CAN AN INFLUENCER BE A COMMERCIAL AGENT?

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Summary

This paper deals with the question of whether an influencer who markets products or services on social media on behalf of a client can acquire the legal status of a commercial agent. The author analyses the Slovenian, German, and Italian regimes and frames them within the context of the EU Commercial Agents Directive. The methodological approach is based on an analysis of sources of law and case law, taking into consideration the particularities of the digital environment. The author concludes that, in principle, anyone who satisfies the criteria laid down by the Commercial Agents Directive and the associated national legislation can be a commercial agent, including an influencer. The author finds that the current legislation governing commercial agency law is substantively sufficient to deal with new forms of agency, but that certain outstanding issues and differences in practice necessitate the development of uniform and clear case law.

Keywords: *influencer; commercial agent, commission; indemnity; Directive 86/653/EEC.*

1 INTRODUCTION AND RESEARCH FRAMEWORK

Numerous companies are utilising platforms such as YouTube, TikTok, Instagram and others to promote their products and services, as an increasing proportion of the global population, especially younger demographics, can no longer be reached via radio, television or print media. According to Eurostat data, the use of social networks among individuals in the European Union has shown a steady increase in recent years. In 2023, approximately 59% of individuals aged 16-74 in the EU participated in social networks, meaning they created profiles or posted content on platforms such as Facebook, Instagram or TikTok. More recent Eurostat data indicate a continued upward trend. By 2025, the share of individuals using social

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networks in the EU rose to around two-thirds of the population (approximately 65%), reflecting the growing importance of digital communication and online interaction across Europe.[1] Influencers are playing an increasingly important role on these platforms, wielding considerable influence, including over their followers' attitudes, behaviour, consumption patterns as well as their purchase decisions.[2]

Influencer marketing has expanded considerably in recent years, emerging as a key form of online advertising and an increasingly important component of the digital economy. The global influencer marketing market was estimated to reach approximately USD 32.55 billion in 2025 and has more than tripled in size since 2020.[3]

But what exactly is an influencer? The concept of an influencer is not subject to a single, uniform definition. According to Michaelsen et al the influencer is a content creator with a commercial intent, who builds trust and authenticity-based relations with their audience (mainly on social media platforms) and engages online with commercial actors through different business models for monetisation purposes.[4] Similarly, the European Commission, in its guidelines on the Unfair Commercial Practices Directive[5], adopts a broad understanding of the term by including both natural persons and virtual entities, defining an influencer as an individual or entity with an above-average reach on a given platform.[6]

The influencers' increasing economic and social relevance and the fact that influencers influence potential customers – their followers – by driving them to enter into a contract of sale with a company, or contributing to its execution, raises important legal questions, especially concerning their role in commercial relationships and their position within the existing EU regulatory framework. The central issue, discussed below in this paper, is whether this constitutes a new form of commercial agent and whether influencers should enjoy the rights conferred on commercial agents by the Slovenian Obligations Code[7] and the Council Directive of 18 December 1986 on the

1 "Individuals Using the Internet for Participating in Social Networks", Eurostat, accessed March 22, 2026, https://ec.europa.eu/eurostat/databrowser/view/tin00127/default/table?lang=en.

2 "Influencers and IP", European Union Intellectual Property Office, November 2025, accessed March 23, 2026, https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2025_Influencers_and_IP/2025_Influencers_and_IP_FullR_en.pdf.

3 "Influencer Marketing Benchmark Report 2025", Influencer Marketing Hub, accessed March 22, 2026, https://influencermarketinghub.com/influencer-marketing-benchmark-report/#toc-0.

4 Frithjof Michaelsen et al., "The Impact of Influencers on Advertising and Consumer Protection in the Single Market," Policy Department for Economic, Scientific and Quality of Life Policies, Directorate-General for Internal Policies, 2022, accessed July 30, 2025, https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf.

5 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, OJ L 149, 11.6.2005, 22-39 (hereinafter: "Unfair Commercial Practices Directive").

6 Guidance on the Interpretation and Application of Directive 2005/29/EC of the European Parliament and of the Council Concerning Unfair Business-to-Consumer Commercial Practices in the Internal Market, OJ C 526, 29.12.2021, 1-129, 97.

7 Obligations Code [*Obligacijski zakonik*], Official Gazette of the Republic of Slovenia

coordination of the laws of the Member States relating to self-employed commercial agents.[8] At the same time, the analysis takes into account that influencer activities may also fall within the scope of EU consumer law, which introduces an additional layer of legal qualification.

This paper proceeds from the premise that influencers may, under certain conditions, be qualified as commercial agents within the meaning of Directive 86/653/EEC and national laws and, consequently, enjoy the rights conferred on commercial agents by national laws. In this context, the paper seeks to answer the following key research questions: which elements define the legal qualification of an influencer as a commercial agent; how do individual national laws – specifically Slovenian, German and Italian laws – interpret the criteria of intermediation, continuing nature and independence in a digital context; how has case law developed in this respect; and what are the implications of such a definition for the rights and obligations of the contracting parties. The analysis also considers, in a complementary manner, the potential qualification of influencers as traders under EU consumer law, thereby highlighting the interaction between commercial agency law and consumer protection frameworks.

The paper applies comparative law methodology to analyse the relevant legislation and case law of the selected countries, and a doctrinal approach to interpret regulatory provisions and legal concepts in the light of influencer marketing. To that end, the paper references existing jurisprudence and secondary sources. The analysis also includes recent judgments of national courts and the case law of the Court of Justice of the European Union.

The aim of this paper is to contribute, from a theoretical perspective, to the evolving understanding of the concept of commercial agency in the digital age and to provide clear guidance to lawyers, companies and influencers themselves as to when and under what conditions a commercial agency relationship can be created, including the rights to commission and indemnity. The particular value of the paper lies in the fact that it provides answers to topical legal questions raised by the rapid development of digital marketing that have not been comprehensively addressed thus far.

The paper first lays out the regulatory framework governing the concept of commercial agency in Slovenian law and analyses the key criteria that must be satisfied in order for a contractual relationship to be qualified as a commercial agency contract, and goes on to analyse the satisfaction of those criteria in the case of an influencer. In addition, it briefly examines the possible qualification of influencers as traders under EU consumer law, thereby situating their activities within a broader regulatory context. The paper then proceeds to examine other comparable national regimes and case law, and finally offers a synthesis of the key findings and practical

Nos. 97/07 – official consolidated text, 64/16 – Constitutional Court decision, and 20/18 – OROZ631 (hereinafter: "OC").

