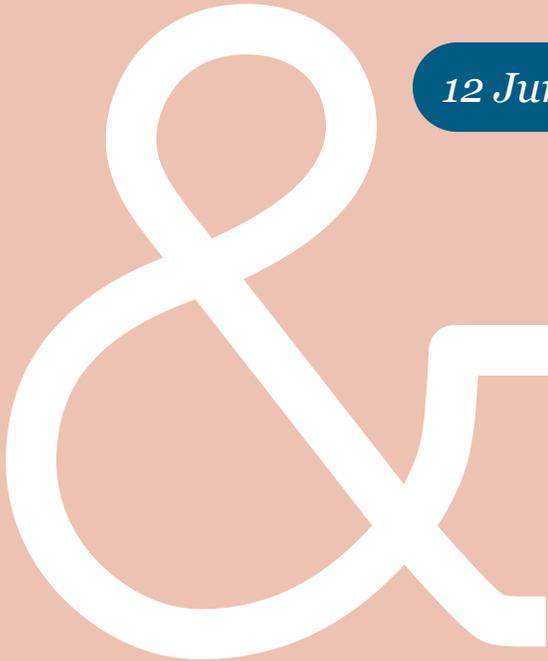


France passes a law to prevent scams and abusive practices by influencers on social medias

New regulation for influencers' activities

12 June 2023



Bird & Bird

1. Introduction of definitions and framework

Influencers: use their reputation, promoting, for an economic benefit or any advantage.

Influencers' agent: representing or putting in contact influencers and persons requesting their services.

| | Influencers established outside EU | Influencers established within EU | Influencers' agent or advertiser |
|--|---|-----------------------------------|--|
| Obligation of representation in EU | <p>Yes –</p> <p>Must designate a legal representant (natural or legal person) established within the European Union and must communicate such details to the French Authorities upon request</p> <p>Subscribe to a professional civil insurance within EU</p> | N/A | <p>Must insure that influencers are compliant with French law, notably with representation's obligations</p> |
| Obligation to conclude an agreement | <p>Yes - Conclusion of a written agreement is mandatory above a certain amount.</p> <p>Must specify the relationship between the parties: missions, payment conditions, etc.</p> | | |
| Responsibility | <p>Advertisers and influencers are jointly responsible for damages deriving from the influencer's agreement concluded</p> | | |

2. Forbidden practices

Interdiction for influencers to promote some sectors and products



Financial products

Hazardous contracts, digital assets, public offer of digital tokens (unless having a visa from the French AMF)



Products or practices related to health

Therapeutic prescription; products containing nicotine and tobacco, vaping products; aesthetic and surgical acts, procedures, techniques, methods or interventions



Non-domestic animals

Advertisement or communication including non-domestic animals, except for a specific authorisation



Products related to sport

Subscription to sport advices or bets

3. Regulated practices

Provisions to enhance transparency of the influencers' practices and communication

Limited communication for some products

Some listed products or services need additional requirements to be promoted by the influencers (e.g., check of the public concerned, additional details on the post etc.).

*Gambling games;
alcoholic beverages ; beverages with added sugar, salt or sweeteners;
medications and drugs; medical devices*

General obligation to explicitly indicate when a post is sponsored, when an image is modified or generated by artificial intelligence or when restricted to the public

Mandatory mentions, that must be clear, identifiable and readable, to put on the image, video or the message, during the whole promotion

*"Publicité" or "Collaboration commerciale"
"Image retouchée"
"Image virtuelle"
"Interdit aux moins de 18 ans"*

Dropshipping

Influencers are responsible of the products sold to consumers, even through a supplier in charge of the delivery. They must provide several information (see L221-5 of the consumer code notably).

*Information on the supplier's identity
Compulsory information before ordering
Investigation on the availability and compliance of the product in EU rules (e.g. non-counterfeiting products)*

A question on influencer's new status on your business?

We would be happy to help.



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