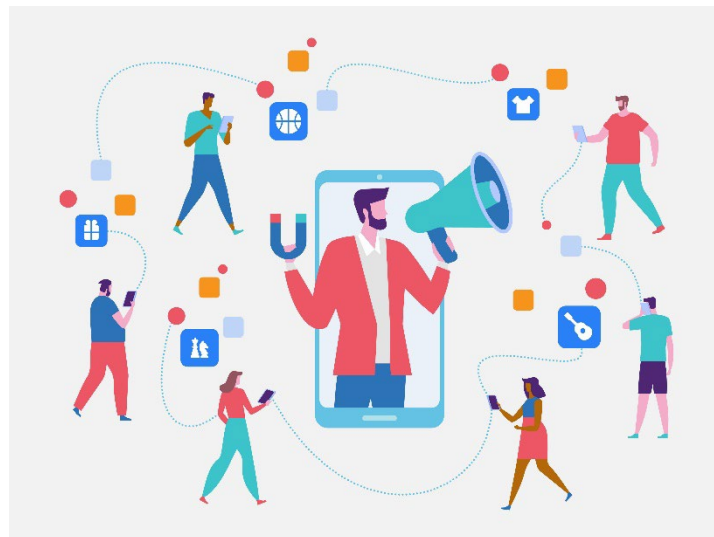


STUDY

Requested by the IMCO committee



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
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The impact of influencers on advertising and consumer protection in the Single Market

Abstract

Influencer marketing as part of the advertising industry has grown significantly in recent years, becoming one of the most popular and effective forms of online advertising. The fast-growing market of influencers comes with potential risks for consumers and creates several challenges for regulators. This study provides information and analysis on the impact of influencers on advertising and consumer protection in the Internal Market, identifies best practices and makes recommendations for future action.

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LIST OF ABBREVIATIONS

ACM	Autoriteit Consument en Markt (Dutch Authority for Consumers and Markets)
AGCM	Autorita' Garante della Concorrenza e del Mercato (Italian Competition and Market Authority)
AI	Artificial intelligence
AIMCO	Australian Influencer Marketing Council
API	Application Programming Interface
ARPP	Autorité de Régulation Professionnelle de la Publicité (French Professional Advertising Regulation Authority)
ASA	UK Advertising Standards Authority
ASAI	Advertising Standards Authority for Ireland
ASCI	Advertising Standards Councils of India
AVMSD	Audiovisual Media Services Directive
CAP	Committee of Advertising Practice
CGI	Computer-generated imagery
CJEU	Court of Justice of the European Union
CMA	UK Competition and Markets Authority
CPC	Consumer Protection Cooperation
CRD	Consumer Rights Directive
DIY	Do-it-yourself
DMA	Digital Markets Act
DSA	Digital Services Act
EASA	European Advertising Standards Alliance
EP	European Parliament

EU	European Union
eWOM	Electronic Word-of-Mouth
FTC	US Federal Trade Commission
GDPR	General Data Protection Regulation
IAB	Interactive Advertising Bureau
ICAS	International Council for Advertising Self-Regulation
ICPEN	International Consumer Protection and Enforcement Network
IGTV	Instagram TV
IMCO	European Parliament committee on Internal Market and Consumer Protection
ISBA	Incorporated Society of British Advertisers
JEP	Jury for Ethical Practices
MCN	Multi-channel network
SPIR	Sdružení pro internetový rozvoj (Czech Association for Internet Progress)
SRO	Self-regulatory organisation
TSI	Technical Support Instrument
UCPD	Unfair Commercial Practices Directive
UI	User interface
UK	United Kingdom
UOKiK	Urząd Ochrony Konkurencji i Konsumentów (Polish Office of Competition and Consumer Protection)
US	United States
UX	User experience
VSP	Video-sharing platform

VVTAT Valstybinė vartotojų teisių apsaugos tarnyba
(Lithuanian State Consumer Rights Protection Authority)

WOM Word-of-mouth

EXECUTIVE SUMMARY

The influencer marketing industry has grown significantly in recent years. **Consumers engage with influencers voluntarily but are at the same time exposed to advertising that relies on the relationship between the consumer and the influencer**, which raises concerns about the protection of consumers.

The objective of this study is to provide information and analysis on the impact of influencers on advertising and consumer protection in the Internal Market. In particular, this study aims to:

- **Define influencers** and examine the key features that make someone an influencer;
- **Analyse the relevance of these market actors in the Internal Market** from a business and consumer perspective;
- Provide an overview of **how influencers and their related market practices are currently regulated**;
- Provide an overview of practices that could be followed; and
- Design tailored **policy recommendations** to tackle market practices that harm consumers.

The study findings are based on a literature review, desk research and interviews at EU level, in the Member States and in non-EU countries, and a social media monitoring exercise.

Influencers are defined as content creators who have a trust-based relationship with their audience

Since the term influencer is not defined in law and the terminology may vary depending on different features of the underlying business models, this study, based on a review of various definitions proposed in the literature, defines the term as follows:

An influencer is a content creator with a commercial intent, who builds trust and authenticity-based relationships with their audience (mainly on social media platforms) and engages online with commercial actors through different business models for monetisation purposes.

The key features of an influencer are:

- Content creation, namely the service provided by influencers.
- Commercial intent, which is driven by direct revenue from brands (monetary and non-monetary), by revenues from audience-engagement or by platform compensation.
- Monetisation, namely the generation of revenue through different business models (including but not limited to influencer marketing).
- Trust and authenticity, namely the source of influence, related to the parasocial relationship¹ of trust established with the audience and the perceived authenticity and relatability of the content.

The influencer industry has grown significantly and is characterised by the frequent emergence of new market actors and business models

Economic data show that **the influencer industry has grown significantly** in recent years. The ways in which influencers interact with their audience have gone beyond influencer marketing, with the emergence of different ways to interact with the followers on platforms and through online

¹ Parasocial relationships are one-sided relationships, where a media user becomes attached to and invested in a social media character.

communities. Moreover, brands have been hiring marketing agencies to identify influencers able to reach specific audience demographics. **In terms of business models, creators are diversifying their revenue streams** and are often funded directly by their fans or through their own business ventures. New business models have emerged around social media platforms, such as tokenisation², subscription/crowdfunding, ad revenue, or direct payments.

Influencer marketing, in particular certain practices, can have a negative impact on consumers, including vulnerable consumers such as children and teenagers

On the consumer side, the relationship between influencers and consumers is characterised by perceived closeness, authenticity and trust. Both the influencer-follower-relationship and the influencer-brand-relationship affect consumers' attitudes towards brands. **Influencer marketing has an impact on consumer purchase decision-making.** Children and consumers with low education and/or low income are particularly vulnerable to influencer marketing. The specific features of influencer marketing exacerbate these vulnerabilities more than other forms of media (e.g., fashion/lifestyle magazines). In this context, the COVID-19 pandemic has led to more time spent online and thereby possibly to an increase of exposure to influencer marketing.

Several key influencer marketing practices that are potentially harmful for consumers were identified and detected through social media monitoring carried out for this study, namely lack of transparency and unclear disclosure, lack of separation between advertising and content, misleading messages, and targeting vulnerable consumer groups.

