difference are certainly not due to the absence of state-imposed sanctions for violations of the codes. The same issue affects all countries without distinction.

As a non-governmental organization without legal authority, the Council for Advertising cannot impose fines on offenders. Still, it is not entirely correct to say that violations of the codes have no consequences. Where a case involves a possible breach of both the Code and applicable law, the Council for Advertising may decide not to handle the complaint and instead refer the complainant to the competent authority. As Čurilla and Hubková note, a violation of a code — even though it constitutes soft law — can be indicative of a violation of the law (i.e., hard law). This is so primarily because the code derives from, elaborates upon, or gives more specific expression to statutory law[37].

Most self-regulatory systems rely on voluntary, sometimes reluctant, compliance with their decisions. However, their credibility depends on their ability to achieve real enforcement. The "name and shame" approach — publishing decisions with details of the complaint and the names of the advertiser and brand — has proven to be an effective deterrent in some countries[38].

The Council's enforcement mechanisms can, in practice, lead to the effective withdrawal of an advertisement, often more quickly than proceedings before a public authority applying statutory rules. Council members expressly agree to comply with the Code. They undertake not to create or accept any advertisement that

[36] Source: EASA, https://www.easa-alliance.org/publications/2024-european-trends-in-advertising-complaints-copy-advice-and-pre-clearance/.

[37] D. Čurilla, P. Hubková: *Kodexy chování v právu EU — samoregulace či společná regulace jako budoucnost nejen v dititální sféře?*, Právní rozhledy 2025, Nr. 21, p. 715.

[38] The EASA Best Practice Self-Regulatory Model (April 2004), p. 2, available from https://www.easa-alliance.org/publication/best-practice-recommendations/.

breaches its provisions and to withdraw any advertisement that the self-regulatory body finds to be in violation.

Regarding sanctions, the Czech Council for Advertising does have certain enforcement tools at its disposal. Its strongest measure is the termination of membership by the General Assembly if a member breaches its fundamental obligations, including the duty to comply with decisions issued by the Council. However, this step may not be sufficient to deter an uncooperative member who does not consider membership in the organization to be of significant value.

There are cautionary examples of how an advertising agency or advertiser may "respond" to a decision of a self-regulatory body. One notable case arose in the Czech Republic in 2004 in connection with the "Radio for Life" billboard campaign, in which a private Czech radio station used the image of a notorious prisoner serving a life sentence for murder in its outdoor advertising. The billboards showed him wearing headphones, accompanied by the slogan "Radio for Life".

The campaign provoked extensive public controversy. The Council for Advertising found the advertisement unethical and requested its withdrawal[39]. The reasoning was based not only on the use of a well-known figure from the criminal milieu but also on the problematic association of the concept of "life imprisonment" with the promoted product, thereby reinforcing negative societal perceptions of punishment.

The advertisement was "withdrawn" in a manner entirely reminiscent of the traditions associated with Josef Švejk, the iconic figure from Jaroslav Hašek's celebrated novel *The Good Soldier Švejk*.

The agency affixed a "NEDOPORUČENO" ("not recommended") sticker to the disputed posters and portrayed itself as a victim of unjustified censorship[40]. The graphic design and font of the phrase "Not recommended", which drew on the aesthetics of late socialism, also played a role. The advertiser used his own violation for further promotion, which led to even more public criticism.



[39] Arbitration Committee Decision No. 28/2008/STÍŽ.

[40] See https://www.bbc.co.uk/czech/domesticnews/story/2004/03/040314_cz_kajinek.shtml.

Except for the above-mentioned case, which is rather an anomaly, the decisions of the Council for Advertising are generally complied with. The rate of non-compliance recorded in the Council's decisions is only a few percent[41].

Nonetheless, the extremely low number of cases cannot be overlooked. The limits of self-regulation discussed above do not fully explain this, and it remains unclear why V4 countries make less use of self-regulatory tools. The low number of complaints tentatively suggests that this self-regulatory body is not being promoted effectively among ordinary consumers. A more extensive empirical inquiry will be needed to address this issue[42].

B. INDIRECT SUPPORT FOR CODES THROUGH STATUTORY REGULATION (UCPD)

With regards to sanctions, it is worth noting the interesting interaction between self-regulatory instruments and public-law penalties. Unfair Commercial Practices Directive (2005/29/EC)[43] prohibits unfair commercial practices, including, inter alia, conduct by a trader who claims to have undertaken to comply with certain rules of conduct (a code of conduct) or that such rules have been approved by a particular body, although this is untrue.