8 Council Directive 86/653/EEC of 18 December 1986 on the Coordination of the Laws of the Member States Relating to Self-Employed Commercial Agents, OJ L 382, 31.12.1986., 17-21 (hereinafter: "Commercial Agents Directive").

guidelines for future regulation. The paper therefore not only addresses jurisprudence, but also has direct significance for professional practice in relation to contractual relationships in the digital environment.

2 LEGAL CRITERIA FOR COMMERCIAL AGENCY UNDER EU LAW WITH REFERENCE TO SLOVENIAN LAW

The legal qualification of influencers as commercial agents is contingent upon the fulfilment of specific criteria established under EU law as elaborated in the text below. The following analysis addresses these criteria in the context of influencer marketing, with particular reference to Slovenian law.

2.1 Intermediation in the Digital Environment

The Commercial Agents Directive, transposed to the Slovenian legal system by the OC, defines a commercial agent as a self-employed intermediary who has continuing authority to negotiate the sale or the purchase of goods on behalf of another person (the principal) or to negotiate and conclude such transactions on behalf of and in the name of that principal.[9]

The Slovenian OC defines a commercial agent as a person who undertakes, under a commercial agency contract, to procure on a continuing basis that third parties enter into contracts with his principal and to act as an intermediary between them and the principal in that regard, and to enter into contracts with third parties in the name and on behalf of the principal pursuant to the authority granted to him, for which the principal undertakes to pay him a certain fee (commission) for each contract.[10]

As is evident from the very definition, the Slovenian regime, as well as many other European regimes, with exceptions such as Denmark and Sweden,[11] extend the law governing commercial agency to include services.

The first distinction that differentiates a commercial agent from a distributor, consignee and others is that a commercial agent carries on an activity consisting of acting as an intermediary in the sale or purchase of goods or services on behalf of the principal or, to the extent that he is authorised to do so, entering into such transactions in the name and on behalf of the principal.

Some may perform a dual function. For instance, influencers may also purchase and resell the principal's products themselves while at the same time promoting the principal's other sales channels (e.g. online shop), in which case their classification as a commercial agent is not excluded, provided that they also perform the function of a commercial agent.[12]

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9 Article 1(2) of the Commercial Agents Directive.

10 Article 807(1) of the OC.

11 Philine Fabig and Josephine Toepfer, "Influencer im Geltungsbereich der Handelsvertreter-Richtlinie," *ZVertriebsR* 6 (2024): 350.

12 Fabig and Toepfer, "Influencer im Geltungsbereich," 352, 353.

The concept of intermediation is to be understood very broadly. For instance, the German Federal Court of Justice wrote as early as 1982 that it is sufficient for a business transaction between a customer and an undertaking to be promoted by influencing the customer.[13] As the CJEU has stated, the term "negotiate" in Article 1(2) of the Commercial Agents Directive is to be interpreted in the light of the context in which that provision operates and the objectives pursued by the Commercial Agents Directive.[14] The circumstance that a commercial agent does not have the power to change the prices of the goods he sells on behalf of the principal does not prevent the commercial agent from carrying out his main tasks as described in the Commercial Agents Directive, as a commercial agent's main tasks are to bring the principal new customers and to increase the volume of business with existing customers, which tasks the commercial agent may accomplish by providing information and advice, as well as through discussions, aimed at facilitating the conclusion of the transaction for the sale of goods on behalf of the principal, without the commercial agent having the power to change the prices of those goods.[15]

An influencer who merely directs interested customers – his followers – to the principal's online shop by means of a link, without negotiating or organising the terms and conditions with the customer himself can thus also qualify as a commercial agent.[16] By advertising products and facilitating their purchase, influencers influence the purchase decisions of their followers. This constitutes intermediation, as the mere provision of a link and the associated influence on purchase decisions is sufficient to meet the definition of intermediation. Followers' purchase decisions are influenced by the contents of the posts or simply by the link to the undertaking's online shop, with contributory – and not necessarily predominant – causation alone being sufficient.[17]

2.2 Existence of a Contractual Relationship

While the Commercial Agents Directive does not directly mention commercial agency contracts in the definition itself, the requirement is implied by its contents. Each party is also entitled to receive from the other on request a signed written document setting out the terms of the agency contract, including any terms subsequently agreed, and this right cannot be waived.[18] The Directive even allows a Member State to provide that a commercial agency contract is valid only if made in writing.[19] Slovenian law does not provide for a mandatory written form for the validity of a commercial agency contract and has left the decision in this respect to the parties,[20] with implicit acts, and certainly verbal agreements, mandates, etc.,

13 Judgment of the German Federal Court of Justice (BGH), case no. I ZR 68/80 of May 19, 1982.
14 See Judgment of 4 June 2020, *Trendsetteuse*, C-828/18, EU:C:2020:438, para. 29.
15 *Trendsetteuse*, C-828/18, paras. 32, 33 and 34.
16 Fabig and Toepfer, "Influencer im Geltungsbereich," 350.
17 Fabig and Toepfer, "Influencer im Geltungsbereich," 353.
18 Article 13(1) of the Commercial Agents Directive.
19 Article 13(2) of the Commercial Agents Directive.
20 Article 808 of the OC.

being sufficient.

Therefore, if an influencer, on his own initiative, without any written or other agreement with the principal, promotes or favours certain brands and/or goods or services in one way or another, this does not and cannot constitute a commercial agency contract. This means that the influencer is acting solely for his own benefit, using a third party's brands, services or products to promote himself, without any agreement with the principal. In such a case, no relationship of any kind is created between the principal and the influencer. The issue may arise, however, of potential claims by the manufacturer, trademark holder or any other party who might suffer harm as a result of the influencer's posts.

2.3 Continuing Nature of the Relationship

The Slovenian OC includes the continuing nature of the relationship in the definition of a commercial agency contract by the phrase "at all times" (Article 807(1) of the OC), whereas the Commercial Agents Directive (Article 1(2) of the Commercial Agents Directive) and the German (Article 84(1) of the HGB[21]) and Austrian legal regimes (Article 1(1) HVertrG[22]) provide for it in the definition of a commercial agent.[23] Advocate General L.A. Geelhoed stated in his Opinion in *Poseidon Chartering*[24] that "continuing" authority requires simply that the agent be responsible either for negotiating more than one type of contract, or for (re) negotiating the same contract on more than one occasion. The CJEU followed the position in the Opinion and took the view in the same case that Article 1(2) of the Commercial Agents Directive must be interpreted as meaning that, where a self-employed intermediary had authority to conclude a single contract, subsequently extended over several years, the condition laid down by that provision that the authority be continuing requires that the principal should have conferred continuing authority on that intermediary to negotiate successive extensions to that contract.[25]

In the grounds of its judgment, the CJEU further noted that, as is clear from Article 1(2) of the Directive, a commercial agency contract is characterised in particular by the fact that the agent, defined as a self-employed intermediary, is invested by the principal with continuing authority to negotiate. That is clear from several provisions of the Directive, especially Articles 3 and 4 on the obligations upon the parties to act dutifully and in good faith towards each other, Article 6 et seq. on the remuneration of the agent during the period of contractual relations, and

21 *Handelsgesetzbuch* of 10 May, BGBl. No. III. 4100-1, with last amendments of 27 December 2024, BGBl. 2024 I No. 438 (hereinafter: "HGB").

