

Decrees, orders, circulars

GENERAL TEXTS

MINISTRY OF THE ECONOMY, FINANCE AND INDUSTRY

Order No 2024-978 of 6 November 2024 amending Law No 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating abuses of influencers on social networks

NOR: ECOI2418969R

The President of the Republic,

On the report of the Prime Minister and the Minister of the Economy, Finance and Industry,

Having regard to the Constitution, in particular Article 38 thereof;

Having regard to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce');

Having regard to Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive').

Having regard to Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive);

Having regard to Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services;

Having regard to the Code of Administrative Justice, in particular Article R. 123-20 thereof;

Having regard to Law No 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating abuses of influencers on social networks;

Having regard to Law No 2024-364 of 22 April 2024 laying down various provisions adapting to European Union law matters concerning the economy, finance, the ecological transition, criminal law, social law and agricultural matters, in particular Article 3 thereof;

Having regard to notification No 2024/0379/FR sent to the European Commission on 3 July 2024;

Having heard the Council of State
(Finance Section), Having heard the Council of
Ministers,

Orders:

Article 1

Law No 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating abuses of influencers on social networks is amended as follows:

I. – Article 1 is replaced by the following provisions:

‘Article 1. – Natural or legal persons who, for consideration, use their reputation among their audience to communicate to the public by electronic means content intended to promote, directly or indirectly, goods, services or any cause, exercise the activity of commercial influence by electronic means.’;

II. – Article 4 is replaced by the following provisions:

“Article 4. – I. – Any promotion, direct or indirect, of acts, processes, techniques and methods with an aesthetic purpose which may pose risks to the health of the persons referred to in Article L. 1151-2 of the Public Health Code and the interventions referred to in Article L. 6322-1 of that Code shall be prohibited for persons exercising the activity of commercial influence by electronic means.

‘II. – Any promotion, direct or indirect, of non-therapeutic products, acts, processes, techniques and methods presented as comparable or preferable to or as replacements for therapeutic acts, protocols or prescriptions shall be prohibited for persons exercising the activity of commercial influence by electronic means.

‘III. – Any, promotion, direct or indirect, of products considered to be nicotine products which can be consumed and are made of, even partially, nicotine shall be prohibited for persons exercising the activity of commercial influence by electronic means.

‘IV. – Any promotion, direct or indirect, involving animals not included in the list referred to in I of Article L. 413-1 A of the Environmental Code shall be prohibited for persons exercising the activity of commercial influence by electronic means. This prohibition shall not apply to establishments authorised to keep those animals in accordance with Article L. 413-3 of that Code.

‘ V. – Any promotion, direct or indirect, of the following financial products and services shall be prohibited for persons exercising the activity of commercial influence by electronic means:

‘1° The financial contracts defined in Article L. 533-12-7 of the Monetary and Financial Code;

‘2° The provision of digital asset services, within the meaning of Article L. 54-10-2 of that Code, with the exception of those for which the advertiser is registered under the conditions laid down in Article L. 54-10-3 of that Code or authorised under the conditions laid down in Article L. 54-10-5 of this Code;

‘3° Public token offerings, within the meaning of Article L. 552-3 of the same Code, except where the advertiser has obtained the visa provided for in Article L. 552-4 of this Code;

‘4° Digital assets, except those related to services for the supply of which the advertiser is registered under the conditions laid down in Article L. 54-10-3 of that Code or approved under the conditions laid down in Article L. 54-10-5 of this Code, namely where the advertiser does not fall within the scope of Articles L. 54-10-3 and L. 54-10-5 of the same Code.

“ Infringements of the provisions of this V shall be subject to the penalties provided for in the fifth subparagraph of Article L. 222-16-1 and the penultimate subparagraph of Article L. 222-16-2 of the Consumer Code.

“ VI. – Any promotion, direct or indirect, of subscriptions for sports tips or bets shall be prohibited for persons exercising the activity of commercial influence by electronic means

‘ VII. – Commercial communications by electronic means by the persons referred to in Article 1 of this Law relating to gambling as defined in Articles L. 320-1 and L. 320-6 of the Internal Security Code shall be authorised only on online platforms offering the technical possibility of excluding from the audience of such content all users under the age of eighteen years of age and if that exclusion mechanism is actually activated by those persons.

‘Such commercial communications shall be accompanied by a reference to the prohibition of such content for persons under the age of 18. This statement shall be clear, legible and understandable on any medium used.

‘The exclusion mechanisms provided for in this VII shall comply with a reference framework drawn up by the Regulatory Authority for Audiovisual and Digital Communication after consulting the National Gaming Authority and the National Commission for Informatics and Freedoms.

‘Promotion contracts with gambling operators shall include a clause whereby the persons defined in Article 1 of this Law certify that they have familiarised themselves with the laws and regulations applicable to commercial communications relating to gambling and undertake to comply with them.

‘Infringements of the provisions of this VII shall be liable to the fine provided for in Article L. 324-8-1 of the Internal Security Code.

“ VIII. – After 2° of Article L. 6323-8-1 of the Labour Code, a subparagraph worded as follows is inserted:

‘Any sale or promotional offer of a product or any payment in return for subscription to programmes referred to in the same Article L. 6323-6 shall also be prohibited.’

‘ IX. – Infringement of the provisions of I to IV and VI of this Article shall be punishable by the penalty provided for in Article L. 132-2 of the Consumer Code.

