[IT] Italian Communications Authority releases guidelines on influencers to ensure compliance with rules and principles governing audiovisual media services

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On 10th January 2024, the Italian Communication Authority (AGCOM) issued, by resolution no. 7/24/CONS, some long-awaited guidelines to urge compliance with the Audiovisual Media Services Code ('TUSMA', Legislative Decree no. 208/2021) by influencers ('Guidelines'). The resolution also established a technical group of experts.

The release of the Guidelines follows the increase in the online dissemination of content by various subjects having control over the creation, fabrication or organisation of the same, commonly known as 'influencers'.

According to the Guidelines, this notion extends to those who provide services similar or comparable to audiovisual media services, when the following conditions are met:

1. The service operated constitutes a service pursuant to Articles 56 and 57 of the Treaty on the Functioning of the European Union;

2. The main goal of the service lies with the provision of content created or selected by an influencer to inform, entertain or educate, which are likely to generate revenues either directly, by commercial agreements entered by providers of goods or services, or indirectly, by content monetisation agreements entered by the relevant online platform or social media;

3. The influencer has editorial responsibility over the content, including control of the creation, selection or organisation;

4. The service is available to the public, targets a significant number of users in the Italian territory, has a substantial impact on a fair share of the audience and the content is disseminated through online video-sharing platform or social media services;

5. The service allows users to access content upon their request;

6) The service has a stable and actual connection with the Italian economy;

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7) The content is offered in Italian or explicitly targets residents in the Italian territory.

However, AGCOM has acknowledged that the definition of the scope of application regarding influencers may need more clarity in some circumstances.

Therefore, it has been clarified that the Guidelines target the influencers that fulfil these requirements:

1. Having at least one million followers, as a sum of subscribers across online platforms and social media, where influencers disseminate their content

2. In the year preceding the survey have published at least 24 pieces of content matching the characteristics defined in the Guidelines.

3. Have an average engagement rate in the last six months equal to or higher than 2% either an online platform or social media.

Given the nature of their activity, AGCOM found the following principles and provisions directly applicable to influencers:

• The general principles under Article 4 of the Audiovisual Media Services Code;

• The general principles on freedom of information, where applicable;

• The provisions on the protection of copyright pursuant to Article 32 of the Audiovisual Media Services Code;

• The provisions safeguarding the fundamental rights of individuals, the provisions protecting minors and those protecting sports values;

• The provisions on commercial communications established by Articles 43, 46, 47 and 48 of the Audiovisual Media Services Code.

According to the Guidelines, compliance with these principles and rules imply that, among others, content disseminated by influencers:

• Shall not incite or provoke to commit crimes or condone their commission;

• Shall protect human dignity and shall not include any expression likely to spread, incite, promote or justify and trivialize violence, hatred or discrimination against individuals and groups, and shall not offend human dignity;

• Shall not contain elements likely to justify the perpetrators of crimes or blame the victims of violence, hatred, discrimination and offence of human dignity;

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• Shall respect the rules on the protection of minors, in particular by avoiding content likely to seriously harm the physical, psychological or moral development.

Finally, the Guidelines also call for the adoption of one or more codes of conduct that may more accurately define technical measures and arrangements to ensure compliance by influencers with the Audiovisual Media Services Code in light of the peculiarities of their activity.

Italian Communications Authority, Resolution No. 7/24/CONS on 'Guidelines aimed at ensuring compliance by influencers with the provisions of the Audiovisual Media Services Code and establishing a special technical group'

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