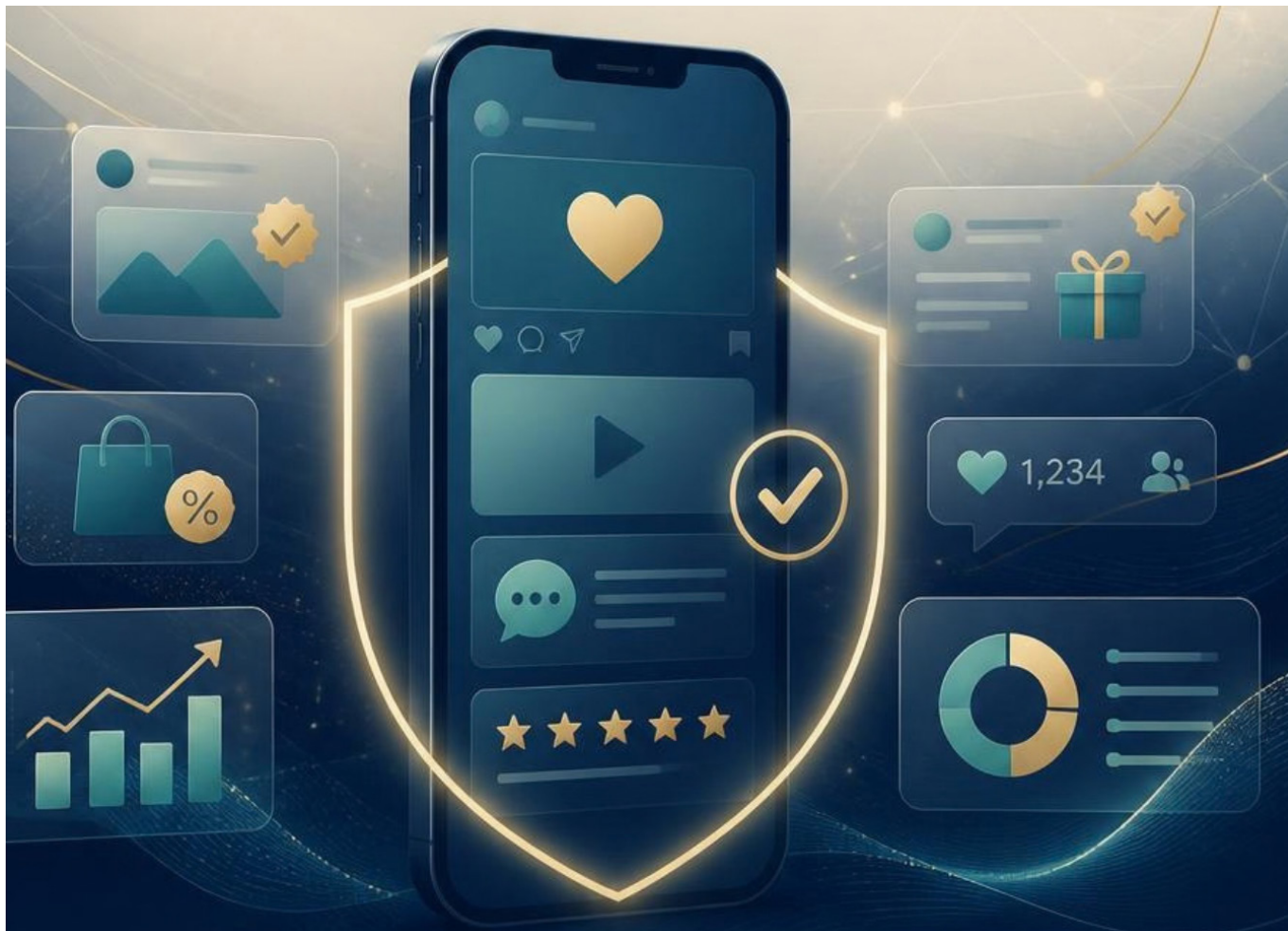




**Institucionalna zaštita potrošača u influencer marketingu
– uporedna analiza Crne Gore i Njemačke
Institutional Consumer Protection in Influencer Marketing
– A Comparative Analysis of Montenegro and Germany**

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Institucionalna zaštita potrošača u influencer marketingu – uporedna analiza Crne Gore i Njemačke
/Institutional Consumer Protection in Influencer Marketing – A Comparative Analysis of Montenegro and Germany

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U našoj prethodnoj publikaciji o zaštiti potrošača na društvenim mrežama u kontekstu influencer marketinga bavili smo se oglašavanjem putem društvenih mreža koje je sve više zastupljeno, kao i nepostojanjem posebnih pravila koja regulišu influencer marketing u Crnoj Gori. Takođe smo ukazali na to da jedan od glavnih problema u odnosu trgovac – influencer – potrošač nastaje kada influenceri u sadržajima koje objavljuju ne naznačavaju da se radi o plaćenim promocijama proizvoda. Razlikovanje ličnih preporuka od komercijalnog sadržaja je od sve većeg značaja imajući u vidu da je oglašavanje proizvoda i usluga preko influensera sve više zastupljeno u praksi.

