



# Influencer Marketing The key to legal compliance in Europe

# Introduction



**The business of influence marketing and content creation has grown considerably over recent years, without any real framework in Europe.**

**This highly lucrative and powerful business is not without its share of legal issues, and certain abuses have flourished, often to the detriment of Internet consumers. The time has come to put an end to this grey area, not to say this Wild West, and the main European countries have been doing just that! Below is an overview of the various regulations in Europe:**

# I. The European legal framework: towards a harmonised regulation of influence marketing



## 1. Applicable EU directives

Influencer marketing in Europe is mainly framed by two major directives: Directive 2000/31/EC on e-commerce and Directive (EU) 2018/1808 on audiovisual media services. These texts require influencers to explicitly mention their commercial partnerships and the company for which the communication is made. This transparency requirement applies to all EU Member States.

In addition, two new pieces of legislation, the Digital Services Act (DSA) and the Digital Markets Act (DMA), have been passed to overhaul digital business practices within the EU. These laws aim to increase online accountability and fairness, placing additional obligations on influencers and platforms.

## 2. Influencer obligations

As creators of content, influencers must now assume greater responsibility for the content they publish online. They must ensure that their content is appropriate, non-misleading and compliant with current legislation. Commercial partnerships must be clearly indicated with terms such as “advertisement” or “commercial collaboration”.

## 3. The role of online platforms

The social networking platforms that host influencer content also have increased obligations. They must be clearer and more transparent about how their content recommendation algorithms work. In addition, they must provide mechanisms for users to report unlawful content and then respond quickly to such reports. Platforms are also required to monitor publications and delete non-compliant content, or even suspend the accounts of offending influencers.

## 4. Towards European harmonization

Despite these various texts, there is as yet **no unified European regulation** specifically dedicated to influencer marketing. The rules therefore vary from country to country, creating a fragmented legal landscape. This situation complicates the task of influencers and advertisers who must navigate between different national legislations.

Harmonisation of rules at European level is therefore essential to ensure a uniform application of the requirements and penalties. Such harmonisation would simplify procedures for influence marketing players and ensure better consumer protection across the EU.

# II. FRANCE: a rigorous framework for influencer marketing

Mathilde Ponchel and Nadège Riederer-Lemarchand

## 1. The Influence Law of 9 June 2023

France has taken a significant lead in regulating influencer marketing with the adoption of the Influence law of 9 June 2023. This legislation was designed to respond to the specific challenges posed by this new form of commercial communication, establishing clear and binding rules for influencers, their agents and advertisers.

### Defining influencers and influencer agents

The Law provides a precise definition of “influencers” and “influencer agents”, clearly specifying their respective roles and responsibilities.

The term “influencers” is defined as “individuals or legal entities who, for consideration, use their notoriety with their audience to communicate online content to the public aimed at directly or indirectly promoting goods, services or any cause whatsoever.”

The activity of “influencer agent” consists of: “representing, for consideration, individuals or legal entities engaged in the activity of online influence marketing with individuals or legal entities and, where applicable, their authorized representatives, for the purpose of promoting, for consideration, goods, services or any cause whatsoever”.

The Law also creates the status of “child influencer”, providing for the protection of both children and their income, by reference to the law of 19 October 2020 aimed at regulating the commercial exploitation of the images of children under the age of sixteen on online platforms.

## 2. Main provisions of the Influence Law

### • Mandatory Written Contracts

Contracts between influencers, agents and advertisers must be formalized in writing. These contracts must include specific clauses on their tasks, compensation and legal obligations. As no decree has yet been published setting the threshold below which they are not mandatory, these contracts are compulsory, whatever the collaboration, community or compensation involved.

### • Transparency of Sponsored Content

Influencers are required to clearly indicate sponsored content with terms such as “advertisement” or “commercial collaboration”. Content modified by filters or artificial intelligence tools must be accompanied by statements such as “retouched image” or “virtual image”.

### • Bans on the Promotion of Certain Products

The promotion of certain products is prohibited, including those related to cosmetic surgery, risky financial products (such as cryptocurrencies) and gambling. Advertising aimed at minors, notably for nicotine products or sports advice, is strictly regulated.

## 3. Penalties and liability

### • Joint Liability

Influencers, their agents and advertisers can be held jointly liable in the event of breaches or harm caused to consumers. This joint liability is designed to ensure that all players involved in influencer marketing comply with the established rules.

### • Types of Penalties Applicable

Violations of the Influence Act can result in fines of up to €300,000 and prison sentences. Penalties can also include temporary bans and compliance obligations. For example, an influencer who fails to comply with the new rules could be fined and banned from promoting products for a specified period.

