

ANNEX A
resolution no. 7/24/CONS

**GUIDELINES AIMED AT ENSURE COMPLIANCE WITH THE PROVISIONS
OF THE CONSOLIDATED TEXT BY INFLUENCERS AND INSTITUTION OF
A SPECIAL TECHNICAL TABLE**

Purpose of the Guidelines	1
Scope of	3
Provisions immediately applicable to influencers	4
Essential provisions of the code of conduct	6
Final provisions and review clause	6

Purpose of the Guidelines

1. The Authority has noted the growing diffusion of content published online, via platforms for sharing videos and social media, by subjects, real or virtual, hereinafter referred to as "*influencers*" (and called in current language, a by way of example, also "*vlogger*", "*streamer*", "*creator*", "*uploader*"), who have control over the creation, production or organization of such content.
2. By *influencer* we mean those subjects who carry out an activity similar or in any case similar to that of suppliers of audiovisual media services under national jurisdiction, where they cumulatively possess the following requirements: the service offered constitutes an economic activity pursuant to
 - articles 56 and 57 of the TFEU;
 - the main purpose of the service offered is the provision of content, created or selected *by the influencer*, which informs, entertains or educates and which is likely to generate income directly in the execution of commercial agreements with producers of goods and services or indirectly in application of the monetization agreements applied by the platform or *social media* used;

- *the influencer* has editorial responsibility for the contents, which includes effective control over the creation, selection or organization of the contents themselves;
- the service is accessible to the general public, reaches a significant number of users in Italy, has a significant impact on a significant portion of the public and the contents are disseminated via a video sharing platform or *social media service*;
- the service allows the use of contents upon user request;
- the service is characterized by a stable and effective link with the Italian economy;
- the contents are offered through the use of the Italian language or are explicitly aimed at users on Italian territory.

3. The Authority, through these Guidelines, adopted following the public consultation launched with resolution no. 178/23/CONS, intends to identify the provisions of the legislative decree of 8 November 2021, n. 208 (hereinafter also "Consolidated Law on Audiovisual Media Services" or "Consolidated Law") that influencers *are* required to respect and the measures necessary to guarantee its uniform and coherent application, with particular reference to compliance with the principles of transparency and of the correctness of the information, the application of the regulations regarding the protection of minors and fundamental human rights and the provisions regarding commercial communications and *product placement* aimed at making any promotional purposes pursued transparent to the public.

4. For the purposes referred to in paragraph 2, and with particular reference to the adoption of technical measures and measures, with these Guidelines, the Authority intends to dictate criteria to safeguard the interests protected by the legislation dictated by the aforementioned Legislative Decree no. 208 of 2021, as applicable to the case considered, as well as useful indications for the adoption of one or more codes of conduct through co-regulatory procedures, in accordance with the provisions of paragraphs 15 et seq. To this end, a specific technical table chaired by the Authority has been established, according to the methods indicated in Annex B of this resolution, which will draw up said regulation for subsequent approval by resolution of the Authority.

Scope of

5. Given the peculiar nature of the subjects who qualify as *influencers* and the audiovisual contents disseminated by them and the blurred boundary between subjects carrying out amateur or professional activities, it is appropriate to list certain elements which, upon first application, allow, in compliance with principles and canons of proportionality, differentiation and adequacy, to identify influencers *who* carry out professional activities to which the relevant provisions of Legislative Decree 8 November 2021, n. apply. 208. The subjects can be distinguished into:

- (the) *Influencers* who propose audiovisual content having the characteristics defined by these Guidelines including commercial communications on the basis of agreements of any type, upon payment of money or supply of goods or services which cumulatively:
 - to. reach a number of subscribers (the so-called *followers*) equal, upon first application, to at least one million, resulting from the sum of subscribers on the platforms and *social media* on which they operate;
 - b. they published at least 24 in the year preceding the survey contents having the characteristics defined by these Guidelines;
 - c. have exceeded at least on one platform or *social media* an average *engagement rate* value equal to or greater than 2% in the last 6 months;
- (ii) subjects who operate in a less continuous and structured manner, and who are characterized by not reaching the threshold established *above* in terms of the number of *followers* and a significant *engagement rate*, on whom, on the other hand, the imposition of such charges does not appear justified, without prejudice to the applicability of the articles to the contents published by them. 41 and 42 of the Consolidated Law.

6. The Authority therefore intends to identify the provisions immediately applicable to *influencers* who fall into the category under i), ensuring, however, not to provide for unnecessary obligations and burdens. The technical table referred to in paragraph 15 further defines the characteristics necessary for the identification of professional *influencers*, also in relation to specific sectors of activity.

7. The technical table identifies the methods of formation and publication of the list of subjects referred to in paragraph 5.