Ova publikacija nadovezuje se na našu prethodnu analizu kroz uporedni prikaz institucionalne zaštite potrošača u Crnoj Gori i Njemačkoj, sa posebnim osvrtom na mogućnosti daljeg razvoja crnogorskog okvira zaštite potrošača od nepoštenih poslovnih praksi u influencer marketingu.

In our previous publication on consumer protection on social media in the context of influencer marketing, we addressed the increasing prevalence of advertising through social media, as well as the absence of specific rules regulating influencer marketing in Montenegro. We also highlighted that one of the main consumer protection concerns arises when the commercial nature of influencer content is not clearly disclosed. Distinguishing between personal recommendations and commercial content is becoming increasingly important, given the growing importance of advertising products and services through influencers in practice.

This publication builds on our previous analysis by taking a comparative approach to the institutional protection of consumers in Montenegro and Germany, with a particular focus on how the Montenegrin framework for protection against unfair commercial practices in influencer marketing could be further developed.

Njemačka predstavlja koristan primjer za uporednu analizu. Iako influencer marketing nije regulisan jednim posebnim zakonom, njemačko pravo razvilo je znatno detaljniji okvir kroz Zakon protiv nelojalne konkurencije (UWG), propise u oblasti medija i obimnu sudsku praksu. Njemačko pravo naročito zahtijeva da komercijalna svrha poslovne prakse bude jasno naznačena, osim ako je već očigledna iz okolnosti, dok Međupokrajinski ugovor o medijima (njem. Medienstaatsvertrag – MStV) zahtijeva da oglašavanje u digitalnim medijima bude jasno odvojeno od uredničkog sadržaja.

U kontekstu institucionalne zaštite potrošača, Njemačka je uspostavila mehanizme za praćenje poštovanja zahtjeva u pogledu transparentnosti oglašavanja. Pokrajinska regulatorna tijela za medije mogu pratiti sadržaj i postupati po pritužbama koje se odnose na prikriveno oglašavanje. Kada se utvrdi neusklađenost, može se zahtijevati preduzimanje korektivnih mjera, dok dalje nepoštovanje propisanih obaveza može dovesti do sankcija. Dodatno, pod određenim uslovima, odgovarajuće mjere u slučaju povrede odredaba UWG-a mogu preduzimati i organizacije koje se bave zaštitom od nelojalne konkurencije, kao i konkurenti.

Germany provides a useful comparative example. Although influencer marketing is not regulated by a single dedicated act, German law has developed a considerably more detailed framework through the Act Against Unfair Competition (UWG), media regulation and extensive case law. In particular, German law requires the commercial purpose of a business practice to be clearly disclosed unless it is already apparent from the circumstances, while the Interstate Media Treaty requires advertising in digital media to be clearly distinguishable from editorial content.

In the context of institutional consumer protection, Germany has established mechanisms for monitoring compliance with advertising transparency requirements. The State Media Authorities may monitor content and investigate complaints concerning hidden advertising. Where non-compliance is identified, corrective action may be required and continued non-compliance may lead to sanctions. Additionally, under certain conditions, organisations engaged in protection against unfair competition, as well as competitors, may take appropriate action in the event of infringements of the UWG.

Na osnovu opisanog primjera, zaključuje se da djelotvorna zaštita potrošača u oblasti influencer marketinga ne zavisi nužno od donošenja posebnog zakona kojim bi se regulisao influencer marketing. Stoga je neophodno napraviti kombinaciju jasnih pravila, smjernica za njihovu praktičnu primjenu i funkcionalnih mehanizama nadzora sa ciljem da se obezbijedi okvir koji će pružiti sveobuhvatu zaštitu usljed nepoštenih poslovnih praksi u novim oblicima oglašavanja u digitalnom prostoru.

Trenutno stanje zakonodavnog i institucionalnog okvira zaštite potrošača u Crnoj Gori je znatno drugačije. Zakon o zaštiti potrošača predviđa mehanizme administrativne zaštite potrošača i zabranjuje nepoštene poslovne prakse. Međutim, trenutni zakonodavni okvir u Crnoj Gori ne predviđa izričite odredbe koje regulišu ponašanje influencersa na domaćem tržištu, zbog čega influencer marketing prvenstveno podliježe opštim pravilima zaštite potrošača. 7

Based on the example described above, it can be concluded that effective consumer protection in the field of influencer marketing does not necessarily depend on the adoption of a specific law regulating influencer marketing. It is therefore necessary to combine clear rules, guidelines for their practical application and effective monitoring mechanisms in order to establish a framework that provides comprehensive protection against unfair commercial practices arising from new forms of advertising in the digital space.

The current legislative and institutional framework for consumer protection in Montenegro is considerably different. The Montenegrin Consumer Protection Act provides mechanisms for the administrative protection of consumers and prohibits unfair commercial practices. However, Montenegro does not currently have specific legislation governing influencers or sponsored social media content, meaning that influencer marketing remains subject primarily to general consumer protection rules.