‘ In respect of those offences and the offence provided for in VII, the offender may also be prohibited, either definitively or temporarily, in accordance with the procedures laid down in Article 131-27 of the Criminal Code, from exercising the professional or social activity in the exercise of which the offence was committed or the activity of commercial influence by electronic means defined in Article 1 of this Law.

‘ X. – After 31° of Article L. 511-7 of the Consumer Code, 32° is inserted as follows:

‘32° By V of Article 4 of Law No 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating abuses of influencers on social networks.’; III. – Article 5 is replaced by the following provisions:

‘ Article 5. – I. – Content communicated by the persons referred to in Article 1 of this Law comprising images which have been subjected to:

‘1° Modification by any image processing process to refine or thicken the silhouette or to alter the appearance of the face shall be accompanied by the terms: ‘Edited images’;

‘2° Production by any artificial intelligence process to represent a face or silhouette shall be accompanied by the terms: ‘Virtual images’.

“ The terms provided for in this I shall be clear, legible and comprehensible on any medium used. They may be replaced by an equivalent term adapted to the characteristics of the influence activity and the format of the communication medium used.

“ II. – Where the promotion is carried out by the persons referred to in Article 1 of this Law and concerns registration for a vocational training activity referred to in Article L. 6313-1 of the Labour Code, financed by one of the bodies referred to in Article L. 6316-1 of that Code, the reference set out in Article 5-2 of this Law shall include information relating to the associated financing, commitments and eligibility rules, the identification of the provider(s) responsible for that training programmes and the provider referenced on the electronic service referred to in Article L. 6323-9 of the same Code.

“ III. – Infringement of the provisions of I and II of this Article shall be punishable by one year’s imprisonment and a fine of EUR 4 500.

‘ IV. – The detailed rules for the application of I and II of this Article shall be laid down by decree made after hearing the Council of State.’;

IV. – After Article 5, two Articles 5-1 and 5-2 are inserted as follows:

‘ Article 5-1. – I. – The provisions of I to III of Article 4 shall not apply to media service providers within the meaning of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 which fall within the competence of another Member State of the European Economic Area within the meaning of Article 2(2) of that Directive. They apply, on the other hand, to such suppliers when they fall within the competence of France.

‘ However, where the conditions referred to in paragraphs 2 to 3 of Article 3 or paragraphs 2 to 5 of Article 4 of that Directive are fulfilled and at the end of the procedure laid down in those provisions, the administrative authority shall specify to the person concerned the provisions applicable to him or her, subject to the relevant penalties, and the service concerned.

“ II. – Subject to I, as regards the application of the provisions of I to III of Article 4 to media service providers, the provisions of Articles 4 and 5 shall not apply to persons established in another State party to the European Economic Area.

‘ However, where the conditions referred to in paragraphs 4 to 5 of Article 3 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 are fulfilled and at the end of the procedure laid down in those provisions, the administrative authority shall specify to the person concerned the provisions applicable to him or her, subject to the relevant penalties, and the service concerned.

‘ III. – The implementation procedures for this Article shall be defined by decree by the Council of State.

‘ Article 5-2. – It is a misleading commercial practice within the meaning of Article L. 121-3 of the Consumer Code and under the conditions laid down in that Article, for a natural or legal person exercising an influence activity within the meaning of Article 1 of this Law not to indicate, in a clear, legible and comprehensible manner, on any medium used, the commercial intention it has, if that intention is not already apparent from the context.

‘ Commercial intent may be explicitly indicated by the use of the terms ‘advertising’ or ‘commercial collaboration’ or by an equivalent term adapted to the characteristics of the influence activity and the format of the medium used.’;

V. – Article 9 is replaced by the following provisions:

‘ Article 9. – I. – Where they carry out the activity defined in Article 1 and are not established in the territory of a Member State of the European Union, the Swiss Confederation or the European Economic Area and target an audience in France, legal persons or natural persons engaged in an independent activity under the status defined in Articles L. 526-6 to L. 526-21 of the Commercial Code or Articles L. 526-22 to L. 526-26 of that Code shall designate in writing a legal or natural person ensuring their representation in the territory of the European Union.

‘ This representation is intended to ensure the conformity of contracts which have as their object or effect the implementation of an activity of commercial influence by electronic means directed, in particular, at an audience established in French territory. The designated representation shall also be responsible for responding, in addition to or in place of the persons referred to in the first subparagraph of this I, to all requests from the competent administrative or judicial authorities for compliance with this Law.

‘ The persons referred to in the first subparagraph shall give the person so designated the necessary powers and sufficient resources to ensure effective cooperation with the competent authorities to comply with this Law.

‘ The persons referred to in the first subparagraph shall, upon request, communicate to the competent administrative authorities the name, postal address, e-mail address and telephone number of the person designated pursuant to that first subparagraph.

‘This designation shall not constitute an establishment in the European Union.

‘ II. – A person pursuing the activity defined in Article 1 who is established outside the European Union, the Swiss Confederation or the European Economic Area shall be required to take out civil insurance with an insurer established in the European Union, guaranteeing the financial consequences of their professional indemnity, where that activity is aimed, even incidentally, at an audience established in French territory. ‘III. – The implementation procedures for this Article shall be defined by decree made after consultation with the Council of State.’

Article 2

The Prime Minister and the Minister of the Economy, Finance and Industry shall be responsible, each insofar as he or she is concerned, for the application of this Order, which shall be published in the *Official Journal* of the French Republic.

Done on 6 November 2024.

EMMANUEL MACRON

By the President of the Republic:

The Prime Minister,
MICHEL BARNIER

*The Minister of the Economy,
Finance and Industry,*
ANTOINE ARMAND