Provisions immediately applicable to influencers

8. The Authority believes that, in light of the characteristics of the activity carried out, consisting mainly in the dissemination of self-produced audiovisual content, whether at least the provisions of the Consolidated Law indicated below are applicable to *influencers* :
- The general principles referred to in article 4, paragraph 1;
 - The general principles referred to in article 6, paragraph 2, letter. a), regarding information, as applicable;
 - The provisions protecting copyright referred to in article 32;
 - The provisions to protect the fundamental rights of the person, minors and the values of sport referred to in articles 30, 37, 38 and 39 and the relevant implementing resolutions adopted by the Authority;
 - The provisions regarding commercial communications referred to in articles 43, 46, 47 and 48.
9. In particular, the contents disseminated by influencers:
- to. must not contain any incitement or provocation to commit crimes or condoning them;
 - b. must guarantee respect for human dignity and do not publish content or expressions likely to spread, incite, propagandize or justify, minimize or otherwise legitimize violence, hatred or discrimination and offend human dignity towards a group of people or a member of a group on the basis of one of the grounds set out in Article 21 of the Charter of Fundamental Rights of the European Union, especially in the case of minority groups or groups discriminated against by virtue of their distinctive characteristics. Furthermore, as applicable, they adapt to the principles established in the recommendation on the correct representation of the image of women as identified in resolution no. 442/17/CONS;
 - c. must not contain elements likely to determine the deresponsibility of the author or co-responsibility of the

victim of violence, hatred, discrimination or injury to human dignity or any other form of secondary victimisation;

- d. respect the rules on the protection of minors, ensuring that they do not publish content that is seriously harmful to the physical, mental or moral development of minors, as identified in resolution no. 52/13/CSP and adopting reporting mechanisms compliant with the provisions of art. 9 of resolution no. 74/19/CONS for potentially harmful content. When uploading content, *influencers* use, where available, the features provided by the video sharing platform to indicate that the content contains content potentially harmful to minors.

10. Influencers avoid the *use* of subliminal techniques, both in terms of creating informative or entertaining content and in terms of commercial communications.

11. Influencers comply with the rules on commercial communications, teleshopping, sponsorships and product placement, referred to in articles 43, 46, 47 and 48 of the Consolidated Law, the prohibition of hidden advertising, as well as the implementing provisions adopted by the Authority with *specific* regulation, also recognizing the rules set out in the *Digital Chart* Regulation on the recognisability of commercial communication disseminated via the Internet promoted by the Advertising Self-Regulation Institute. In the case of content with product insertion, the *influencers* report in the text accompanying the content, or superimposed within the content itself, a writing that highlights the advertising nature of the content in an immediately recognizable way.

12. Furthermore, the *influencers* undertake to guarantee the truthful presentation of facts and events and to verify the correctness and objectivity of the information also by mentioning the sources used, as well as to implement actions to combat *online* disinformation as part of the initiatives proposed by the Technical Committee.

13. Influencers guarantee compliance with the provisions regarding the protection of copyright and intellectual property rights.

14. In case of violation of the provisions mentioned above, the relevant sanctioning mechanism is applied in accordance with the provisions of the art. 67 of the Consolidated Law, without prejudice to the provisions of art. 1, paragraph 31, of law n.249/97.

Essential provisions of the code of conduct

15. Taking into account the peculiarity of the activity subject to regulation, it seems appropriate to identify, through one or more codes of conduct, the additional measures and methods by which influencers *adapt* their activities in order to guarantee compliance by them of the provisions of the Consolidated Law that are theirs applicable, as identified above.

16. The code of conduct must define the further measures and instrumental technical measures aimed at ensuring that influencers *comply* with the provisions of Legislative Decree 8 November 2021, n. 208 applicable to them, in compliance with the principles and specific informative criteria indicated in the following paragraphs and taking into consideration the specific characteristics of the individual service provided and of the platform or social media that guarantee its dissemination.

17. The code of conduct must provide systems of transparency and recognisability of *influencers*. In particular, the sender or creator of the video must be clearly identifiable and contact details must be available, according to methods to be established in the code of conduct.

18. The Authority will monitor to verify that the measures envisaged in these guidelines guide and code of conduct are effectively and correctly implemented.

Final provisions and review clause

19. The provisions of the Consolidated Law, including the definitions contained therein, in addition to guaranteeing the appropriate protection for users, partially coincide with the terms and conditions already applied by the platforms for sharing videos and social media, with the obligations of transparency and recognizability of commercial communications and with the regulatory framework regarding consumer protection. The Authority reserves the right to review the criteria for the qualification of *Influencers* as providers of audiovisual media services following the first phase of application of these guidelines.

20. For video sharing platform services, the provisions of articles 41, 42 and 43 of the Consolidated Law continue to apply, as well as those set out in the Platform Regulations referred to in resolution no. 298/23/CONS and subsequent implementing regulations adopted by the Authority, as, in this context, these

platforms represent the tool through which *influencers* make their content available to the public.

21. The Authority notes that in the broader scope of activity of the *influencer sector*, *Influencer marketing* is a phenomenon that is becoming considerably popular. However, this phenomenon is not limited to *influencers alone*, but involves a group of subjects who do not fall within the subjective scope of application of the Consolidated Law. By way of example and not exhaustively, *the influencer* marketing ecosystem includes specialized agencies and in general those who act as intermediaries between *influencers* and companies, such as PR agencies, media centers, creative agencies, talent managers, MCN multi-channel networks, which they carry out, as third parties, activities providing services such as audience expansion, content programming, collaboration with creators, digital rights management, monetization and sale of advertising content. It is often the responsibility of these agencies to draft the contracts and ensure the transparency of communication between the client and the hired *influencer*. However, for the purposes of these Guidelines, these subjects cannot be traced back to the scope of application of Legislative Decree 8 November 2021, n. 208. Therefore, the Authority reserves the right to evaluate the inclusion of said subjects in the list of recipients of these Guidelines.

22. The Authority, in light of the complexity and novelty of the matter, also reserves the right to update with its own provision the thresholds identified in paragraph 5, having consulted the interested parties and on the basis of the experience deriving from their implementation and the work of the Roundtable technical referred to in Annex B of this resolution.