Influencer marketing is subject to EU and national consumer protection rules applied by national courts and authorities, as well as to industry self-regulation

At EU level, no specific legislation focussing on influencer marketing is in place, but **horizontal legislation on consumer protection applies.** Concerning transparency requirements under consumer law applicable to influencers who are active as advertisers, the **Unfair Commercial Practices Directive (UCPD)** in particular provides the overall framework on practices infringing consumer protection rules. The **Consumer Rights Directive (CRD)** and other legislation on consumer contracts apply to influencers who act as sellers, with regard to the obligations of online traders to disclose a wide array of information to consumers.

The **Digital Services Act (DSA)** proposal addresses some of the new challenges that emerged with recent market trends and aims to complement the existing set of horizontal EU legislative instruments. The relevant changes in the DSA concern transparency issues with regards to online advertising, as well as traceability of traders, intermediary liability, due diligence, and enforcement.

The European Parliament position on DSA was voted in January 2022. **Article 24 of the DSA proposal, in its amended form, integrates the most essential points made by the IMCO committee in its draft report of May 2021 with respect to advertising business models undertaken by influencers.** For example, the Parliament's position includes a reference to standardised approaches for advertising, whereby a new obligation is created for platforms to display information "through prominent and harmonised marking". More general aspects of online interface design are also covered to ensure that

² Platform tokens, or alternative 'virtual currencies', allow users to interact with or receive access to exclusive content by their favourite creators. These tokens are obtained in exchange for real money. Examples include YouTube's Super Chat or Super Sticker that allow fan messages to be highlighted when interacting on live streams, or YouNow's "bar" currency which allows fans to "purchase premium gifts that help them further engage with broadcasters and support them".

the structure, function or manner of operation of their online interface do not distort or impair the recipients of services' ability to make a free, autonomous and informed decision or choice. **One of the most important points about the DSA and its links to other instruments relevant for content monetisation by influencers is the definition of illegal content.** The amended version of the DSA proposal now defines illegal content as "any information or activity, including the sale of products or provision of services which is not in compliance with Union law or the law of a Member State, irrespective of the precise subject matter or nature of that law". This definition establishes a bridge between the DSA and other national or European regulations governing online content. Particularly for influencer marketing, the interpretation arises that if European (and national) law mandate advertising disclosures and other information duties, failure to comply with these standards may render such content illegal within the scope of the DSA. This interpretation shows how the DSA can contribute to a new narrative around platform governance, namely that of digital legal compliance.

In terms of the legal framework in EU Member States and non-EU countries, influencer marketing activities are not addressed through tailored and specific legislation but in general, they fall within the scope of advertising regulation. **The application of existing rules to influencer marketing by courts and authorities has therefore become an important factor.**

Overall, the main practices from legislators, authorities and the industry to tackle influencer marketing are:

- Adopting specific influencer legislation;
- Applying existing consumer protection legislation to influencers;
- Publishing guidelines and codes of conduct to establish good practices;
- Using digital monitoring and enforcement tools;
- Offering training and certification of influencers;
- Raising awareness and providing support to consumers; and
- Facilitating compliance on platforms via standardised disclosure tools.

The way forward: relying on and expanding existing consumer protection rules, strengthening enforcement, guiding influencers, and empowering consumers

In view of the increasing importance of influencer marketing practices on the market and the impacts they can have on consumers, as well as of the legal framework in place at EU and Member State level, this study puts forward the following recommendations:

- Regulating influencers requires **striking the right balance** between, on the one hand, enabling the Single Market for commercial activities but also for (online) social interaction and the creation of non-commercial content, and, on the other hand, protecting the interests of consumers. There is also a risk that regulation will run behind fast-paced technological and market developments.
- **Relying on and expanding existing consumer protection legislation** is generally considered to be the right path to tackle influencer marketing. National courts and authorities already interpret and apply existing rules to influencer marketing practices. Recent changes to the UCPD and the upcoming DSA will provide further clarity.
- **National authorities should be supported in developing and using digital tools** that facilitate the monitoring of influencer marketing activity and the enforcement of consumer

rights. This could be done within the scope of the EU eLab and with further assistance through the Technical Support Instrument (TSI).

- **Information and guidance that helps influencers** comply with applicable rules already exist at national level, and the EU could create a resource centre where this information is centrally available. EU support to national, regional and local initiatives aiming to empower consumers would **help consumers be aware of their rights and identify influencer marketing practices**.
- Lastly, **all market actors, which are not limited to influencers but also include brands and platforms, must know their duties and obligations and collectively act in a professional and responsible way**. The EU should keep monitoring to what extent industry practices effectively guarantee the protection of consumer interests. The effectiveness of practices should be verified and confirmed through consumer testing and behavioural research.

1. INTRODUCTION

The influencer marketing industry has grown significantly in recent years, becoming one of the most popular and effective forms of online advertising. The fast-growing market of influencers, while offering many benefits to consumers, also poses several challenges and comes with potential risks for consumers. Online marketplaces have shifted from consumer trade to more developed forms of trade, such as being facilitators for providers of goods and services. This has been enabled as social media have introduced new functionalities and integrated new transactions between consumers and potential traders. **Consumers engage with influencers voluntarily but are at the same time exposed to advertising that relies on parasocial relationships³ between the consumer and the influencer.**

The objective of this study is to provide information and analysis on the impact of influencers on advertising and consumer protection in the Internal Market. In particular, this study aims to:

- **Define influencers** and examine the key features that make someone an influencer;
- **Analyse the relevance of these market actors in the Internal Market** from a business and consumer perspective;
- Provide an overview of **how influencers and their related market practices are currently regulated**;
- Provide an overview of **practices that could be followed**, taking into account recent developments in Member States and non-EU countries; and
- Design tailored **policy recommendations** to tackle market practices that harm consumers.

1.1. Scope of the study

Overall, this study focusses on **consumer protection aspects of influencer marketing** that fall within the remit of IMCO competencies and does not cover issues related to political advertising. The focus thus lies on **commercial consumer transactions** (purchasing decisions on the consumer side) and how they are impacted by influencer marketing in consumer markets such as travel, fashion, lifestyle, gaming or health. Special attention is given to vulnerable consumers (in particular young consumers). Elements related to influencers that are not directly linked to consumer policy in the narrow sense, such as taxation or labour law, are also not further explored. Additionally, the study does not cover in depth the roles and responsibilities of other actors in the eco-system, notably platforms and brands. While these elements cannot be completely ignored, they are discussed and analysed in this study only **insofar as they are needed to fully understand the functioning and impacts of influencer marketing**. The study thus focusses on applicable legal regimes and advertising self-regulatory measures, rather than on platform and brand self-regulation which has been mapped more by academic literature.

³ Parasocial relationships are one-sided relationships, where a media user becomes attached to and invested in a social media character. In the case of influencers, it is one-sided relationship since the follower mainly observes the influencer.