22 *Bundesgesetz über die Rechtsverhältnisse der selbständigen Handelsvertreter* of 11 February 1993, BGBl. No. 88/1993, with last amendments of 2 June 2016, BGBl. I No. 29/16 (hereinafter: "HVertrG").

23 Sebastjan Kerčmar, *Odpravnina po pravilih agencijske pogodbe v primerjalnem pravu* (GV Založba, 2024), 52.

24 See Opinion of Advocate General Geelhoed of 28 April 2006, *Poseidon Chartering,* C-3/04, EU:C:2005:259.

25 See Judgment of 16 March 2006, *Poseidon Chartering,* C-3/04, EU:C:2006:176, Jasmina Cigrovski, "Trgovski zastopnik s (trajnim) pooblastilom," *Pravna praksa* 12 (2006): 29.

Article 17 et seq. on the rights of the agent after termination of the contract.[26] In any case, it is indisputable that a principal authorising an independent agent to act as an intermediary in the execution of a single contract cannot constitute a commercial agency contract. Nor does continuing nature necessarily mean that the contractual relationship must last forever or indefinitely.[27] Even shorter relationships, for instance for the duration of a season, campaign, exhibition or trade fair, can satisfy the criterion of continuing nature. What is essential is that the contractual relationship is made for an indefinite number of transactions.[28, 29] Similarly, the commissioning of an influencer for a post, video, etc., may satisfy the characteristic of continuing authority, as it is intended to reach an indefinite number of followers and the content is continuously available, even at later times.[30]

2.4 Independence and Economic Nature of the Activity

The Slovenian OC further provides that an agent is a natural person or legal entity who is independently and gainfully engaged in registered agency activities,[31] it being clear from the case law of the CJEU that the Commercial Agents Directive does not preclude a national law that makes the enrolment of a commercial agent in the register of undertakings conditional on that agent's name having been entered in a register of commercial agents, provided that the inclusion or otherwise of a commercial agent in either register does not affect the validity of agency contracts entered into by that agent or otherwise weaken the legal protection afforded to commercial agents in legal relations with their principals.[32]

The CJEU also ruled on this issue in *Centrosteel*, holding that the Commercial Agents Directive precludes national legislation that makes the validity of an agency contract conditional upon the commercial agent being entered in the appropriate register. The national court is bound, when applying provisions of domestic law predating or postdating the Commercial Agents Directive, to interpret those provisions, so far as possible, in the light of the wording and purpose of the Directive, so that those provisions are applied in a manner consistent with the result pursued by the Directive.[33] National provisions subjecting the validity of an agency contract to a condition of entry in the register provided for that purpose are capable of significantly hindering the conclusion and operation of agency contracts between parties in different Member States and therefore from that point of view are contrary to the

26 See Judgment of 16 March 2006, *Poseidon Chartering*, C-3/04, EU:C:2006:176, para. 24.
27 German Federal Court of Justice (BGH) in case no. IV ZR 154/91 of April 1, 1992.
28 Michael Nocker, *HVertrG – Handelsvertretergesetz 1993* (Verlag Österreich, 2015), 62, and Gerrick Freiherr von HoyningenHuene, „Kommentar zu § 84 HGB," in *MüKoHGB*, ed. Karsten Schmidt (C. H. Beck, 2016), § 84 HGB, recital no. 54 – referring also to the Judgment of the Nürnberg Higher Regional Court (OLG) in case no. 3 U 94/57 of September 19, 1957.
29 Kerčmar, *Odpravnina*, 52-53.
30 Fabig and Toepfer, "Influencer im Geltungsbereich," 351.
31 Article 807(2) of the OC.
32 Judgment of 6 March 2003, *Caprini*, C-485/01, EU:C:2003:135.
33 Judgment of 13 July 2000, *Centrosteel*, C-456/98, EU:C:2000:402.

aims of the Commercial Agents Directive.[34,35]

Accordingly, the provisions of Article 807(2) of the OC must be interpreted such that the absence of proper registration of the agent's activities cannot affect the validity of the commercial agency contract and the rights deriving therefrom.[36] Zabel also argues, albeit with slightly different arguments, that registration is not an absolute positive or negative criterion for qualification as a commercial agency contract.[37]

In defining a commercial agent, the legislature included gainful engagement in agency activities as one of the conditions. While the Commercial Agents Directive does not directly provide for such a condition, Article 2(1) of the Commercial Agents Directive, which lists the cases in which the Directive does not apply, includes commercial agents whose activities are unpaid.[38]

This raises the question of whether a natural person may independently and gainfully engage in agency activities without being a sole trader despite this potentially being in violation of the aforementioned national regulations. In practice, there have been cases where a contract was executed and agency services were duly performed by, and commission was paid to, a natural person who was not in fact registered as a sole trader. Zabel states that the reason for the entrepreneurial status of the commercial agent in the Slovenian OC and many other regimes is that only a professional commercial agent bears certain entrepreneurial risks and therefore enjoys special protection.[39] This view is also supported by Article 2(2) of the Commercial Agents Directive, which allows Member States to exclude from the protective provisions of the Commercial Agents Directive those persons whose activities as commercial agents are considered secondary – or side – activities. Although Slovenia has not provided for such an exclusion, this provision makes it clear that the Commercial Agents Directive is not primarily intended for persons whose social security is provided for in other ways and who engage in commercial agency as a secondary (side) activity. On the other hand, there may be persons for whom commercial agency activities are the main source of income or who engage in commercial agency activities in addition to their employment or other activities, but whose relationship with the principal does not qualify as one of employment and who perform their work under the commercial agency contract independently, but not as a sole trader or through a company. These are certainly exceptional cases that are likely to be rare in practice, yet, as stated, they should not be excluded *a priori*, and it is therefore necessary to assess on a case-by-case basis and in detail whether the

34 Judgment of 13 October 2013, *Unamar*, C-184/12, EU:C:2013:663, para. 38.

35 Kerčmar, *Odpravnina*, 41-42.

36 Sebastjan Kerčmar, "Der Ausgleichsanspruch des Handelsvertreters nach slowenischem Recht im Lichte der EU-Richtlinie 653/86 — The Commercial Agent's Indemnity under Slovenian Law in the Light of EU Directive 653/86," *Internationales Handelsrecht* 24, no. 3 (2024): 89-96.