Unfair practices may occur when traders present false or misleading information to the public about complying with a specific code of conduct. Such a situation arises, for example, where a trader adopts a "consumer-attractive" code (and publicly advertises this commitment in the spirit of the German saying *Tue Gutes und rede darüber*[44]), but then fails to follow its rules because it is unwilling to bear the increased costs, typically associated with expensive environmental measures[45].

Adoption of a reputable code may be seen by some consumers as an important feature that distinguishes a trader's products or services from those of its competitors, so false claims of adherence to a consumer-attractive code can deceive consum-

[41] See https://www.novinky.cz/clanek/ekonomika-billboard-s-ceskymi-expremiery-porusuje-kodex-reklamni-rady-238083.

[42] On the methodology of research into self-regulatory mechanisms, see further H.J. Rotfeld, C.R. Taylor: *The Advertising Regulation and Self-Regulation Issues Ripped From the Headlines With (Sometimes Missed) Opportunities for Disciplined Multidisciplinary Research*, Journal of Advertising 2009, Vol. 38, no. 4 (Winter), pp. 5–14.

[43] Within the Directive itself, codes of conduct are referred to in several provisions: Article 2(f) and (g) provide the definitions of "code of conduct"; Article 6(2)(b) identifies as prohibited certain misleading practices relating to statements about adherence to a code; Article 11(1) subparagraph 4 and Article 10 address the resolution of disputes concerning claims about codes of conduct; Article 17 stresses the importance of informing consumers about the existence of a code of conduct; Annex I, points 1 and 3 regulate the dissemination of information concerning a code of conduct as part of the "black list" of prohibited misleading practices.

[44] A. Birk: *Corporate Responsibility, unternehmerische Selbstverpflichtung und unlauterer Wettbewerb*, GRUR — Gewerblicher Rechtsschutz und Urheberrecht 2011, Nr. 3, p. 196.

[45] Another unfair practice may consist in presenting an internal "corporate code" as if it were approved by a respected authority or even a public body, although no such endorsement has in fact been granted.

ers, distort their purchasing decisions, and harm compliant competitors who bear the extra costs. This is precisely why the Directive seeks to protect consumers from deceptive business-to-consumer communications by ensuring that references to codes of conduct, typically in advertising and marketing, do not mislead or unduly influence the economic behavior of the average consumer.

The requirements of the Directive were transposed into Czech law by the Consumer Protection Act, which entrusts supervision of the prohibition of unfair commercial practices to public authorities.

For this reason, it is important to assess, as a preliminary question, whether the CAC qualifies as a code of conduct within the meaning of the UCPD.

The Directive defines the term "code of conduct" while deliberately maintaining a high level of generality. The definition combines formal elements (the origin of the code) with material ones (the content of the rules). Under the Directive (Art. 2 (f)), a 'code of conduct' means "an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behavior of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors".

These attributes are fully met by the CAC. The origin of the Code satisfies the requirement that it be a set of rules not imposed by legislation, as it consists of standards voluntarily adopted by the Council's own members[46].

Its content defines the behavior of traders in relation to commercial practices (advertising) and business sectors, as the CAC contains several specific rules for sensitive products and sectors (such as alcohol, tobacco, medicines, and advertising aimed at children). As stated in the preamble, the CAC was "formulated with the aim that advertising in the Czech Republic should serve to inform the public and meet the ethical requirements for advertising demanded by the citizens of the Czech Republic".

The CAC preamble makes clear that member organizations of the Council expressly recognize the Code and undertake not to produce or accept any advertisement that is in breach of it, and to withdraw any advertisement subsequently found by the advertising self-regulatory body to be non-compliant. The principal sanction is exclusion of a member, which is procedurally governed by the Statute of the Council for Advertising. This possibility of exclusion demonstrates the binding nature of the Code[47].

[46] J. Kotásek: *Co je a není „kodex chování" v zákoně na ochranu spotřebitele? (What is and what is not a „code of conduct" in consumer protection Act?)*, In: K. Ronovská, B. Havel: *Pocta prof. Janu Hurdíkovi k 70. Narozeninám (Tribute to Professor Jan Hurdík on His 70th Birthday)*, Masarykova Univerzita, Brno 2021, p. 667.

[47] In this context, A. Birk speaks of a "social obligation" (A. Birk: *Corporate Responsibility, unternehmerische Selbstverpflichtung und unlauterer Wettbewerb*, GRUR — Gewerblicher Rechtsschutz und Urheberrecht 2011, Nr. 3, p. 200).