1.2. Methodological approach

This study is based on an extensive **review of existing literature**, complemented by expert advice. An **internal expert workshop** was organised to discuss the findings of the literature review and fine-tune the definition of influencers. **Desk research and interviews** were conducted to gather quantitative and qualitative data at European and national level (in selected Member States and non-EU countries⁴) on market trends, consumer protection issues and existing practices. A review of European and national legal frameworks was performed as part of the desk research. Lastly, to complement the desk research and the interviews, a **social media monitoring** exercise was performed in order to provide additional data to the study, in particular on the market practices undertaken by influencers when marketing goods and/or services online. More details on the methodological approach behind this study are provided in the Annex.

⁴ EU Member States: Belgium, Croatia, Czechia, Finland, France, Germany, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Spain, Sweden. Non-EU countries: Australia, the US, the UK, India, China.

2. DEFINITION OF INFLUENCERS

KEY FINDINGS

An influencer can be defined as 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.

Key features of an influencer are:

- **Content creation**, namely the service provided by influencers.
- **Commercial intent**, which is driven by direct revenue from brands (monetary and non-monetary), by revenues from audience-engagement or by platform compensation.
- **Monetisation**, namely the revenue generation through different business models (including but not limited to influencer marketing) and emerging trends such as livestream shopping.
- **Trust and authenticity**, namely the source of influence, and related to the parasocial relationship of trust with the audience as well as the perceived authenticity of the content, which can be used to influence consumer purchasing behaviour.

This chapter provides an overview of the current debate on influencers with the objective to come up with an encompassing definition that clarifies the features that make someone an influencer, the key considerations around the methodological approach to be taken, and the pros and cons of the main definitions.

Defining the term influencer appears to be challenging due to the existence of different profiles of influencers, as well as heterogeneous business models. Since the term is not defined in law and the terminology may vary depending on different features of the underlying business models, a key objective of this study is to provide a general definition based on what makes an individual an influencer.

2.1. Various definitions of influencers are proposed in the literature

A review of literature that discusses the question of how to define influencers shows that criteria used to define influencers are derived from different features that are considered to make an individual an influencer, which mainly refer to the **source of revenue**, the **service provided**, and the **audience**.

On the basis of a wider review of the available literature, the following publications were assessed:

1. The European Advertising Standards Alliance (EASA), 2018, *Best Practice Recommendation on Influencer Marketing*.
2. Goanta, C. and Ranchordás, S., 2020, *The regulation of social media influencers: an introduction*, Edward Elgar Publishing.
3. Goanta, C., 2021, *Human Ads beyond targeted advertising. Content monetization as the blind spot of the Digital Services Act*.
4. Trzaskowski, J., 2018, *Identifying the Commercial Nature of 'Influencer Marketing' on the Internet*, Scandinavian Studies in Law, Volume 65, 81-100.
5. Morteo, I., 2017, *To clarify the typification of influencers: A review of the literature*.

6. European Commission, 2018, *Behavioural study on advertising and marketing practices in online social media*.

An overview of the definitions and main criteria used by the authors of these six publications is provided below.

2.1.1. EASA, 2018, Best Practice Recommendation on Influencer Marketing

The European Advertising Standards Alliance (EASA) is the lead regulatory authority for advertising in Europe promoting self-regulation. EASA has published guidelines and best practice recommendations on influencer marketing. In particular, it has provided a definition of influencers and identified regulations on their advertising content to complement commercial and media law.

- **Defines influencers** as “independent third-party endorsers who shape audience attitudes through blogs, posts, tweets, and the use of other social media”.
- **Defines influencer marketing** based on two criteria to be met: “(i) editorial content from sponsoring brands having a dominant control with a pre-suggested message script, scenario or speech for the influencer before its publication, and; (ii) a compensation for the marketing communication shared by the influencer, which can take different forms, from formal contractual agreements defining monetary payments to a mere provision of free goods or other reciprocal commitments for the benefit of the influencer”.

Regarding the regulation of influencer marketing activities, influencers work with traders via different means. According to EASA’s Digital Marketing Best Practice Recommendation, “if marketers or brand owners approach users to generate content in **exchange for payment or other reciprocal arrangements**, and have **control of the content**, then this would need to be clearly identified as **marketing communication**”.

Table 1: Definition 1 – Overview of criteria

Criteria	Description of the criteria
Service provided	Users who generate content as one of the main features of influencer marketing.
Editorial control	A dominant control with a pre-suggested message script, scenario or speech for the influencer prepared by the advertiser with additional requests for validation of the content before its publication.
Compensation	Marketing communication shared by the influencer, which can take different forms, i.e., from formal contractual agreements defining monetary payments to a mere provision of free goods or other reciprocal commitments for the benefit of the influencer.

Source: Authors own elaboration.

Pros: The definition provided is sufficiently broad to encompass future developments in influencer advertising. The **commercial nature** of the relationship (compensation criteria) is crucial for this study's scope and it is sufficiently broad ranging from more formalised contractual agreements to provision of free goods or other reciprocal commitments beneficial to the influencer. The **generation of content** which defines users as influencers is also a very important feature highlighting the importance of content creation. Hence, influencers' content practices are identified as "user-generated content" which is defined as "a distinct form of electronic word-of-mouth (e-WOM)".

Cons: However, a broad definition of influencer marketing features can become inadequate to understand influencers and their role in marketing and media in general. As also mentioned by EASA, it might be important to identify specific developments in influencer advertising and ensure they fall under self-regulation codes. **The definition also highlights editorial control of the content to be shared by the influencers. This feature might not always be relevant and applicable to certain marketing practices.** In an industry centred on authenticity, brands deliberately evade editorial control. For example, this definition does not capture longitudinal economic relationships in which the influencer functions as an "ambassador" for a brand (in this case they often are required to use the products throughout their daily life, attend events, etc.). Gifted products would also not be subject to brand editorial control. These features make sponsorship relationships and the degree of editorial control very challenging to ascertain for regulators. Moreover, this definition does not capture influencers marketing their own products, which is another key income stream. Another missing feature that can be useful to be defined is the impact/influence aspect which characterises influencers, namely their impact on consumers and the market.

2.1.2. [Goanta and Ranchordás, 2020, The regulation of social media influencers: an introduction](#)

The book examines the concept of influencer and provides an overview of how influencer marketing operates from a legal perspective whilst taking into account the variety of business models pursued by influencers. Drawing on developments in characterising influencers, the study emphasises the importance of social media influencers on modern influencer marketing.

- **Defines social media influencers** as "a recent social media phenomenon which reflects endorsement practices by individuals with a significant social media audience, with the purpose of increasing online engagement for the endorsed product or service".
- **Defines modern influencer marketing** as a "digital form of word-of-mouth ("WOM") advertising, a marketing technique which relies on the endorsement of information by trusted individuals within small communities or networks on the basis of mutual trust and repeated interactions. [...] The most important aspect of modern influencer marketing remains the ability for content creators to monetise content on social media".

Table 2: Definition 2 – Overview of criteria

Criteria	Description of the criteria
Industry	The type of industry/sector where the influencer operates or produces content about (e.g., pets, parenting, fashion, entertainment, travel, gaming, fitness, beauty, home, food, tech, family/children). These sectors are usually retail-friendly and prone to the monetisation of influence.
Source of popularity	The source of an influencers' popularity (distinction between "professionals", celebrities using social media for their personal and professional promotion, and "peers", influencers exclusively known for their activity on social media).
Influence analytics	Any data-driven measurement of how fast their influence spreads (e.g., significant number of followers/content views).
Legal status	Linked to the variety of pursued business models. This relates to the types of partnerships with brands (traders) for example, and the existence of a business underlying the influencer's operation.