Order no. 2024-978 of 6 November 2024 has fine-tuned the Influence Law to bring it into line with EU directives, in particular Directive 2005/29/EC on unfair commercial practices. Clarifications have been made to: the provisions on the display of commercial intent; the wording of the various applicable penalties to ensure a better understanding and application of the rules; the means of informing about retouched and virtual images; lastly, Article 9 on Territoriality has been adjusted to specify that it applies to persons engaged in an influence marketing activity targeting the French public. Article 9 also sets out the requirement to take out professional liability insurance in the EU for persons established outside the European Economic Area and Switzerland.

# III. Germany: A mix of legislation and case law

Dr. Geert Johann Seelig

## Key provisions for influencer marketing

In Germany, there is no special law for influencers. Rather, the provisions of media and competition law apply. In addition, the German Federal Court (BGH) has issued various landmark rulings in the past, addressing many unanswered questions regarding labelling obligations for commercial content on social media.

The core provisions have been incorporated into the following acts of law:

- The German Digital Services Act (Digitale-Dienste-Gesetz – DDG) implements the DSA at national level. It also regulates the general information requirements for digital service providers, such as the imprint requirement, and labelling requirements for commercial communications which both can be applicable on influencers.
- The Interstate Media Treaty (Medienstaatsvertrag – MStV) contains regulations for the organisation and offers, distribution and provision of access to broadcasting and telemedia in Germany, including regulations on advertising. Influencers must therefore label advertising as such on their social media channels and clearly separate it from the rest of the (editorial) content.
- The Act against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb – UWG) regulates the prohibition of surreptitious advertising under competition law.

## The question of whether to label

Influencers must label their (advertising) posts if they receive any kind of compensation for the post (money, goods or services, any other kind of advantage). This is considered to be third-party advertising. Self-promotion – i.e. advertising posts to promote one’s own (influencer) company – can also trigger labelling requirements if, exceptionally, the advertising character is not recognisable to the consumer.

## The question of how to label

The advertising labelling must be clear and visible at first glance. Labelling in the middle of a “hashtag cloud” or under the “See More” button does not meet the legal requirements. The same applies to the terms “ad”, “sponsored by”, “paid



content” or “collaboration”, especially if the advertising is aimed at German-speaking consumers.

On the other hand, terms such as “Werbung” and “Anzeige” (“advertisement” or “advert” in German language) placed immediately before the text or visibly embedded in videos/photos are not objectionable.

## Risks of missing or incorrect labelling

Influencers can be held liable by consumer protection associations or even competitors. They may face the threat of warning letters, the submission of a cease-and-desist declaration with a penalty clause and, if necessary, lengthy legal proceedings. In addition, the influencer is liable to recourse at the social media agency if they violate their duties of disclosure.

## Beyond the scope of labelling requirements

In addition to the labelling requirements under media and competition law, it should be noted, for example, that it is not permitted under trademark law to use trademarks in hashtags without these having a reference to the goods displayed in the image. Furthermore, the copyrights and privacy rights of third parties must always be respected.

## Conclusion

The German regulations on influencer marketing are primarily intended to ensure transparency for consumers and to protect against misleading information. Influencers should comply with the legal regulations and the principles developed by case law for labelling posts in order to avoid third-party claims.

# IV. Austria: A patchwork of legislation and a code of ethics to regulate influencer marketing

**Barbara Kuchar**

## Key legal regulations for influencer marketing

Although there is no specific legislation or case law on influencers in Austria, their advertising activities are subject to several legal provisions aimed at ensuring transparency and protecting consumers from misleading practices. The primary regulations include:

- **Media Act (Mediengesetz – MedienG):** This act mandates that any paid content must be clearly identified as advertising. Influencers are required to disclose when they receive compensation for promoting products or services.
- **E-Commerce Act (E-Commerce-Gesetz):** Under this legislation, commercial communications must be unmistakably recognizable as such, and the entity on whose behalf the communication is made must be clearly identifiable.
- **Unfair Competition Act (Gesetz gegen den unlauteren Wettbewerb – UWG):** This act prohibits unfair business practices, including misleading advertising. Direct purchase appeals to children are explicitly forbidden.
- **Audiovisual Media Services Act (Audiovisuelle Mediendienste-Gesetz – AMD-G):** Influencers providing audiovisual media services, such as YouTube channels, must comply with this act, which includes provisions on advertising and product placement.
- **Telecommunications Act (Telekommunikationsgesetz – TKG):** This act can be relevant for influencer marketing, particularly regarding unsolicited commercial communications and data protection, which can affect how influencers engage with their audiences. Any electronic communication for commercial purposes must be clearly identifiable as such. If an influencer promotes products through personal messaging without prior consent from the recipient, this could constitute illegal spam.

## Obligations for Influencers

Influencers are obliged to clearly label paid promotional content on their channels. While the exact format for such disclosures is not specified by law, common practices include using hashtags like #Werbung, #Anzeige, or #sponsored at the beginning of posts.

Additionally, influencers must avoid direct purchase appeals to children, as such practices are legally forbidden.