The CAC, therefore, constitutes a code of conduct within the meaning of the UCPD. A public-law sanction could be imposed on a Council member that publicly advertises its membership and adherence to the Advertising Code but fails to observe it, for example, by disregarding the decisions of the Council.

Such conduct is likewise prohibited where a non-member claims to comply with the CAC even though this is not true, for example, by publishing advertising that breaches the Code or by disseminating advertising that the Council has prohibited.

"Cooperation" with statutory law ends at this point. Not every breach of the CAC will automatically amount to unfair commercial practice. If an advertiser is not a member of the Council or does not claim in its advertising to comply with the Code, a breach of the Code will not, by itself, constitute an unfair commercial practice (based on the rules on marketing communications about codes of conduct).

CONCLUSIONS

The article reaches the following main conclusions:

- Advertising self-regulation constitutes a valuable complement to public and private law — offering procedural speed, regulatory flexibility, and reduced compliance costs — yet it is neither a panacea nor a substitute for legislative intervention.
- While self-regulatory systems offer undeniable advantages — including expeditious decision-making, flexibility, procedural informality, and reduced costs — they are not without significant drawbacks.
- Some weaknesses of self-regulation stem from the fact that codes are drafted within the industry, outside the democratic legislative process, which creates a risk of normative redundancy (mere restatement of the law) or, conversely, "overshooting" in the form of ethical cartelization that restricts free competition.
- The Czech Advertising Code (CAC) has, in the past, come into direct conflict with the law (regulation of unsolicited SMS) and more frequently indirectly undermines regulatory objectives — especially competition law goals — by imposing stricter limitations than those required by EU and Czech law. An example is the set of rules on comparative advertising, which disproportionately restricts marketing by prohibiting so-called single-criterion comparisons.
- Some CAC provisions are, in the author's view, excessive: formally lawful, but needlessly impoverishing the public sphere and preventing courts from developing a balanced approach to freedom of expression and personality rights in concrete cases. An example is the unnecessary prohibition on using politicians' likenesses (and even mere caricatures) in advertising, which prevents

commercial advertising from combining with social and political criticism. In such cases, the German self-regulatory authority (Deutscher Werberat) adopts a significantly more restrained approach.

- Enforcement of the Advertising Council's decisions relies primarily on voluntary compliance, reputational pressure, and the "name and shame" tool, complemented by the ultimate measure of expelling a member; this confirms a certain binding force of the Code, but overall enforceability remains limited.
- EASA's empirical data show that in the Czech Republic and other states of the Visegrád Group Countries, self-regulation is significantly underused: the number of cases is low even though the mechanisms can be effective. This cannot be explained solely by the absence of state sanctions; low consumer awareness of the Council and its role is a likely factor.
- Legal order actively reinforces self-regulatory systems (not only) in advertising. It does so inter alia through the UCPD, the general prohibition of misleading representations as to compliance with codes, and the prospect of public-law enforcement where traders make false claims of adherence to a code of conduct. The CAC is one of the codes that enjoy such protection.
- Not every violation of the CAC will automatically constitute an unfair commercial practice. Where an advertiser is not a member of the Council and does not claim in its advertising to adhere to the Code, a breach of the Code alone will not amount to an unfair commercial practice.
- Looking ahead, the author calls for (i) better alignment of code content with the aims of legal and competition regulation, (ii) greater transparency and clarity of self-regulation, (iii) stronger promotion of self-regulatory bodies to consumers, and (iv) more in-depth empirical research into the actual use and perception of self-regulatory instruments in the states of the Visegrád Group countries.

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PROF. JUDR. JOSEF KOTÁSEK, PH.D.

THE LIMITS OF ADVERTISING SELF-REGULATION: LESSONS FROM THE CZECH REPUBLIC

S u m m a r y

The article analyzes the limits of advertising self-regulation in the Czech Republic, focusing on the Czech Advertising Code and the practice of the Advertising Council. It shows that, while self-regulation offers speed, flexibility, and low costs, it also suffers from structural weaknesses, including occasional conflicts with statutory law, overly restrictive rules that may distort competition, and only limited enforceability. The article further argues that self-regulatory instruments in Visegrád group countries (Czech Republic, Hungary, Poland, Slovakia) are significantly underused, likely due to low consumer awareness, and calls for closer alignment between codes and legal objectives, greater transparency, and more empirical research into how these mechanisms function in practice.

Key words: Self-regulatory organization; SRO; Czech Advertising Code (CAC); Code of ethics; Advertising Standards Council; EASA; Unfair Commercial Practices Directive (UCPD); Consumer protection; Media ethics; Comparative advertising; ICC Advertising and Marketing Communications Code.