Source: Authors own elaboration.

Pros: More detailed and specific elements to understand the nature of influencers, which can be useful to further define their activities. A relevant element is also the **influence measurement** aspect, namely shedding light on the relationship between the influencers and their audience. Another important feature highlighted is the **influencers' legal status** criterion as part of how to characterise influencers, which is closely linked to the variety of business models pursued by influencers. This can help to distinguish between those "who have companies, influencers who have the legal status of a freelancer, and influencers who are still consumers themselves".

Cons: One of the elements to identify influencers is metrics, which are important to understand how well-known influencers are, but it provides a limited understanding of their impact on the market, from a transactional perspective. As such, it is necessary to measure the number of followers engaged with influencers' specific campaigns. An interesting element that could complete the definition is the **engagement aspect**, namely the influencer's ability to involve users, activating them in the topics discussed, and incentivising referrals, conversations about products/brands, and customer feedback. Moreover, this definition also uses the word "small networks", while this study covers different sizes of influencers, including those with multi-million follower counts, as the key issues and recommendations will also be relevant to these actors.

2.1.3. Goanta, 2021, Human Ads beyond targeted advertising. Content monetisation as the blind spot of the Digital Services Act

The paper discusses social media monetisation as a trend including new forms of native advertising such as influencer marketing. It also addresses the recent legislative developments spurred by the new Digital Services Act package, which proposes new rules on digital markets.

- **Defines influencer marketing** as a form of human advertising, i.e., “influencers, also called content creators, who earn revenue from social media advertising by creating authentic, relatable content for their followers. In turn, influencers receive money, goods or services (influencer marketing), or sales commissions (affiliate marketing)”.

Table 3: Definition 3 – Overview of criteria

Criteria	Description of the criteria
Service provided	Content creation, creating audience-related, authentic and relatable content for their followers.
Source of revenue	Social media advertising.
Type of revenue	Money, goods, services, or sales commission.

Source: Authors own elaboration.

Pros: The definition provides useful criteria that stress the **content creation** aspect of influencer activities, such as creating audience-related and authentic content. Influencers, therefore, create advertorials⁵ that are generated based on their followers’ interests and likes. Another important feature highlighted in the definition is the **source of revenue** of these new actors, which mainly consists of social media advertising. Lastly, the **commercial nature** is also stressed, by mentioning that in exchange for the service provided, influencers receive money, goods and services (influencer marketing) or sales commissions (affiliate marketing).

Cons: By defining the source of revenue from social media advertising, **the scope does not encompass other media used by influencers** (blogs for example). Sales commissions (affiliate marketing) is an important aspect that is highlighted and is increasingly gaining relevance in the sector. However, there are several types of partnerships between brands and influencers that can be considered. Partnerships can be not only affiliate or paid, but also based on revenue with platforms. Another shortcoming of the definition is the emphasis put on the human element of influencer advertising, to stress the authenticity and relatedness of the content. However, the emergence and success of virtual, artificial (or AI), digital, or computer-generated imagery (CGI) influencers challenge the definition. For example, Lil Miquela, a digital avatar, was estimated to have generated around 10 million Euros in 2020⁶.

⁵ An advertorial is an advertisement in the form of editorial content, such as articles or blog posts.

⁶ Bloomberg, 2020, *Virtual Influencer Make Real Money While Covid Locks Down Human Stars*. Available at: <https://www.bloomberg.com/news/features/2020-10-29/lil-miquela-lol-s-seraphine-virtual-influencers-make-more-real-money-than-ever>.

2.1.4. Trzaskowski, 2018, Identifying the Commercial Nature of ‘Influencer Marketing’ on the Internet

The article discusses influencers and their commercial communication based on two practices: promotion of the traders’ products, and acting as an editor to promote products based on money or other benefits (e.g., remuneration). The article analyses the legal implications when traders use private individuals to promote their products on the internet. In particular, it focusses on the commercial nature of information created by influencers.

- **Defines influencer** as a “person who has an audience that is entertained through a channel”.
- **Defines influencer marketing** as “a marketing practice where traders address individuals that have influence over potential buyers rather than targeting potential buyers directly”.

The article further provides an overview of how traders communicate to consumers through influencers:

- **Trader:** The marketer who wishes consumers to be influenced.
- **Influencer-advertising agency:** Entity that connects the trader with an influencer who has an appropriate audience.
- **Influencer:** Third-party endorser for brands to communicate with potential audiences directly.
- **Platform:** The technological platform that the influencer uses to reach their audience.
- **Consumers:** The influencer’s audience comprises potential customers of the trader.

Table 4: Definition 4 – Overview of criteria

Criteria	Description of the criteria
Promotion of a trader’s product	Dissemination of information by the influencer to followers with a view to promote the trader’s product.
Commercial interest	Commercial interest of receiving remuneration or other benefits in return for the promotion.

Source: Authors own elaboration.

Pros: The definition provides an understanding regarding the partnership between brands and influencers and the **value chain underlying influencer marketing**. By defining influencers as individuals that have influence over potential buyers, the **influence aspect** is highlighted. Another relevant aspect stressed is the importance of identifying the **commercial intention** when influencers work with traders.

Cons: This definition focusses on influencers’ role as mediators between brands and consumers. However, **influencers have also an entrepreneurial role** in which they can act as trade bodies and communicate with their audiences. There are several case studies that can be looked at to understand the journey of influencers to become entrepreneurs, rather than acting only as third-party endorsers (e.g., Jamie Liang, Jess Hunt, Chiara Ferragni). When it comes to influencers promoting their own merchandise, there is a limited understanding around regulations for marketing practices of their own brand and products. Moreover, there are many influencers who conduct promotional activities but because they are new entrants, or due to their audience size, they do not maintain steady commercial

relationships with brands. In these cases, influencers may even pretend to have sponsorships to legitimise themselves.

2.1.5. Morteo, 2018, To clarify the typification of influencers: A review of the literature

The paper focusses on identifying the diversity of influencer profiles and the relationships between different actors. Based on the criteria outlined below, the author provides a classification of types of influencers, such as opinion leaders, experts, consumers, social media luminaries, celebrities, trendsetters, bloggers and potential influencers.

- **Defines influencer** as “an individual who through their expertise in a specific topic creates original content and offers their unbiased opinion to an audience gained through word-of-mouth communication that voluntarily has determined them to be a referent and trusts their opinion”.

Table 5: Definition 5 – Overview of criteria

Criteria	Description of the criteria
Service provided	Original content and unbiased opinion.
Source of influence	Expertise of influencers: background of the influencer, profession or a personal interest in the topic (either based on previously acquired reputation, organisational position, experience, content quality, personality etc.).
Trust relationship with consumer	Attained by reputation, experience, quality of images, videos and posts, personal traits, equitable style and communication, and trust.
Engagement per post/outreach of the influencer audience	Including number of likes, comments, views, retweets and replies.
Number of Followers	<p>Mega-influencers: Influencers who have more than 1 million followers.</p> <p>Macro-influencers: Influencers who have between 10,000 and up to 1 million followers.</p> <p>Micro-influencers: Influencers who have between 500 and up to 10,000 followers.</p>

Source: Authors own elaboration.

