



REGULATION ON DIGITAL INFLUENCERS: FRANCE'S NEW LAW AND THE CURRENT POSITION OF BRAZIL

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In early June of 2023, France became the first country in the European Union to enact a specific legislation to regulate the activity of digital influencers. The bill of law had been proposed by the members of the parliament Arthur Delaporte (Socialist Party) and Stéphane Vojetta (Ensemble Party) in January of 2023, and, after swift proceedings with few amendments, it was approved by the National Assembly on May 31 and by the Senate on June 1, and promulgated as Law No. 2023-451 shortly thereafter.

The law innovates by defining digital influencer as a natural or legal person who, in exchange for payment, uses their notoriety to communicate to the public, via electronic means, content aimed at the direct or indirect promotion of goods or services. The law goes even further and restricts which goods and services cannot be promoted by digital influencers, banning, for example, the promotion of medicines, beauty products, and aesthetic procedures that pose health risks, as well as the promotion of cryptocurrencies and sports betting apps.

Furthermore, the law imposes new obligations on influencers to provide certain information related to the goods and services promoted by them. According to the new legislation, the promotion of goods or services must be explicitly tagged with "advertisement" or "commercial collaboration", with such tag being clear, legible, and identifiable throughout the promotion. Also, images that have undergone any processing intended to alter silhouettes or modify the appearance of faces should be accompanied by the tag "retouched images". Likewise, contents produced by artificial intelligence with the aim of representing a face or a silhouette must be accompanied by the tag "virtual images".

In the event of a breach of the new law, sanctions may be applied, varying from fines amounting up to €300,000 (three hundred thousand Euros) to a prison sentence of two years, in addition to further penalties provided for in the French Consumer Code.

In Brazil, the regulation of commercial activities carried out by digital influencers has been progressing at a slower pace. In the Brazilian Chamber of Deputies, at least six bills dealing with the matter were proposed by deputies between 2020 and 2023, all of which were appended to Bill of Law no. 929/2020¹, which "provides for the practice of the profession of blogger and vlogger" in Brazil. However, the bill has not progressed since April 2021, except for the appending of similar bills, which have also not progressed in the legislature process. In the Federal Senate, in May 2022, Senator Eduardo Gomes proposed Bill 1138/2022, which also dealt with professional digital social influencers and was withdrawn by the author himself a few days after being filed.

¹ Bill 3130/2021, Bill 1282/2022, Bill 1335/2022, Bill 2347/2022 and Bill 547/2023.



The same dynamics seems to apply to sectorial regulatory bodies, which have few guidelines on the activities carried out by digital influencers in their respective areas of regulation. In December 2020, for example, the National Council for Self-Regulation of Advertising (CONAR) published the "Guide for Advertisement by Digital Influencers", which has a merely advisory character, i.e., it does not provide for regulatory or sanctioning tools for the activity of digital influencers.

On another front, the Brazilian Securities and Exchange Commission (CVM), motivated by the "growing popularity of social networks and also the increased interest of investors in the securities market exercised on these channels", issued Circular Letter No. 13/2020 in November 2020, aiming to clarify which opinions, including those issued by digital influencers, could be characterized as an activity of a securities advisor according to CVM Resolution No. 20². More recently, CVM also published a study³ on digital influencers and the capital markets, aiming to investigate whether digital influencers were acting in accordance with CVM's regulations, considering their relationship with participants in the securities markets regulated by the Commission.

On the other hand, the federal councils of medicine and nutrition have taken action on certain issues before the discussions of the National Congress and issued their own sectorial regulations with the aim of regulating the activities of professionals under their respective jurisdictions in the digital environment. For nutritionists, for example, it is forbidden, even if through social networks, to

(i) promote their professional activities with misleading or sensationalist messages and to claim exclusivity or guarantee of the results of products, services, or therapeutic methods; and

(ii) disclose body image of themselves or others, attributing results to products, equipment, techniques, protocols⁴ In a similar way, doctors are forbidden to carry out advertising publicity, even of established procedures, in an exaggerated manner and deviating from technical concepts, to individualize and prioritize their performance or the institution where they work or have personal interest in.⁵

Thus, unlike the progress of the subject in France in recent months, in Brazil, the world's leading market for digital influencers⁶, the matter has advanced little or almost nothing at the federal legislation level and has had rather modest developments in sectorial regulations. In this sense, regulations have not addressed the new technologies employed by digital influencers, notably artificial intelligence, nor have they concerned themselves with increasing the transparency of the content shared by influencers to clarify to digital content consumers that much of what is published online is manipulated or constitutes veiled advertising.

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² CVM Instruction No. 598 has been revoked and replaced by CVM Resolution No. 20.

³ Available at:

<https://www.gov.br/cvm/pt-br/assuntos/noticias/cvm-divulga-estudo-sobre-possivel-regulamentacao-envolvendo-influenciadores-digitais-e-o-mercado-de-capitais>

⁴ Nutritionists Federal Council - Resolution No. 599/2018.

⁵ Federal Council of Medicine - Resolution No. 1974/11, Annex 1.

⁶ Available at: <https://valor.globo.com/empresas/noticia/2022/07/29/brasil-lidera-mercado-de-influencers.ghtml>