

FOCUS IP

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INFLUENCERS – NEW OBLIGATIONS FOLLOWING THE PUBLICATION OF THE ORDER OF 6 NOVEMBER 2024



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On 6 November 2024, order n°2024-978 (**the Order**) amended Law n°2023-451 of 9 June 2023 aimed at regulating commercial influence and combating abuses by influencers on social networks (**the Influencers Law**).

The aim of this law¹ was to prevent certain abuses related to commercial influence on social networks and to better regulate practices by establishing a stricter legal framework.

Following its entry into force, the European Commission sent France a letter of observations on 14 August 2023, highlighting several breaches of European regulations resulting from this legislation.

It identified several incompatibilities with European Union law.

Thus, the Order under review clarifies certain points and complies with the Commission's observations.

1. The maintenance of the definition of commercial influence

The Influencer Law states that any person or entity who, *“for a fee, uses their reputation among their audience to communicate content to the public by electronic means with a view to promoting, directly or indirectly, goods, services, or any cause whatsoever”*, is

¹ See our previous [Focus IP](#): Influencers – Analysis of the French regulations and the recent bill of law aiming to frame their activity.

considered to be engaged in commercial influence activity by electronic means.

This definition applies to both natural and legal persons.

2. Restriction of the territorial scope of the Influencer Law

The Influencer Law was intended to apply to all influencers targeting an audience established on French territory, regardless of their place of residence and without making any distinction among the Member States of the European Economic Area (EEA).

The European Commission challenged this approach, arguing that influencers should be subject to the “e-commerce” and “AVMS”² directives, which provide that the applicable law is that of the Member State in which they are established (“country of origin” principle).

Therefore, the Order complies with the Commission’s interpretation and narrows the territorial scope of the Influencer Law by stating that several of its provisions do not apply to influencers established in an EEA Member State other than France³, subject to exceptions laid down in these directives. For instance, the Influencer Law would therefore not apply to an influencer established in Germany, even if he were addressing to the French Public.

3. Clarifications regarding the promotion of certain goods and services in the healthcare sector

The Order clarifies that the prohibition on the promotion of aesthetic procedures and methods applies only to those “*which may present risks to people’s health*” (Art.1 of the Order), thus revising the initially proposed general prohibition.

The aim here is to comply with the proportionality requirement set out in the “e-commerce” directive⁴.

4. More flexible compulsory indication for images modified or generated by Artificial Intelligence (AI)

The Order confirms the obligation to display the indication “Retouched Image” and “Virtual Images” for visuals that have been modified or generated by AI and that depict a silhouette or a face.

However, it eases this requirement by allowing the indication to be replaced “*with any equivalent indication adapted to the characteristics of the influencer activity and the format of the communication medium used*”.

Here again, the aim is to comply with the principle of proportionality and to “*ensure the longevity of the provision, in the context of rapid developments in technology and legal standards in this area (notably AI regulation)*”⁴.

² See [Directive 2000/31/CE](#) « e-commerce » [Directive 2018/1808](#) modifying Directive [2010/13/UE](#) on Audiovisual Media Services (“AVMS”).

³ See article 5-1 of the Order.

⁴ See [Rapport au Président de la République relatif à l'ordonnance n° 2024-978 du 6 novembre 2024](#)

5. The easing of the assessment of commercial intent as a misleading commercial practice

The Order upholds that the absence of disclosure of the commercial intent by an influencer constitutes a misleading commercial practice by omission within the meaning of Article L.121-3 of the French Consumer Code, but only when this intent *“is not already apparent from the context”*⁵, thereby tempering this obligation.

Commercial intent may be indicated by using the indications *“advertising”* or *“commercial collaboration”*, which must be *“clear, legible and understandable”*.

Like the easing for images modified or generated by AI, this indication may be replaced by *“any equivalent indication adapted*

to the characteristics of the Influencer activity and the format of the communication medium used”.

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The draft Order was already notified to the European Commission on 3 July 2024 which has not made any comment.

The Order was published in the Official Bulletin on 6 November 2024 and came into force the following day.

A ratification bill must be voted by the Parliament within three months of the publication of the Order⁶, *i.e.* before the 7 February 2025. Failing this, it will automatically cease to apply.

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⁵ See art. 5-2 of the Order.

⁶ See article 3 of Law No. 2024-364 22 April 2024.