



To: Director-General

Thro': Manager - Buyer Power

Subject: KEY LEARNING POINTS: WEBINAR ON INVESTIGATIONS REGARDING ADVERTISING AND INFLUENCERS

A. Introduction

1. The session which was held virtually on 29th January, 2026 was led by a team from Direção Geral do Consumidor, Portugal (DGC) and provided insights to investigations on influencer advertising in Portugal.

B. The Legal Pillars

2. General advertising in Portugal is governed by a robust, structured framework designed to ensure market fairness and consumer protection.

- **The Constitution (Art. 60) & Consumer Law (Art. 7):** These establish the "Right to Information" as a fundamental right. Consumers must be protected against economic harm and misleading claims.
- **The Advertising Code (Decree-Law 330/90):** This code dictates the **Principles** (Legality, Identification, Truthfulness) and **Restrictions** (e.g., bans on tobacco/alcohol advertising in specific contexts).
- The DGC's enforcement follows a preventive cycle that begins with an **Annual Plan** starting from sweep actions which involves screenings of digital platforms to identify broad patterns of non-compliance. Once a sweep flags specific infringements, the process moves into the **National Follow-up Phase**, where the DGC contacts the influencers and brands to demand immediate corrective action. If this preventive outreach fails, the agency transitions to **Specific Enforcement**, leveraging the Digital Services Act (DSA) to trace influencers' addresses and gathering forensics on commercial relationships (such as hidden contracts or affiliate links) to impose fines across the entire advertising chain.

3. The DGC's enforcement powers are as follows:

- **Precautionary Cessation:** The power to immediately stop an ad from running if it poses an imminent risk.

- **Corrective Advertising:** Forcing the brand to publish a corrective action in the same medium to undo the harm of a misleading ad, delete the domain name and contact the advertising platform to remove the advertisement among others.
- **Fines:** Applying sanctions to the **Advertiser** and the **Agency**.

Influencer Advertising

4. The DGC emphasized that influencer marketing requires a different investigative lens because it operates on emotion and proximity rather than corporate messaging.
5. Influencers are not explicitly defined in Portuguese law. However, they are legally categorized as "Traders" (Economic Operators). This classification subjects them to the same regulation as traditional businesses.
6. Because influencers build "parasocial relationships" (a sense of friendship) with followers, thus their endorsements carry more weight, making "hidden" advertising particularly dangerous especially for children
7. The DGC can hold the Influencer, the Advertiser, and the Agency jointly liable. All three can be fined if a post is not clearly labeled as an ad.

C. The DGC Influencer Marketing Informative Guide

8. The DGC shared that while the digital space is difficult to police, they are seeing a shift in compliance. However, since the DGC released its Informative Guide and issued state press releases (essentially letting the market know "The DGC is watching"), there has been a significant increase in voluntary compliance. Influencers have begun using standardized tags like #pub and #ad to signal commercial intent.
9. The Guide serves as a practical manual for influencers and brands to navigate the "gray areas" of digital endorsements. While influencers are not defined by a specific "Influencer Law" in Portugal, the DGC uses this guide to bridge the gap between traditional law and digital reality.
10. The guide is generally divided into principles and restrictions. The principles include the principle of legality, identification, truthfulness and respect for consumer rights. Some of the restrictions relate to minors, tobacco use, alcohol, breast milk substitutes, environmental claims, betting, high value salt and sugar products, motor vehicles and financial services.

The Three Indicators of an Influencer

11. The DGC identifies an "Influencer" not by their follower count, but by three functional indicators:
 - i. **Digital Presence:** A person or character (including virtual avatars) active in the digital environment.
 - ii. **Potential to Influence:** The capacity to affect the purchasing decisions, opinions, or behaviors of an audience.

- iii. **Commercial Intent:** The presence of a commercial relationship, characterized by any form of consideration (payment, gifts, or affiliate benefits).

D. Emerging Regulatory Focus

12. The training concluded with the next wave of investigations in 2026:

- **Gambling & Financial Marketing:** Cracking down on who promotes risky financial products.
- **Health Sector Alignment:** Working with health authorities to regulate influencers promoting medical treatments or supplements, ensuring they don't bypass safety standards.

E. Enforcement Challenges

13. The main challenges faced by the DGC are:

- Evidence Collection: It is notoriously difficult to prove a "commercial relationship" (payment, free gifts, or affiliate links) without a physical contract.
- Locating Infringers: Many influencers do not have a registered business address, making it difficult for the DGC to serve legal documents or notices.

F. Key takeaways

14. The key takeaways from the webinar are:

- a. Preventive measures like sensitization of key players or press statements in a specific sector are a key soft enforcement tool that can lead to compliance.
- b. Regular surveillances (sweeps) can assist authorities in identifying potential practices that infringe consumer protection (and competition) laws.
- c. Authorities need to equip themselves with investigative skills that are relevant to the fast-changing regulatory environment influenced by technological advancements.

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