37 Bojan Zabel, "Samostojni položaj trgovskega zastopnika", *Pravosodni bilten* 23, no. 2 (2002): 104, Kerčmar, *Odpravnina*, 42.

38 Kerčmar, *Odpravnina*, 40-41.

39 Zabel, "Samostojni položaj", 100.

conditions required by the Commercial Agents Directive are satisfied.

It follows from its submission to the European Commission's working group that Slovakia suggested deleting the word "self-employed" from the definition of "commercial agent" under Article 1(2) of the Directive. In response, the European Commission stated that a commercial agent who is not self-employed is already protected under national social laws applicable to salaried workers, so further protection under the Commercial Agents Directive would not be justified.[40] This answer also implies that the essential elements are the autonomy and independence of the commercial agent from the principal, but that the agent is not necessarily required to operate in any kind of legal form, which is what is the term *self-employed* is normally understood to mean in our country.

The interpretation of the criteria laid down in Article 1(2) of the Commercial Agents Directive has been further clarified by the CJEU in *ZAKO*,[41] where the court emphasised that the arrangements under which the commercial agent performs his activities are irrelevant. What is essential is that he satisfies the three necessary and sufficient conditions for a person to be classified as a "commercial agent" under Article 1(2) of the Commercial Agents Directive and that he does not fall within one of the exclusions laid down by Article 1(3) and Article 2 of the Commercial Agents Directive.[42] In the same case, the Advocate General stated in his Opinion[43] that the introduction of additional conditions – in addition to those laid down in Article 1(2) of the Commercial Agents Directive – for classification as a "commercial agent" and consequently for the application of the Commercial Agents Directive, such as conditions relating to the place or the manner in which the commercial agent performs his activities, would limit the scope of that protection and would therefore hinder the achievement of the objective pursued by the Commercial Agents Directive. Therefore, there appears to be no obstacle to commercial agents carrying out their activities in the principal's premises. As stated by the Advocate General,[44] an interpretation of Article 1(2) of the Commercial Agents Directive to the contrary would exclude from protection persons carrying out, with the assistance of modern technological means, tasks similar to those carried out, on an itinerant basis, by commercial agents who travel, in particular, for the purposes of client acquisition and direct marketing. Although the mere fact that an agent carries out his activity in the principal's premises cannot justify the exclusion of the agent from the concept of "commercial agent" within the meaning of Article 1(2) of the Commercial Agents Directive, that circumstance must not affect his independence vis-à-vis the principal. In the view of the Advocate General,[45] the commercial agent's independence can be

40 Evaluation of the Council Directive on the Coordination of the Laws of the Member States Relating to Self-Employed Commercial Agents (Directive 86/653/EEC) / REFIT Evaluation of 16 July 2015, 26.

41 Judgment of 21 November 2018, *ZAKO*, C-452/17, EU:C:2018:935.

42 *ZAKO*, C-452/17, para. 24.

43 Opinion of Advocate General Szpunar of 25 July 2018, *ZAKO*, C-452/17, EU:C:2018:625, para. 23.

44 AG Szpunar, Opinion in *ZAKO,* C-452/17, para. 25.

45 AG Szpunar, Opinion in *ZAKO,* C-452/17, para. 34.

challenged not only by his subordination to a principal's instructions, but also by the methods by which the agent performs his duties.[46]

In the same case, the CJEU addressed another highly important issue, namely that Article 1(2) of the Commercial Agents Directive must be interpreted as meaning that the fact that a person not only performs activities consisting in the negotiation of the sale or purchase of goods for another person, or the negotiation and conclusion of those transactions on behalf of and in the name of that other person, but also performs, for the same person, activities of another kind, without those other activities being subsidiary to the first kind of activities, does not preclude that person from being classified as a "commercial agent" within the meaning of that provision, provided that that fact does not prevent the former activities from being performed in an independent manner, which it is for the referring court to ascertain. It is therefore necessary to ascertain whether the fact that the commercial agent performed, for the same person, his activities as a commercial agent together with other activities having the same importance has the effect, taking account of all of the circumstances of the case, such as the nature of the tasks performed, the manner in which they are carried out, the proportion those tasks represent with regard to the overall activities of the person concerned, the method of calculating the remuneration, or the reality of the financial risk incurred, of preventing the agent from performing his activities as a commercial agent in an independent manner.[47] It is also not necessary for a commercial agent to have the power to change the prices of the goods he sells on behalf of the principal in order to be classified as a commercial agent within the meaning of the Commercial Agents Directive.[48][49]

It follows from the foregoing that a natural person, including an influencer, who is gainfully (i.e. for remuneration), and on a "continuing" basis,[50] engaged in commercial agency activities, whether or not registered in any legal form, and independently carries on the business of a commercial agent, satisfies all the conditions and enjoys all the rights conferred on a commercial agent by the applicable law.

Based on the available Slovenian case law, the courts have not yet dealt with this issue, nor is this to be expected, since, as mentioned repeatedly,[51] the courts have never even awarded a commercial agent indemnity as one of the fundamental rights afforded by the law and the Commercial Agents Directive.

46 *ZAKO*, C-452/17, paras. 27, 29, 31 and 32.
47 *ZAKO*, C-452/17, para. 2 of the operative part.
48 Judgment of 4 June 2020, *Trendsetteuse*, C-828/18, EU:C:2020:438.
49 Kerčmar, *Odpravnina*, 46-49.
50 For a more detailed explanation of the term "continuing", see section 2.2 or Kerčmar, *Odpravnina.*
51 E.g. Kerčmar, *Odpravnina*, 28, Sebastjan Kerčmar, "Odpravnina trgovskega zastopnika", in: *Studia Iuridica Miscellanea MMXXI*, ed. Martina Repas (Maribor: University of Maribor, Faculty of Law, 2024), 125.

2.5 Interim Conclusions on the Qualification of Influencers as Commercial Agents in Slovenian Law

Based on the analysis of the above criteria, the following interim conclusions may be drawn regarding the qualification of influencers as commercial agents under Slovenian law.