Za razliku od njemačkog sistema, Crna Gora nema specijalizovani nacionalni organ koji je isključivo nadležan za administrativno sprovođenje pravila o zaštiti potrošača u ovoj oblasti. U postojećem okviru, relevantne nadležnosti vrše nadležni državni organi i inspekcijski organi zaduženi za nadzor nad primjenom propisa o zaštiti potrošača.

Nepostojanje specijalizovanog organa, međutim, ne sprečava aktivnije korišćenje postojećeg institucionalnog okvira. Konkretno, na osnovu opštih pravila kojima se zabranjuju nepoštene poslovne prakse mogle bi se razviti smjernice ili preporuke o komercijalnom sadržaju koji objavljuju influenseri. Savjet za zaštitu potrošača mogao bi imati značajnu ulogu u ovom procesu. Imajući u vidu njegovu ulogu u praćenju zaštite potrošača i predlaganju mjera i aktivnosti u ovoj oblasti, Savjet bi mogao predstavljati odgovarajuću institucionalnu platformu za izradu preporuka koje bi se posebno odnosile na influencer marketing.

Unlike the German system, Montenegro does not have a specialised national authority exclusively responsible for the administrative enforcement of consumer protection rules in this area. Under the existing framework, the relevant responsibilities are exercised by the competent state authorities and inspection bodies responsible for supervising the implementation of consumer protection legislation.

The absence of a specialised authority does not, however, prevent the existing institutional framework from being used more actively. In particular, guidelines or recommendations on commercial communication by influencers could be developed based on the general rules prohibiting unfair commercial practices. The Consumer Protection Council could have an important role in this process. Considering its role in monitoring consumer protection and proposing measures and activities in this field, the Council could serve as an appropriate institutional platform for developing recommendations specifically addressing influencer marketing.

Takve smjernice mogle bi, između ostalog, obuhvatiti obavezu izričitog označavanja plaćene promocije proizvoda, okolnosti u kojima bi trebalo naznačiti postojanje veze između influencera i trgovca, kao i način na koji bi takvo označavanje trebalo predstaviti potrošačima. Kao što smo razmatrali u prethodnoj publikaciji, ova obaveza mogla bi se smatrati ispunjenom kada influencer izvrši označavanje na dva nivoa (eng. two-level tagging), tako što će odabirom odgovarajuće opcije u okviru same platforme označiti sadržaj kao sponzorisan, a ujedno to navesti i u tekstu koji prati samu objavu.

Iako takve preporuke ne bi mogle zamijeniti obavezujuće propise, one bi mogle pružiti praktične smjernice influencerima i trgovcima, a istovremeno pomoći nadležnim organima u primjeni opštih pravila o nepoštenim poslovnim praksama na oglašavanje putem društvenih mreža. Na primjeru rješenja u njemačkoj jurisdikciji, vidimo da je važno ne samo transparentno definisati obaveze učesnika na tržištu, već uspostaviti i mehanizme koji omogućavaju praćenje njihove primjene u praksi.

Such guidelines could address, among other matters, the clear disclosure of sponsored content, the circumstances in which a commercial relationship between an influencer and a trader should be disclosed, and the manner in which such disclosure should be presented to consumers. As discussed in our previous publication, this could include clear and unambiguous disclosure of paid promotions and the use of two-level tagging, combining the platform's advertising disclosure tools with an appropriate indication in the content itself. These were already identified as possible mechanisms for improving transparency in our previous analysis.

Although such recommendations would not replace binding legislation, they could provide practical guidance to influencers and traders while assisting competent authorities in applying general rules on unfair commercial practices to social media advertising. The example of the approach taken in the German jurisdiction shows that it is important not only to clearly define the obligations of market participants, but also to establish mechanisms that enable their implementation to be monitored in practice.

Ovo pitanje će vjerovatno postajati sve značajnije za Crnu Goru u kontekstu procesa evropskih integracija. Kako Crna Gora nastavlja da usklađuje svoj okvir zaštite potrošača sa standardima Evropske Unije, može se očekivati da će se veća pažnja posvetiti praktičnoj primjeni pravila o zaštiti potrošača u digitalnom prostoru, uključujući influencer marketing.

Razvoj praktičnih smjernica za influencers, zajedno sa jasnijim definisanjem uloge nadležnih organa u praćenju njihove primjene, mogao bi predstavljati realističan prvi korak. Dugoročno, iskustvo Njemačke i drugih država članica Evropske Unije može pružiti korisne smjernice za dalji razvoj sveobuhvatnijeg regulatornog i institucionalnog okvira za influencer marketing.

This issue is likely to become increasingly relevant for Montenegro in the context of its ongoing EU integration. As Montenegro continues to align its consumer protection framework with EU standards, the practical enforcement of consumer protection rules in the digital environment, including influencer marketing, can be expected to receive greater attention.

The development of practical guidelines for influencers, combined with a more clearly defined role of the competent authorities in monitoring compliance, could therefore represent a realistic first step. In the longer term, the experience of Germany and other EU Member States may provide useful guidance for the further development of a more comprehensive regulatory and institutional framework for influencer marketing.

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