

LEGAL BRIEF #4: HOW EUROPEAN CONSUMER LAW INTERACTS WITH MEDIA LAW AND SELF-REGULATION

European consumer law is not the only field of law that covers influencer activities. It is important to keep in mind that in this video, we will give you an overview of two other types of laws that you need to be aware of: media law and industry self-regulation.

Advertising has long been regulated under media law. One of the most recent European media laws is the [Audiovisual Media Services Directive](#) (AVMSD) and it was updated in 2018. This Directive sets out strict rules prohibiting hidden advertising, as well as subliminal techniques for advertising. It also reacts to some of the changes to advertising and commercial messaging brought by social media. In addition, the advertising industry has generally established private organisations that develop best practices for the industry as a whole - this is called self-regulation. In the case of influencer marketing, self-regulation has led to the development of practical guidelines that sometimes even mention what hashtags need to be added for the disclosure of advertising and where. One of the supranational organisations that deals with advertising at European level is the [European Advertising Standards Alliance](#) (EASA). In 2023, EASA has made a disclosure tool available, called [DiscloseMe](#). According to EASA, this is a *'new tool aimed at enhancing transparency in the influencer marketing industry. DiscloseMe provides users with information on recommended transparency disclosures in different European countries. The tool is designed to assist influencers, content creators, and marketers in meeting requirements when sharing sponsored content, affiliate links, or engaging in brand partnerships'*.

What law applies when?

European consumer law and media law will generally have a mandatory nature. This means that you cannot avoid the application of these rules, and not complying with them can lead to administrative punishments like fines. In some Member States, violations of fair trading may even lead to criminal sanctions. This is because mandatory rules are laws that focus on protecting public interests - in this case the collective public interest of consumers. The application of consumer law will not lead to media law not being applicable. In other words, you need to comply with all these rules at the same time. Unlike these sanctions, industry organisations will mostly rely on voluntary compliance, which reflects the private interests of traders who want to show the market that they have healthy commercial practices.

Administrative authorities

European consumer protection is generally implemented at national level through national laws. Making sure that these laws apply in practice are the national consumer protection authorities. A list of all the authorities in the different Member States can be found [here](#). Consumer authorities have legitimate powers to monitor commercial activities, to investigate them and to enforce European and national consumer law by applying sanctions such as fines and injunctions. The same goes for media authorities, which will have separate powers. It is important to keep in mind that whenever influencer marketing leads to harms, both consumer and media administrative authorities have the powers to remedy these harms. This is why following and complying with self-regulation (and regulation in general) can be a good legal strategy to avoid fines and other sanctions.

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