An influencer can, in certain cases, be legally qualified as a commercial agent within the meaning of the Slovenian OC. The key conditions for such qualification are as follows. The influencer must act independently, meaning that he must not be an employee of the client and must carry on his activities as an independent entity. The activity must be continuous and involve the regular intermediation of transactions, indicating the existence of a continuing business relationship.[52] It is also essential that the influencer acts in the name and on behalf of the principal, or that he clearly and systematically facilitates transactions between the principal and third parties. His activities must be aimed at the execution of a contract, meaning that a purely promotional function without a definite link to sales is not sufficient. The main objective of the influencer's cooperation with the client must be to promote sales or enter into transactions within a specific market. If the influencer merely informs or expresses a personal opinion without economic motivation to promote sales, this element is not present. However, if the influencer actively promotes goods or services with a view to the execution of contracts between the client and third parties, such conduct corresponds to the concept of a commercial interest.

If the conditions described above are cumulatively satisfied, we believe there is a legal basis for applying the provisions governing commercial agency to relationships with influencers, including their rights to commission and indemnity and other rights afforded by the law to commercial agents.

2.6 Legal Consequences of the Qualification as a Commercial Agent

Qualification as a commercial agent also confers on the influencer certain rights vis-à-vis the principal, or imposes certain obligations on the principal vis-à-vis the influencer, such as the principal's obligation to act fairly and in good faith in his relationship with the agent, and the principal's obligation to inform the agent in the event that a transaction with the third party will not be completed or has not been completed by the third party. The principal must make available to the agent, at his own expense, the necessary documentation, samples, drawings, price lists, advertising materials, general terms and conditions of business, etc., with the Slovenian OC providing, in contravention of the Commercial Agents Directive and therefore unlawfully to the detriment of the agent, that the agent is to bear the costs of translating and printing any advertising materials in Slovenian.[53] The principal must also provide the agent with all the information necessary for the performance of the

52 For more details on what can be considered to constitute a continuing business relationship, see: Kerčmar, *Odpravnina*, 52-53.

53 For more on this, see Kerčmar, *Odpravnina*, 72-73.

commercial agency contract.[54]

Naturally, the principal is required to pay a commission to the agent for contracts executed through the agent's intermediation, and the agent is also entitled to payment for contracts executed by the principal directly with customers found by the agent, provided that if the agent, pursuant to the contract, operates only in a certain geographical area or with certain customers, the agent is also entitled to a commission for contracts executed for the principal with customers in that geographical area or with those certain customers without the agent's intermediation.[55] In the case of an influencer, there is a defined customer base – the influencer's followers. However, after the termination of the relationship between the agent and the principal, the agent is entitled to a commission only for contracts resulting from the agent's efforts during his relationship with the principal and executed within a reasonable time after the termination of that relationship, or for offers by third parties to enter into a contract received by the agent or principal before the termination of their relationship.[56]

The principal must prepare and deliver to the agent a statement of the commissions to which the agent is entitled, broken down by month, at least every three months. That statement must contain all the essential elements on the basis of which it has been prepared, and the principal must pay the commission for the entire relevant period by the end of the month following the last month included in the statement. Furthermore, if the agent so requests, the principal is required to deliver to the agent an extract from the principal's books showing all the transactions entitling the agent to a commission and to inform the agent of any circumstances affecting the commission.[57]

The Commercial Agents Directive and the Slovenian OC also include provisions for minimum notice periods in favour of the agent,[58] an obligation to pay indemnity,[59] post-contractual non-compete clauses,[60] and some other specifics – in short, an entire range of rights and obligations, parts of which cannot be modified to the detriment of the agent, with any such waiver being null and void.[61]

Naturally, the law also lays down the obligations of the commercial agent, including that he may not, without the principal's consent, undertake to work for another principal in the same geographical area and for the same type of business or for the same customer base,[62] that he must safeguard the principal's interests by acting fairly and in good faith in the performance of the contract and by exercising due diligence in all transactions undertaken by him, and in particular

54 Article 820 of the OC.
55 Article 823(1), Article 823(2) and Article 823(3) of the OC.
56 Article 823(4) of the OC.
57 Article 836(1), Article 836(2) and Article 836(3) of the OC.
58 Article 830 of the OC and Article 15 of the Commercial Agents Directive.
59 Article 833 of the OC and Article 17 of the Commercial Agents Directive.
60 Article 836 of the OC and Article 20 of the Commercial Agents Directive.
61 E.g. Article 814(3), Article 815(3), Article 822, Article 825(5), Article 826(5), Article 836(6) of the OC, and Article 10(4), Article 11(3), Article 12(3), Article 19 and Article 20(2) of the Commercial Agents Directive.
62 Article 807(5) of the OC.

by endeavouring, in the performance of the contract, to properly negotiate or enter into transactions in accordance with the instructions given to him by the principal.[63] In addition, the commercial agent must provide the principal with all necessary information concerning the market situation, particularly information relevant to each transaction, and must regularly report to the principal on his work and, in particular, on third parties willing to enter into a contract with the principal.[64] The agent is further required to protect any trade secrets of the principal of which the agent gains knowledge in connection with the business entrusted to him and is liable for any misuse of such secrets or their disclosure to a third party, including after the termination of the commercial agency contract.[65] Finally, upon termination of the contract, the agent must return to the principal all the things that the principal has provided to the agent for use during the term of the contract.[66]

2.7 Influencers as Traders under EU Consumer Protection Law

While the central focus of this paper is the qualification of influencers as commercial agents within the meaning of the Commercial Agents Directive and relevant national laws, it is also necessary to briefly address their potential classification as traders under EU consumer protection law. This question is of particular importance, as such qualification entails the application of a distinct set of legal rules governing commercial practices vis-à-vis consumers and raises the further question of how this classification relates to the influencer's potential role as a commercial agent, given that the same activity may give rise to parallel legal relationships governed by different regulatory frameworks. Influencer marketing consists in the promotion of particular brands or products through individuals who leverage their influence over their audience and their ability to shape consumer perceptions. Compared to other forms of online advertising, this type of marketing often lacks clear indicators that would enable consumers to readily recognise its commercial nature,[67] which highlights the need to ensure a high level of consumer protection, as required under EU consumer law.

As follows from the case law of the CJEU, including the Opinion of Advocate General Geelhoed in *Poseidon Chartering*, the Commercial Agents Directive aims, *inter alia*, to approximate national laws and to ensure a minimum level of protection for commercial agents, as well as the security of commercial transactions.[68] In this respect, the Commercial Agents Directive primarily governs the legal relationship between the agent and the principal.