Pros: This definition provides clarity on multiple key features of an individual who is considered an influencer. The emphasis of this definition is the **key content strategies/services provided** that an individual uses to become influential. For example, key content strategies emphasised in this definition are producing unbiased and original opinions about brands, products or services. Expertise is also mentioned as a key characteristic of an influencer. Trust as a key feature of the **relationship between the influencer and the audience** is another important aspect highlighted. Trust is considered most effective and can validate the power of influencers as it emphasises a variety of qualities that encourage

followers to engage with influencers. It also shows how relevant and relatable the influencers are and the value of their opinions to the individuals who follow them.

Cons: By defining influencers as creators of original content and unbiased opinion, the definition fails to address cases where influencers share content that is not necessarily unbiased. Therefore, influencers can also produce content in a partnership with brands they work with as a form of sponsored content. This definition, hence, lacks an important aspect of influencer activities that is the transactional and commercial intent behind the content generated. An important element of influencer marketing is the audiences' perception that the influencer is providing an 'unbiased' opinion. Moreover, the "source of influence" criterion might be too narrow, also in view of future trends, such as the emergence of artificial intelligence (AI) content creators. The number of **followers and engagement aspect** is also stressed in the definition, which is not necessarily relevant as practices like using fake followers are widespread.

2.1.6. European Commission, 2018, Behavioural study on advertising and marketing practices in online social media

The study investigates advertising and marketing practices in online social media from the perspective of consumer behaviour and consumer protection. It also identifies disguised advertising practices on online social media that can be considered as potentially problematic for consumers, one of them being influencer marketing. According to the study, influencer marketing can be seen as disguised advertising because the practice is perceived as spontaneous and non-commercial by consumers and appears on online platforms where non-commercial content is present.

- **Defines influencer** as "a person who has a greater than average reach and impact through word-of-mouth in a relevant marketplace, and influencer marketing relies on promoting and selling products or services through these individuals".
- **Defines influencer marketing** as "a practice involving the creation and promotion of content that features specific brands or products, with the aim of tapping into the positive impact influencers are likely to have on consumer perceptions of what is being promoted".

Table 6: Definition 6 – Overview of criteria

Criteria	Description of the criteria
Creation	Design and promotion of content by an individual person – not a business.
Personal endorsement	The content published focusses on the influencer's positive experience with the product or brand, and to have them recommend the product/brand to their connections or followers through online social media.
Outreach	Influencers have to have a high number of followers that are the target audience of the promotion of the product or brand.
Positive impact	The association between the influencer and the product or brand positively impacts the consumers' evaluation of the product or brand.

Source: Authors own elaboration.

Pros: The definition provided by the study focusses on the **relationship** between an individual person who is an influencer and their followers who are consumers. In particular, this takes into account the **impact of the influencer's personal endorsement and promotion** of a product or brand on the judgement and behaviour of the consumers who are the target audience. The association between the influencer and a product or brand is considered as the added value in this marketing practice, which ensures the effectiveness of this practice as well as the possibility to engage and target the right audience.

Cons: This definition does not address **the issue of the relationship between the influencer and the trader**, its transactional aspect, and the diversity of business models that can be created around this relationship.

2.2. Experts emphasise certain limitations when defining influencers

The **internal expert workshop**⁷ organised in the context of this study provided additional insights for the definition. Experts agreed that defining influencers poses various challenges, including the fast-changing business models that go beyond influencer marketing, the low relevance of the size of the audience, and the professionalisation of content creation.

- **Professionalisation of content creation:** as a form of internet entrepreneurship for individuals and businesses of various sizes, it has created a shift from the term “influencer” to the term “content creator”. For example, mega-influencers often are supported by a team working on the content. Very often, the staff of influencers is not really acknowledged to maintain an authentic relationship with the audience. According to SignalFire, around the world, there are 50 million content creators, of which 2 million are able to make a full-time career out of creating content⁸. Moreover, online platforms define these actors as content creators and very rarely use the word influencer⁹. The input of managers, for example, is deliberately obscured and “Do-It-Yourself” (DIY) aesthetics are intentionally used¹⁰.
- **Fast-changing business models:** influencer marketing is only one business model with a clear link to advertising activities. However, there are also other business models (such as direct selling, crowdfunding, or affiliate marketing) that relate more to content monetisation rather than advertising activities. Influencers are creators associated with the business model of influencer marketing, which raises sectoral questions about media/advertising/consumer regulation. Regulating content creators as a profession or economic activity would entail the need to capture these fast-changing business models beyond influencer marketing (e.g., crowdfunding, tokenisation and direct selling), which in turn touch upon other types of regulation as well (e.g., labour law, fundamental rights, company law, tax law, etc.). An

⁷ The internal expert workshop was organised by the authors of this study in November 2021. Academic experts working on content/web monetisation, EU consumer law and e-commerce, constitutional law, influencer marketing, economics, natural processing, data mining, and machine learning business models in influencer marketing participated in the workshop to exchange their views on a potential definition of influencers.

⁸ SignalFire, 2021, *SignalFire's creator economy market map*. Available at: <https://signalfire.com/blog/creator-economy/>.

⁹ Bishop, S., 2021, “Creator” and “influencer” aren't different jobs. Who does it serve to pretend they are?. Available at: <https://reallifemag.com/name-of-the-game/>.

¹⁰ Abidin, C., 2017, #familygoals: Family influencers, calibrated amateurism, and justifying young digital labor. *Social Media + Society*. Available at: <https://doi.org/10.1177/2056305117707191>.

interesting new trend is “livestream shopping” or “social commerce”, which is very popular in China and has attracted investments¹¹.

- **Lack of harmonisation of rules:** in particular regulation relating to company incorporation and legal personhood with respect to commercial gains (e.g., freelancer regulation) may be relevant for the legal characterisation of influencers as traders or non-traders (e.g., relevant for the application of consumer protection).
- **Low relevance of size (number of followers):** due to the volatility of organic or fake followers¹², as well as the problems of calculating engagement accurately, it is not desirable to pursue a definition of influencers according to their size. The number of followers is a biased metric and cannot be defined (or built) cross-platform, raising questions on the parameters used to measure engagement and how to access data from a regulator’s perspective. For example, engagement metrics can be deceiving (platforms like Social Blade¹³ or Heepsy¹⁴ do not reveal how they calculate engagement). Also, the audience engagement is only relevant at a later stage when trying to capture the impact on transactional decision-making, but not for the purpose of defining those actors. From a consumer perspective, using engagement as criteria to define influencers may also have a negative impact on consumer protection. For example, a potentially unfair commercial practice would be differently assessed, depending on the number of followers. Hence the same actor or commercial practice could be treated differently depending on the fluctuation of the influencer’s followers.