## Role of the Austrian Advertising Council

The Austrian Advertising Council (Österreichischer Werberat) provides ethical guidelines for influencer marketing. It emphasizes that advertising must be clearly identifiable and not misleading. While the Austrian Advertising Council offers guidance, it does not have enforcement authority; however, it can refer cases to appropriate regulatory bodies. These ethical guidelines place special emphasis on the protection of minors (children and young adults under the age of 18) in advertising.

## Penalties for Non-Compliance

Non-compliance with these regulations can lead to administrative fines ranging from EUR 3,000 to EUR 20,000, depending on the specific violation. Additionally, violations of the above referred acts can result in injunctions to cease unfair practices.

## Conclusion

The Austrian regulatory framework for influencer marketing is designed to promote transparency and protect consumers, particularly children and young people, from deceptive practices. Influencers must comply with these regulations to maintain ethical standards and avoid legal consequences.

# V. Italy: Guidelines for the application of the audiovisual media services legislation to influencers – Code of Conduct

**Fabrizio De Luca**

Initially regulated only by the Digital Chart, a self-regulation code for commercial communication on the Internet issued by the Advertising Self-Discipline Institute, the influencers activity has finally been the subject of specific regulation by the Italian Communications Authority (the “Authority”) in 2024.

The Authority issued Guidelines concerning the regulation of online content shared by real or virtual influencers, aimed at ensuring compliance with the provisions of the legislation implementing in Italy Directive 2018/1808. Under the Guidelines, influencers are required to comply with the principles of transparency and correctness of information, the protection of minors and fundamental rights of the person and, from a more concrete perspective, they must comply with the rules on commercial communications and product placement aimed at making the promotional purposes pursued by any – real or virtual – influencer transparent to the public.

## Identification of influencers

Influencers are defined as those individuals who carry out an activity similar or comparable to that of audiovisual media service providers under national jurisdiction, which possess, inter alia, the fundamental requirement of being responsible of a service the main purpose of which is the provision of content – whether created or selected by the influencer – that informs, entertains or educates and that is likely to generate income directly in the performance of commercial agreements with producers of goods and services or indirectly in application of the monetization agreements applied by the platform or social media used.

Only the subjects that can be classified as “professional” influencers are the recipients of the provisions of the law as identified by the Guidelines, i.e. those who operate in a continuous and structured manner and cumulatively possess certain specific requirements in terms of (i) number of followers, (ii) number of yearly content publications and (iii) engagement rate during a certain period of time.

## Strengthening of regulatory provisions under the Code of Conduct

A public consultation was launched on December 2024 by a technical committee within the Authority where all the operators of the advertising and media markets are encouraged to express their views on the proposed amendments to the Guidelines in view of the issue of a Code of Conduct intended to regulate the activity of influencers.

The Code shall basically provide for the mandatory compliance to the general rules of the media and advertising sectors, based on the principles of correct information, respect for human dignity, prohibition of incitement to violence and hatred, prohibition of discrimination, protection of minors, safeguard of copyright as well as compliance to the general principles of commercial communications.

In particular it is proposed that the Code should amend and supplement the Guidelines on matters such as: (i) the thresholds of the number of followers, of content publications and engagement rate, (ii) the extension of the category of real or virtual influencers also to legal entities and (iii) the creation, management and updating by an independent and impartial entity appointed by the Authority, of an official Register of operating influencers.

Ultimate scope of said Register being the presence of the name or brand of the influencer in the space dedicated to the presentation of its profile of its social media account as well as the inclusion in such pages of wording warning the followers that said influencer is an “influencer listed by the Authority” or, in the case of a virtual influencer, a “virtual influencer listed by the Authority”.

## Conclusion

By its very nature, influencer marketing transcends national borders, with influencers and content reaching international audiences. This transnational dimension raises significant regulatory challenges, as influencers and advertisers must comply with varied and sometimes contradictory legislation in different countries. Harmonizing the rules at the EU level is therefore essential

to guarantee uniform application of the requirements and penalties, thereby simplifying the process for influencer marketing players and ensuring better consumer protection across the EU.

At present, differences in domestic legislation can make it difficult, if not impossible, to comply with all the applicable regulations simultaneously.

A unified regulatory framework at European level would standardise the requirements and penalties, offering greater clarity and predictability for influence marketing players. It would also facilitate cooperation between national regulatory authorities, enabling more consistent and effective application of the rules.

**unyer's IP lawyers offer their expertise to advertisers, influencers, and communication and influencer agencies to help them bring their practices into compliance. Our knowledge of both national and European legislation enables us to propose solutions tailored to the legal challenges of influencer marketing, while advocating for a harmonisation of rules at the EU level.**

**For more information, and to benefit from their expertise, don't hesitate to contact us.**



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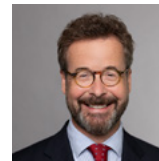
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