By contrast, EU consumer protection law pursues a different objective, namely the protection of consumers in the marketplace, and governs the relationship between

63 Article 814(1) and Article 814(2) of the OC.
64 Article 815(1) and Article 815(2) of the OC.
65 Article 817(1) and Article 817(2) of the OC.
66 Article 818 of the OC.
67 Guidance on the Interpretation and Application of Directive 2005/29/EC, 97.
68 Opinion of Advocate General Geelhoed of 28 April 2006, *Poseidon Chartering,* C-3/04, EU:C:2005:259, para. 25.

traders and consumers. The relevant framework is laid down, in particular, in Unfair Commercial Practices Directive, as amended by Modernisation Directive (EU) 2019/2161[69].

Under Article 2(b) of the Unfair Commercial Practices Directive, a "trader" is defined as any natural or legal person who is acting for purposes relating to their trade, business, craft or profession, as well as anyone acting in the name of or on behalf of such a person. This element of the definition is particularly relevant in the context of commercial agency, as it indicates that persons acting in the name of and/or on behalf of a trader – including commercial agents – may, in principle, fall within the definition of a "trader" and consequently within the scope of EU consumer law. However, this does not imply that every commercial agent is automatically to be regarded as a trader, as will be further elaborated below.

The concept of a "trader" constitutes an autonomous concept of EU law, which must be interpreted uniformly across Member States and must also be assessed objectively and by means of an overall assessment of the functional criterion, on a case-by-case basis.[70]

In the context of influencer marketing, the requirement that a person acts for purposes relating to their trade, business, craft or profession is typically fulfilled where influencers engage in monetised activities, such as promoting products or services in exchange for remuneration, commissions, gifts or other economic benefits. More specifically, influencer activities may fall within the scope of commercial practices where three cumulative elements are present: first, the activity is aimed at generating revenue through content monetisation; second, it involves communication directed at consumers, such as advertising, product promotion or reviews; and third, it is carried out in connection with a professional or economic activity, thereby going beyond purely private or occasional conduct. Where these elements are satisfied, influencers may be considered to act for purposes relating to their trade or profession and thus fall within the scope of the concept of a trader.[71]

The interpretation of the concept of a trader has been clarified in the case law of the Court of Justice, notably in *Kamenova*, where the Court emphasised that the classification must be based on a case-by-case assessment. Relevant factors include, *inter alia*, whether the activity is carried out in an organised manner, whether it is intended to generate profit, whether it is conducted on a regular basis, and whether it is connected to a commercial or professional activity.[72]

It follows that the qualification of an influencer as a commercial agent does

69 Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU as regards the Better Enforcement and Modernisation of Union Consumer Protection Rules, OJ L 328, 18.12.2019, 7-28 (hereinafter: "Modernisation Directive").

70 Opinion of Advocate General Biondi of 18 September 2025, *Eisenberger Gerüstbau*, C-564/24, EU:C:2025:713, para. 26.

71 "When Is an Influencer a 'Trader'?," Influencer Legal Hub, accessed March 28, 2026, https://commission.europa.eu/topics/consumers/consumer-rights-and-complaints/influencer-legal-hub_en.

72 See Judgment of 4 October 2018, *Kamenova,* C-105/17, EU:C:2018:808, para. 38.

not automatically imply that the influencer is also a trader under EU consumer law. The influencer's possible status as a commercial agent does not exclude their simultaneous qualification as a trader, as the two concepts pursue different objectives and operate within distinct legal frameworks, and must therefore be assessed independently. Nevertheless, in practice, the two qualifications will often overlap, as influencer activities are typically carried out for commercial purposes and are aimed at influencing consumer behaviour. This reflects the dual functional role of influencers in the digital environment, where the same conduct may fall simultaneously within two distinct legal frameworks, namely commercial agency law in the context of the relationship with the principal and EU consumer law in relation to consumers.

3 COMPARATIVE PERSPECTIVE: GERMAN LAW

In Germany, commercial agency law is dealt with in Sections 84 to 92c of the German Commercial Code (HGB), which comprehensively regulate the relationship between principals and commercial agents. The HGB was adopted as early as 1897, with the provisions relating to commercial agents being amended several times, including as a result of the Commercial Agents Directive.

The German regime governing this subject matter is very important, particularly at the European Union level. Indeed, when enacting the Slovenian OC in 2001, the legislature drew upon the German regime with regard to the regulation of commercial agency contracts and, in particular, with regard to the indemnity for termination of the contractual relationship.[73] Likewise originating from German law is the "indemnity system" laid down in Article 17(2) of the Commercial Agents Directive, which is based on Section 89b of the HGB. Article 17 of the Commercial Agents Directive is the fruit of compromise between the different approaches previously taken in the laws of Member States[74] and gives Member States a choice between two solutions – either the indemnity system modelled on German practice, with the indemnity being determined in accordance with the criteria set out in Article 17(2) of the Commercial Agents Directive, or the compensation system, which is similar to the mechanism applied in French law and where the compensation is determined in accordance with the criteria set out in Article 17(3) of the Commercial Agents Directive. The alternative nature of the two systems has been confirmed by the CJEU, which has taken the view that Article 17 of the Commercial Agents Directive prohibits the cumulation of an award of indemnity under Article 17(2) and an award of compensation under Article 17(3).[75] Virtually all Member States at the time opted

73 Draft Code of Obligations, Bulletin of the National Assembly of the Republic of Slovenia, Issue 30, 1996, 104.

74 Report on the Application of Article 17 of Council Directive of 18 December 1986 on the Coordination of the Laws of the Member States relating to Self-Employed Commercial Agents (86/653/EEC), 23.7.1996., COM(96) 364 final, 1; Opinion of Advocate General Wahl of 16 July 2015, *Quenon K*, C-338/14, EU:C:2015:503, para. 30.

75 Opinion of Advocate General Wahl of 16 July 2015, Quenon K, C-338/14, EU:C:2015:503, para. 30, Judgment of 23 March 2006, *Honyvem Informazioni Commerciali*, C-465/04, EU:C:2006:199, para. 20, Judgment of 26 March 2009, *Semen*, C-348/07, EU:C:2009:195,

for the indemnity system modelled on the German legal system, with the exception of France, England and Ireland. England has introduced a dual system where the choice of whether the agent will be entitled to indemnity or to compensation upon termination of the contractual relationship is left to the parties themselves and, if the parties do not specifically agree on either, the law provides for the application of the compensation system.[76] In its 1996 report, the European Commission also recommended following the extensive German case law for the calculation of indemnity.[77] Indemnity is governed under German law by the provisions of Section 89b of the HGB, which was added to German law as early as 6 August 1953[78] and has been amended three times to date, first in 1976,[79] when a limitation on the loss of the right to indemnity in the case of termination on the grounds of the commercial agent's age or illness was added, then in 1989,[80] when minor corrections were made to its third paragraph for the implementation of the Commercial Agents Directive, and finally in 2009,[81] when a rather significant amendment was made as a result of a decision of the CJEU.[82, 83]

The German legislature laid down who it deems to be an independent person in the very definition of a commercial agent. Under German law, an independent person is one who is able, in essential respects, to independently organise his work and determine his working hours (second sentence of Section 84(1) of the HGB). Other persons are deemed to be employees (Section 84(2) of the HGB). As is the case in the Slovenian regime, no such provision – one that would be very welcome in practice – is made in Austrian law,[84] as the issues in this respect are resolved in its large body of jurisprudence and case law.[85, 86]

In Germany, the matter of whether an influencer may be entitled to the rights and subject to the obligations of a commercial agent is not yet settled in the case law of the Higher Regional Courts or Federal Court of Justice, while differing views

para. 15.