Another interesting takeaway of the internal expert workshop was the discussion around the question “**when is an influencer a trader?**”¹⁵. Due to the heterogeneity of business models around these actors, it is important to look not only at their revenue from brands, but also whether they get revenue from their own channels. Hence, influencers can work on behalf of traders in the first instance, and act as traders in the second one. This differentiation would entail different legal questions and different obligations (not just disclosures). Moreover, to define an individual as a trader, the concept of “regularity” would apply, namely whether it is a punctual or regular aspect of the trade relationship.

Since influencing is not a legal term, it is extremely difficult to translate it into a legal definition as the term has evolved from practice. A possible approach consists of reframing influencing in terms of advertising and content monetisation. It also must be taken into account that influencers increasingly expand the platforms they use, and their activity is often cross-platforms and cross-business models.

Most of the experts also stressed that influencer marketing activities do not fundamentally differ from traditional marketing activities. Influencers get sponsored for, endorse, advertise a product, and the brand has various degrees of control over the content. However, **trust and authenticity features** of the relationship between influencers and their audience play a key role and differentiate influencers from other marketing actors. Trust and authenticity of the relationship also increase the credibility of influencers, who are considered as experts and trustworthy by their audience. These features have the

¹¹ Talking Influence, 2021, *Shoppable Livestream Influencer Marketing: Is Social Media Turning into QVC?*. Available at: <https://talkinginfluence.com/2021/12/17/shoppable-livestream-influencer-marketing-is-social-media-turning-into-qvc/>.

¹² Organic followers are users of social media following accounts without being paid for doing it, while fake followers are accounts that have been bought to increase the number of followers.

¹³ Social Blade platform. Available at: <https://socialblade.com>.

¹⁴ Heepsy. Available at: <https://www.heepsy.com/>.

¹⁵ This question was further clarified in the 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, published by the European Commission in December 2021 after the internal expert workshop had taken place. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)&from=EN).

highest impact on consumers' attitudes and behavioural intentions, and through that they can also strengthen brand preferences and purchasing behaviour¹⁶.

Another important aspect is the **commercial intent** of the influencer activities. In particular, the content is driven by direct revenue from brands (monetary and non-monetary) or by revenue from audience-engagement.

2.3. Influencers are content creators who have a trust-based relationship with their audience

To summarise, the **literature review** and the **internal expert workshop findings** showed several approaches to defining influencers. For the scope of this study, which looks into influencer marketing from a consumer protection and transactional angle, the following dimensions were deemed the most relevant to define these actors. In particular, starting from the analysis of the value chain and the different actors involved, the definition of influencers should shed light on:

- the **content creation**, namely the service provided by influencers;
- the **commercial intent**, which is driven by direct revenue from brands (monetary and non-monetary), by revenues from audience-engagement or by platform compensation;
- the **monetisation aspect**, namely the revenue generation through different business models (also beyond influencer marketing and including affiliate marketing, crowdfunding and direct selling) and emerging trends such as livestream shopping; and
- the **trust and authenticity aspect**, namely the source of influence, which is related to the parasocial relationship of trust established with the audience, and the perceived authenticity and relatability of the content.

Moreover, although not in the focus of the definition, it is important to highlight the increasing role of the platforms in:

- facilitating labelling of sponsored content, particularly in ways that maintain compliance across regulatory contexts¹⁷;
- directly facilitating relationships between influencers and brands through their own proprietary marketplaces¹⁸; and
- remunerating through their partnership programmes and creator funds.

Based on these considerations, the **definition of influencers** proposed by this study is derived as: "a content creator with a commercial intent, who builds trust and authenticity-based relationships with their audience (mainly on social media platforms) and engages online with commercial actors through different business models for monetisation purposes".

The definition aims to capture influencer practices that are relevant from the consumer protection and Internal Market perspective. **Regulatory questions relevant for influencers but not directly for their relationship with consumers, such as labour law, taxes, or the situation of child influencers, are not in the focus of this study's scope** and therefore not reflected in the definition. Neither are aspects such as political influencing or fake news that are not linked to consumer transactions.

¹⁶ Vrontis, D. et. al., 2021, *Social media influencer marketing: a systematic review, integrative framework and future research agenda*, International Journal of Consumer Studies.

¹⁷ An example is the business section of Instagram, where several services are offered. Available at: <https://business.instagram.com/ad-solutions/branded-content>.

¹⁸ An example is TikTok creator marketplace. Available at: <https://creatormarketplace.tiktok.com/>.

To conclude, our proposed definition aims to shed light on the commercial intent, which captures also influencers that are just starting their activity and are still building their own brand and seeking the attention of other brands. **An important aspect underlying the definition is the role of influencers within the eco-system, between brands and platforms, and the heterogeneity of business models around influencers**, ranging from remuneration (money, goods, services) to different monetisation activities (sales commission).

3. THE ROLE OF INFLUENCERS ON THE INTERNAL MARKET

KEY FINDINGS

Economic data show that the **influencer industry has grown significantly** in recent years, although, due to the novelty of these market trends, there are few coherent and comparable statistics. The ways in which influencers advertise and interact with their audience have gone beyond influencer marketing, with the emergence of different ways to interact with the followers on platforms and through online communities. Moreover, brands have started hiring marketing agencies to identify influencers able to reach specific audience demographics. In terms of business models, creators are diversifying their revenue streams and are often funded directly by their fans. New business models have emerged around social media platforms, such as tokenisation, subscription/crowdfunding, add revenues, or direct payments.

On the consumer side, the relationship between influencers and consumers is characterised by perceived closeness, authenticity and trust. Both the influencer-follower-relationship and the influencer-brand-relationship affect consumers' attitudes towards brands. Influencer marketing has an impact on consumer purchase decision-making. Children and consumers with low education and/or low income are particularly vulnerable to influencer marketing. The specific features of influencer marketing exacerbate these vulnerabilities more than other forms of media (e.g., fashion/lifestyle magazines), notably the lack of oversight and monitoring (especially for young consumers) and the perceived authenticity. In this context, the COVID-19 pandemic has led to more time spent online and thereby possibly to an increase of exposure to influencer marketing.

Overall, not many official consumer complaints on influencer marketing are lodged in the EU. This might be due to the novelty of the trend and the low use of monitoring tools for national authorities. Moreover, the lack of awareness of consumers to bring the complaint to the right authority or even of the existence of a breach in consumer protection is an important factor. Nevertheless, several **key influencer marketing practices that are potentially harmful for consumers** were identified, namely lack of transparency and unclear disclosure, lack of separation between advertising and content, misleading messages, and targeting vulnerable consumer groups.

After having developed an understanding of what makes an individual an influencer, this chapter looks to understand the **relevance of influencers on the Internal Market from an economic and consumer perspective**. An overview of the market uptake of influencer marketing, the actors in the value chain and main business models is presented in the first part of the chapter. The second part provides an overview of the impact of influencer marketing on consumers and the main marketing practices posing risks to consumers.

3.1. Influencers and the advertising industry

The growing relevance of influencers for the advertising industry and the Internal Market as a whole can be captured when looking at **market data**. The **actors in the value chain**, and how they interact in the different **business models** used by influencers, are also analysed in this chapter.

