



1. What happens on the influencers side? – What makes today different from yesterday?

It's the technology, stupid :-). As social media is more widely used than traditional media, influencers have been the “throughfare” for advertisement purposes even for the products of giant market operators. Considering the fact, the guideline published by the Federal Public Service of Economy (De Federale Overheidsdienst van Economie) sets forth that the advertisement activities by the influencers are also covered by the Code of Economic Law like an advertisement on TV. Therefore, influencers active in advertising are called for meeting a set of requirements set forth in the relevant law.

2. What does the **EU legislation** say?

The [Directive 2000/31/EC on Electronic Commerce](#) (art. 6) and [Directive \(EU\) 2018/1808 "Audiovisual Media Services"](#) calls for all influencers and content makers active in Europe to mention

- their commercial partnership, and
- the brand and/or the company for which the advertisement is made.

These obligations are applicable for the influencers in every EU Member state, allowing each Member State the discretionary power to adapt it into their national law.

As known, although "[Communications Code on Advertising and Marketing](#)" was published in 2018 by the ICC, [International Chamber of Commerce](#), and the OECD has published "[Good Practice Guide on Online Advertising](#)" to protect consumers in e-commerce, **there is no specific regulation at the EU level on influencer marketing so far.**

In Europe, [the Digital Market Act \(DMA\)](#) and the [Digital Service Act \(DSA\)](#) have been entered into force this month, November 2022, with the aim of overhauling the existing digital business practices in the EU by increasing accountability and fairness online. Within the scope of the DSA, *influencers*, as content creators, are burdened with greater responsibility for the content they share online. Accordingly, they will have to ensure that their posts are appropriate and not misleading or illegal.

The DSA will be directly applicable across the EU and will apply fifteen months or from 1 January 2024, whichever comes later, after entry into force. As regards the obligations for very large online platforms and very large online search engines, the DSA will apply from an earlier date, that is four months after their designation.

As of 12 October 2022, the DMA was published in the Official Journal. The DMA has now entered into force, and it will become applicable six months later. The designated gatekeepers will have a maximum of six months after the designation decision by the Commission to ensure compliance with the obligations laid down in the Digital Markets Act.



While waiting for a European harmonisation, the rules vary from one country to another.

3. What does the **current Belgian legislation** say?

According to the [Guideline](#) published by the **Federal Public Service of Economy** (De Federale Overheidsdienst van Economie), influencers and content makers active on social media are legally obliged to follow certain obligations when they advertise. *Accordingly, if an influencer advertises a product or shares a commercial post and/or story in their social media account, and gains a benefit as a result, then they must comply with the provisions on advertising from the Code of Economic Law.* The Code rules that an advertisement must always be recognizable by showing the commercial message to the customer clearly and transparently.

a) When does the Belgian legislation applies?

To secure the consumers during and after the advertisement process, the guideline takes the influencers and/or content makers on social media who are actively advertising within the relevant law's scope. There are two main conditions for an influencer to fall under the scope of this application;

i- advertising a product or sharing a commercial post/story of a product, company, service or brand,

ii- gaining a benefit from the undertaking after the brand, product or service. As for the benefit, all economically measurable advantages obtained in return might be counted under this scope; for example, receiving a free product, discount, money, and even an invitation to an event. Worth underlining that an agreement between the parties is not required.

b) What should influencers do to comply with the Belgian legislation?

i) [The Code of Economic Law](#) requires the advertisers, here in this case the influencers, *to make the commercial character of their sharing clearly recognizable*. Therefore, tagging the posts with a directly visible language, such as “advertisement” etc, which shows the commercial character of the sharing is obliged. Also, as there is no language border in social media, it is required to use the wording of the notification in the same language as the targeted group.

ii) According to the [Guideline](#), influencers who regularly advertise brands are considered as a company and therefore must register at the Crossroads Bank for Enterprises (Kruispuntbank van Ondernemingen). However, the frequency of sharing required to be considered as a company is not set out by the [guideline](#). It can be said that the influencers who carry out this activity on a professional basis and for a benefit are under this scope; the ones doing this not professionally and regularly fall out of that scope. Accordingly, influencers need to place the following data on their social media accounts;

- company register number,
- registered address of the company,
- e-mail address.



In case of a failure to register as indicated, this would be seen as an infringement of the Economic Law Code and the activities of the influencer would be considered surreptitious work which is prohibited and punishable.

4. BeCommerce's main Concerns and Solutions:

a. From the consumers perspective, especially for the young, social media has been a huge market where they are shopping from. Therefore, regulating basically the advertisements placed by the influencers is a good step but not enough. As the representative of e-commerce and by benefiting from its long-lasting trust mark history, BeCommerce wishes to develop a **new Trust Mark** which certifies the safety of the advertisement on social media. Through this way, the consumers will ensure that the advertisement is in line with a certain criteria and ultimately the shopping is reliable.

b. As for the influencers, it should be taken into account that sharing their address in their public accounts would cause privacy concerns and therefore problematic consequences for the ones who conduct their activities at their own home. Having an extra registered business address -apart from their private home address- following a professional services contract is the solution to this problem. Also, BeCommerce has been formally recognized as a **Business Center (Bedrijventrum) allowing** influencers to use the address of BeCommerce to use as their registered address.

From a convenience perspective, the influencers are recommended to use this registered business address and other required data on different commercial channels if they are active on:

- i- website, by mentioning them in footer, or header or under the section of contact,
- ii- Facebook, by writing them under "over" or "info"
- iii- Instagram & Twitter, by indicating them in their bio
- iv- YouTube, by mentioning them under "over"

The data should be easily, directly, and permanently accessible on the accounts. Influencers or content makers are required to declare such data on their social media accounts where they advertise. If they have any other personal accounts used with no advertisement purposes, such accounts fall out of the scope of the application.

5. More about EU Level:

a. The [e-Commerce Directive](#) applies to commercial communications. Online targeted advertising falls within the scope of this directive.

- i. The directive sets forth that the online targeted advertising, as well as promotional offers shall be clearly identifiable. In addition to this, it should identify the company/brand for which the advertising is made.
- ii. As for the regulated professions (such as healthcare and legal professionals), the directive requires specific provisions to be respected on online targeted advertising.



- b. The [Unfair Commercial Practices Directive](#)'s scope is commercial practices of business-to-consumer commercial practices by prohibiting “unfair” advertising which includes misleading or aggressive online targeted advertising. The unfairness is associated under this directive if it is contrary to the requirements of professional diligence, or the economic behavior of the average consumer is distorted/likely to be distorted by such practices. Also, Annex I of the directive sets forth the examples of unfair commercial practices.
- c. The [Directive on Misleading and Comparative Advertising](#) applies to online targeted advertising with the aim of protecting advertisers from each other. By prohibiting misleading advertising, the directive sets forth conditions for comparative advertising.
- d. The [Consumer Rights Directive](#)'s scope is the conclusion of sales and service contracts with consumers. Within the scope of this directive, the sellers and service providers are obliged to provide the consumers with a minimum set of information before they conclude the contact.
- e. The [Audiovisual Media Services Directive](#) applies to video-sharing platforms. The standards for commercial communications, including online advertising, between the platforms and the users are set out in the directive.