76 Gregor Kleinknecht, "Commercial Agency Contracts: Termination and Indemnity England and Wales," in *Il trattamento di fine rapporto nel contratto di agenzia*, ed. Alberto Venezia (Ordine degli avvocati di Milano, 2016).

77 Report on the Application of Article 17, 1.

78 *Gesetz zur Änderung des Handelsgesetzbuches (Rech der Handelsvertreter)* of 6 August 1953, BGBl. I, S.771; *Begründung Regierungsentwurf*, BT-Drs. 1/3856.

79 *Gesetz über die Kaufmannseigenschaft von Land- und Forstwirten und den Ausgleichsanspruch des Handelsvertreters* of 21 June 1976, BGBl. 1976 I 1197.

80 Amendment to the HGB of 23 October 1989, BGBl. I S. 1910.

81 Amendment to the HGB of 31 July 2009, BGBl. I S. 2512.

82 Judgment of 26 March 2009, *Semen*, C-348/07, EU:C:2009:195.

83 Kerčmar, *Odpravnina*, 122-123.

84 Nocker, *HVertrG*, 64, recital no. 120, Peter Jabornegg, "Die Rechtsstellung der selbständigen Versicherungsvertreter in österreichichen Recht," *Das Recht der Arbeit* 35, no. 2 (1985): 85-96, Austrian Supreme Court of Justice (OGH) in case no. 9 ObA 88/97 of March 26, 1997, Austrian Supreme Court of Justice (OGH), case no. 8 ObA 2/03g of June 12, 2003, Austrian Supreme Court of Justice (OGH), case no. 9 ObA 81/02f of October 2, 2002, and other cases.

85 See Nocker, *HVertrG*, 64–86, recitals no. 118-172, and the case law from the preceding footnote.

86 Kerčmar, *Odpravnina*, 45-46.

prevail in jurisprudence.

According to Ströbl, an influencer is generally not a commercial agent within the meaning of Section 84 of the HGB since he is usually only required to advertise the products and services of a third party, and not to negotiate specific transactions for that third party.[87] Conversely, Fabig and Töpfer allow for the qualification of influencers as commercial agents under certain circumstances, outlined below, and anticipate that decisions comparable to the Italian decision will appear in other countries sooner or later.[88]

The influencer must be tasked on a continuing basis with the sale of the third party's products within the meaning of Section 84 et seq. of the HGB and must therefore be engaged in intermediation activities aimed at the execution of specific transactions.[89] If the influencer creates content (videos or posts) of his own without reference to the undertaking's products or publishes advertisements for the undertaking on the basis of his contract with the platform he uses (i.e. not on the basis of a contract with the undertaking), there is no intermediation activity. The mere presentation of products without providing a way to make a purchase is likewise to be considered purely an advertising activity; this is particularly clear if the influencer is not compensated on the basis of the undertaking's sales revenue, but only on the basis of the advertisements (i.e. based on the number of views and followers). However, if the influencer's posts facilitate actual purchases through a link to the undertaking's products or promote sales through the provision of discount codes, this could be deemed to constitute intermediation of sales. On the other hand, the mere use of keywords (hashtags) under a post to make it easier to find products and increase reach should not normally lead to specific purchases.[90]

The German approach appears to be broadly compatible with current EU law developments, in particular as regards the broad and functional interpretation of the concept of a commercial agent. At the same time, the absence of settled case law specifically addressing influencers shows that further clarification will still be required at national level.

87 Albin Ströbl, „Kommentar zu § 84 HGB," in *MüKoHGB*, ed. Karsten Schmidt (C. H. Beck, 2025), Section 84 of the HGB, citing: Maximilian Höving, "Das Vertriebsrecht und Social Media: (Wann) sind Influencer Handelsvertreter?", *ZVertriebsR* 3 (2023): 158, and Fabig and Toepfer, "Influencer im Geltungsbereich", 349.

88 Fabig and Toepfer, "Influencer im Geltungsbereich,"349-356.

89 Jörg Semmler, „Kommentar zu § 84 HGB," in *Handelsgesetzbuch: HGB*, eds. Carsten Thomas Ebenroth and Christoph Boujong (Verlag Vahlen, C. H. Beck, 2024), Section 84 of the HGB, recital no. 117a, citing: Höving, "Das Vertriebsrecht," 163, and Raimond Emde and Daniel Valdini, "OnlineHotelportale als Handelsvertreter," *BetriebsBerater* 71, no. 16 (2016): 901.

90 Semmler, "Kommentar zu § 84 HGB," Section 84 of the HGB, recital no. 117a.

4 COMPARATIVE PERSPECTIVE: ITALIAN LAW

The essential provisions on commercial agency contracts are regulated by the Italian Civil Code of 1942[91] in Articles 1742 to 1753, which were amended in 1991[92] and 1999[93] to transpose the Commercial Agents Directive into the Italian legal system and further amended in 1999[94] and 2000.[95]

The Italian system is characterised by collective agreements (*Accordi Economici Collettivi*, AEC) between organisations representing principals and commercial agents. Four different collective agreements are currently in force, applicable based on the category to which the principal belongs.[96] Italian commercial agents are also affiliated with a social security organisation (*Fondazione ENASARCO*), which played a key role in bringing about the highly important court ruling described below.

In a recent judgment, the Court of Rome dealt with the legal classification of an influencer who promoted a company's products online and qualified him as a commercial agent.[97]

The Court examined a case involving an influencer who had entered into a long-term cooperation with a company to promote its products on social media. Under the agreement, the influencer was authorised to publish promotional content and to share a unique discount code with his followers, allowing them to buy the company's products on its website at a reduced price. The use of that code enabled the company to trace individual purchases back to the influencer's activities and to compensate him with a commission – set at 10% – for each transaction resulting from his promotions.[98]

The Court determined that this type of arrangement fulfilled the essential criteria of a commercial agency as set out in Article 1742 of the Italian Civil Code. Unlike a typical advertising relationship, the influencer's activity was oriented towards the execution of a sales contract, creating a direct economic link between his efforts and the company's transactions. The Court identified several decisive indicators supporting this conclusion.