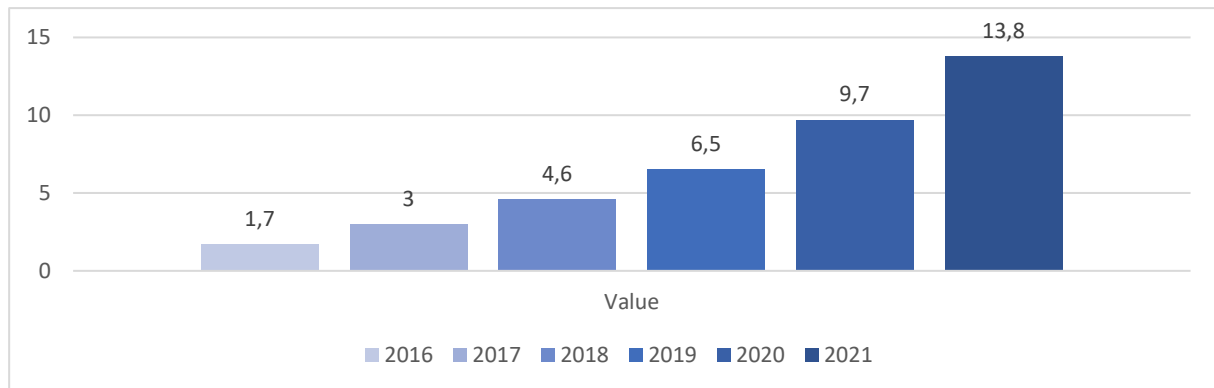
3.1.1. Market data show constant growth of influencer marketing

- a. The importance of influencer marketing has grown significantly in recent years

Influencer marketing is one of the main business models used by influencers (though not the only one, as shown in the next section) and **a fast-growing market whose eco-system is rapidly changing**.

According to data from the Influencer Marketing Hub¹⁹, influencer marketing has become one of the most popular and effective forms of online marketing. **Since 2019, its global market value has more than doubled**, reaching 13.8 billion US dollars²⁰ in 2021, and compared to 2016 the value has experienced a 700% increase.

Figure 1: Global value of influencer marketing (in billion US dollars)



Source: Statista, 2021, Influencer marketing market size from 2016 to 2021.

One of the key enablers of this trend has been social media platforms that facilitate influencer marketing by enabling collaboration between brands and creators and allowing them to reach out to an unprecedented pool of consumers. The global market value of platforms such as Instagram, Facebook, TikTok is expected to reach 370 billion US dollars²¹ in 2027. Additionally, YouTube is a big player: their revenue keeps rising significantly and they are the highest growth subsidiary of Alphabet, the parent company²². Creators who gained their popularity on YouTube and TikTok are some of the highest earning influencers in the business²³. As mentioned in the Social Media Examiner’s 2021 Social Media Marketing Industry Report²⁴, **social media influencers are often used as a marketing tool to increase commercial exposure**: 88% of the marketers surveyed stated that their social media efforts have generated more exposure for their business, almost 80% mentioned an increased traffic and 69% indicated an increase in generated leads (namely growing consumer interest for a product or a service with the aim of turning that interest into a sale).

¹⁹ Statista, 2021, *Influencer marketing market size from 2016 to 2021*. Available at: <https://www.statista.com/statistics/1092819/global-influencer-market-size/>.

²⁰ Around 12.2 billion Euros.

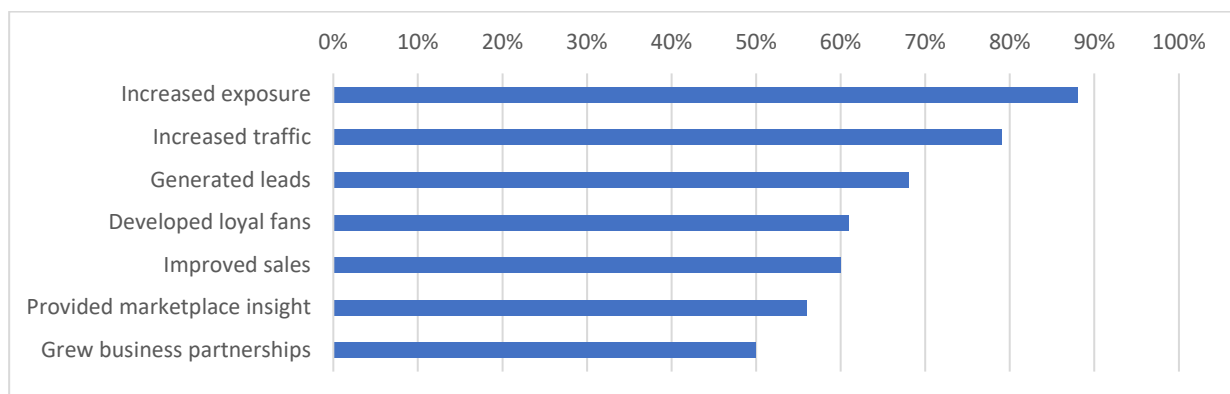
²¹ Around 327 billion Euros.

²² Variety, 2021, *YouTube Q3 Ad Revenue Balloons 43% to \$7.2 Billion, Tops 50 Million Music and Premium Subscribers*. Available at: <https://variety.com/2021/digital/news/youtube-q3-2021-ad-revenue-google-alphabet-1235097943/>.

²³ See Forbes, 2022, *The Highest-Paid YouTube Stars: MrBeast, Jake Paul And Markiplier Score Massive Paydays*. Available at: <https://www.forbes.com/sites/abrambrown/2022/01/14/the-highest-paid-youtube-stars-mrbeast-jake-paul-and-markiplier-score-massive-paydays/?sh=1898bf531aa7>. Variety, 2022, *TikTok’s Highest-Earning Stars: Charli and Dixie D’Amelio Raked in \$27.5 Million in 2021*. Available at: <https://variety.com/2022/digital/news/tiktok-highest-paid-charli-dixie-damelio-1235149027/>.

²⁴ Social Media Examiner, 2021, *2021 Social media marketing industry report, how marketers are using social media to grow their businesses*. Available at: <https://www.tractionwise.com/wp-content/uploads/2021/06/Industry-Report-2021-Final.pdf>.

Figure 2: Benefits of social media marketing for companies worldwide 2021



Source: Social Media Examiner, 2021, 2021 Social media marketing industry report, how marketers are using social media to grow their businesses.

These figures go hand in hand with the **growing prices of sponsored content on a range of online platforms**, such as Facebook, YouTube, Twitter and Instagram. According to analysis carried out by IZEA, the average price of a sponsored photo on Instagram has increased by the factor 12 between 2014 and 2019²⁵, while over the past years the average price per sponsored Facebook status update has risen 49 times on average in the period 2014-2019²⁶.

On the **European market**, similar trends have impacted the online advertising industry. Spending on digital advertising has increased by over 10 times since 2006, with 12.3% growth only in 2019 with a total spending of 64.8 billion euros in Europe²⁷. Moreover, considering that over 50% of the EU population is using social media, and nearly 90% for those aged 16-24²⁸, influencer marketing has become a key sector whose trends have a wide social and economic impact. **Over 50% of European businesses use social media; in some countries, this share has reached nearly three quarters of all companies**²⁹. Social media platforms and influencer marketing have hence become key aspects to be considered from an Internal Market perspective, since product updates, product tests or errors can make or break entire revenue streams of companies whose traffic and visibility is to a substantial extent dependent on these actors and their activities on platforms³⁰.