First, the commercial purpose of the agreement clearly went beyond brand visibility – the influencer's objective was to generate concrete sales among his

91 *Codice Civile*, approved by Royal Decree of 16 March 1942, No. 262, as amended by Decree of 7 December 2016, No. 291.

92 Decree No. 303 of 10 September 1991. amending *Codice Civile.*

93 Decree No. 65 of 15 February 1999. amending *Codice Civile*.

94 Law No. 526 of 21 December 1999, which added a new paragraph to Article 1746 of the Civil Code, substantially prohibiting *del credere*: see hereafter, § 10.

95 Article 23 of Law No. 422 of 29 December 2000, which added several new paragraphs to Article 1751-bis of the Civil Code concerning compensation for post-contractual non-competition obligations.

96 Fabio Bortolotti and Silvia Bortolotti, *Country Report Italy, Commercial Agency* (International Distribution Institute, 2024).

97 Judgment of the Court of Rome (*Tribunale di Roma*), No. 2615 of March 4, 2024.

98 Silvia Bortolotti, "An Influencer was Retrained as a Commercial Agent by an Italian Court," accessed July 30, 2025, https://www.idiproject.com/news/italy-an-influencer-was-retrained-as-a-commercial-agent-by-an-italian-court/.

followers. Second, although no geographical territory was assigned, the "area of operation" was represented by the influencer's community of followers, who purchase the company's products using the influencer's personalised discount code. Third, there was a commission-based remuneration – the influencer's earnings were directly linked to the volume of transactions generated by his activities, evidenced by regular commission statements and continuous invoicing for sales made through his personalised discount code. Finally, the long-term and continuous nature of the relationship, established through a contact, concluded for an indefinite term, indicated a stable and permanent business collaboration comparable to that of a traditional commercial agent.[99]

The Court also clarified that, in the digital environment, personal one-to-one communication with potential customers is not a prerequisite for commercial agency. The decisive factor is that the influencer's activities are systematically aimed at concluding sales contracts, for which he receives performance-based remuneration, and that such activities are conducted on a continuous basis.[100]

The Italian approach, as reflected in the recent case law of the Court of Rome, appears to be in line with current EU law developments, particularly in recognising that digital forms of intermediation may fall within the concept of commercial agency where the influencer's activity is functionally directed at the conclusion of contracts.

5 CONCLUSION

The paper focused on the question of whether an influencer can be granted the status of a commercial agent under certain conditions. Starting from the thesis that an influencer may satisfy the legal conditions for such classification, the legal framework under Slovenian, German and Italian law was analysed and case law and jurisprudence were presented.

The main findings support the paper's thesis: if the influencer acts as an intermediary in the execution of contracts in the name and on behalf of the principal, on an independent, continuing and gainful basis, this constitutes a legal relationship that meets the definition of commercial agency under the Commercial Agents Directive and national laws. At the same time the influencers may fall within the concept of a trader where their activities involve commercial practices directed at consumers within the meaning of EU consumer law.

Influencers are therefore entitled, in certain cases, to commissions, indemnity and other protections afforded to traditional commercial agents. Therefore, anyone who satisfies the criteria laid down by the Commercial Agents Directive and the associated national legislation can be a commercial agent, including an influencer. Ultimately, a call centre or online portal that sells certain services or goods offered by a third party by telephone or via the internet may also qualify as a commercial agent, provided that the call centre or online portal is operated by an independent natural person or legal entity and is permanently tasked with selling the third party's products

99 Bortolotti, "An Influencer."
100 Bortolotti, "An Influencer."

or services within the meaning of the statutory provisions governing commercial agency contracts.[101]

It is reasonable to agree with Oonk that, despite the ongoing changes and challenges brought about by digitalisation, commercial agency law rests on solid foundations, as the legal framework, particularly in the light of Directive 86/653/EEC, appears to be sufficiently broad and flexible to allow for the inclusion of new forms such as influencers.[102] On the other hand, it is true that commercial agency law as established in European countries was developed in the context of traditional forms of agency and is slow to recognise new digital forms such as influencers. It is therefore for the courts to establish clear criteria in their case law for interpreting key elements such as the concepts of "intermediation", "continuing nature" and "independence", taking into account the particularities of the digital environment and the nature of the influencers' activities, as well as to draw clear distinctions between what constitutes mere advertising and what qualifies as intermediation. The development of such case law will be pivotal in ensuring sufficient legal certainty for both clients and influencers and facilitating the effective and predictable enforcement of their rights and obligations. In its absence, legal uncertainty, differences in understanding and the lack of precedent will continue to allow for divergent interpretations, which is particularly problematic in the dynamic and rapidly evolving field of influencer marketing.

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101 Emde and Valdini, "OnlineHotelportale," 899ff.

102 Lennard Hermann Oonk, "Influencer als Handelsvertreter: Eine Bewährungsprobe für § 84 HGB" (Doctoral Dissertation, Gottfried Wilhelm-Leibniz-Universität Hannover, 2024).

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Sebastjan Kerčmar*

Sažetak

MOŽE LI *INFLUENCER* BITI TRGOVAČKI ZASTUPNIK?

U radu se razmatra pitanje može li *influencer* koji na društvenim mrežama promovira proizvode ili usluge za račun naručitelja steći pravni status trgovačkog zastupnika. Autor analizira slovensku, njemačku i talijansku regulativu te je smješta u okvir Direktive o trgovačkim zastupnicima. Metodološki pristup temelji se na analizi pravnih izvora i sudske prakse, uzimajući pritom u obzir posebnosti digitalnog okruženja. Autor zaključuje da načelno svatko tko ispunjava uvjete propisane Direktivom o trgovačkim zastupnicima i povezanim nacionalnim zakonodavstvom može biti trgovački zastupnik, uključujući i *influencera*. Autor smatra da je važeće zakonodavstvo kojim se uređuje pravo trgovačkog zastupanja sadržajno dostatno i za nove pojavne oblike zastupanja, međutim, pojedina otvorena pitanja i razlike u praksi pozivaju na razvoj ujednačene i jasne sudske prakse.

***Ključne riječi**:* influencer*; trgovački zastupnik; provizija; posebna naknada; Direktiva 86/653/EEZ.*

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