The percentage of influencers per population also sheds light on the relevance of these new market actors in the Member States. The country with the highest share of influencers per population is **Italy** (2.22%), followed by **Spain** (1.94%), **Ireland** (1.35%) and **Portugal** (1.18%)³¹.

According to recent analysis, the COVID-19 pandemic has had a positive impact on the influencer market in Europe: a 72% increase in ad content from influencers was recorded during the pandemic,

²⁵ IZEA Worldwide, Inc., 2019, *13 Years of Influencer Marketing Pricing Data*, Press release. Available at: <https://izea.com/2019/11/07/izea-releases-13-years-influencer-marketing-pricing-data/>.

²⁶ IZEA Worldwide, Inc., 2019, *13 Years of Influencer Marketing Pricing Data*, Press release. Available at: <https://izea.com/2019/11/07/izea-releases-13-years-influencer-marketing-pricing-data/>.

²⁷ Statista, 2021, *Digital advertising spending in Europe 2006-2020, based on IHS and IAB Europe data*. Available at: <https://www.statista.com/statistics/307005/europe-online-ad-spend/#statisticContainer>.

²⁸ Eurostat, 2019, *Are you using social networks?*. Available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20190629-1>.

²⁹ Statista, 2019, *Percentage of companies using social media in Europe in 2019, by country*. Available at: <https://www.statista.com/statistics/1090015/use-of-social-networks-among-companies-europe/>.

³⁰ European Commission, 2020, *Commission Staff Working Document impact assessment on a single Market for Digital Services*, SWD(2020)348 final.

³¹ Influencity, 2021, *The European Digital study*. Available at: <https://influencity.com/resources/studies/the-largest-influencer-study-of-europe>.

together with an increase in social media traffic, online shopping and business presence online³². The use of Instagram and Facebook has recently risen by 40% for those under the age of 35 and especially for those viewing content on topics such as meditation, cooking, and fitness³³. With the COVID-19 outbreak, influencers have also become prominent actors in partnering with governments to promote specific health messages through dedicated social media campaigns. For example, the Italian government partnered with Chiara Ferragni, one of the most prominent Italian influencers, for spreading messages to the young population about the importance of wearing masks³⁴. In Finland, during the pandemic, influencers were mobilised to spread reliable information related to the coronavirus³⁵.

b. There is a lack of data on the market size of influencer marketing at national level

Regarding data at Member States level, due to the novelty of these market trends, **there are no coherent and comparable statistics** provided by national statistical offices or other authorities. Hence, for the purpose of this study, national data on influencer marketing was collected based on company market monitoring reports and interviews with national consumer associations, advertising associations, and competition and consumer protection authorities, carried out for a sample of 14 Member States. This section provides some examples of national statistics to show the relevance of influencer marketing in the EU Member States.

Belgium: The influence of content creators on social media continues to grow, according to a study by the Arteveldehogeschool and the trade federation Comeos. 85% of Belgian youth follow at least one influencer and data indicates that they are indeed influenced by them: 1 in 4 bought something in the past three months as a result of a post by an influencer. Interestingly, French-speaking young people are more inclined to be influenced than Dutch-speaking young people: almost a third of them bought something as a result of a post by a so-called "influencer". In particular, TikTok appeals to a young audience but increasingly also to a wider audience. In 2019, 8.8% of young people surveyed used the app, compared to 46.9% in 2021. The app's rise in popularity is also attributed to the fact that physical social contact remained limited due to the COVID-19 pandemic³⁶.

Croatia: A study on influencer marketing in Croatia estimated that around 67% of enterprises used some form of influencer marketing in 2020. Furthermore, almost 40% of the surveyed enterprises reported that they plan to increase their budget for 2021, while roughly half will maintain existing budgets dedicated to agreements with influencers³⁷. The value of the influencer market was estimated at roughly 6.5 million euros in 2020 by Joom Boos (Croatian media brand): approximately 4.5 million euros was generated on YouTube, roughly 2 million euros generated on Instagram and around 400,000 euros generated on TikTok³⁸.

³² Taylor C., 2021, *The urgent need for more research on influencer marketing*, International Journal of Advertising. Available at: <https://doi.org/10.1080/02650487.2020.1822104>.

³³ Kantar, 2020, *Barometer, Consumer attitudes, media habits and expectations*. Available at: <https://www.kantar.com/Inspiration/Coronavirus/COVID-19-Barometer-Consumer-attitudes-media-habits-and-expectations>.

³⁴ Reuters, 2020, *Italian government enlists top influencers to promote COVID masks*. Available at: <https://www.reuters.com/article/us-health-coronavirus-italy-influencers-idUSKBN27525U>.

³⁵ The Guardian, 2020, *Finland enlists social influencers in fight against COVID-19*. Available at: <https://www.theguardian.com/world/2020/apr/01/finland-enlists-social-influencers-in-fight-against-COVID-19>.

³⁶ VRT, 2021, *1 op 4 jongeren koopt iets door influencers*. Available at: <https://www.vrt.be/vrtnws/nl/2021/05/07/1-op-4-jongeren-koopt-iets-door-influencers/>.

³⁷ Kostić Stanković, M., Bijakšić, S., & Ćorić, N., 2020, *Influencer marketing kao način promocije Brenda putem društvenih mreža*, CroDiM: International Journal of Marketing Science, 3(1), 146-158.

³⁸ JoomBoos, 2021, *Tržište influencerica kod nas vrijedi skoro 7 milijuna eura*. Available at: <https://joomboos.24sata.hr/prvi/trziste-influencerica-kod-nas-vrijedi-skoro-7-milijuna-eura-19655>.

Czechia: Based on the data collected by the advertising agency WeDigital through a survey in November 2020, 14% of brands in the Czech market have experience with influencer marketing. Of those, 70% of surveyed Czech businesses stated that they use the services of influencers on Instagram, 60% on YouTube and 58% on Facebook. LinkedIn and TikTok are not widely used for this purpose in Czechia³⁹.

Finland: The turnover of influencer marketing in Finland in 2020 was estimated 27.9 million euros⁴⁰. Moreover, 80% of Business-to-consumer (B2C) brands surveyed mentioned having contracted influencer marketing⁴¹. While 58% of advertisers in Finland were using influencer marketing in 2020, around 75% of advertisers mentioned having a dedicated budget to use influencer marketing in 2021⁴², hinting at an increase by 17 percentage points.

France: According to a report of Rakuten Marketing France, French marketers surveyed declared to plan to spend around 45% of their total marketing budget on influencer campaigns per year⁴³. According to a survey run by Reech (a French agency connecting influencers and brands), while 44% of advertisers do not use any influencer marketing as a communication leverage due to a lack of budget, one third of the brands surveyed spend more than 100,000 euros per year on influencer marketing. For one fourth of the responding brands, the budget allocated to influencer marketing was created in addition to the historical marketing budget. Regardless of the size of the company, an overall increase in the influencer marketing budget was confirmed by 78% of respondents⁴⁴.

Germany: For 2020, the market volume of influencer marketing in the DACH region (Germany, Austria, and Switzerland) was estimated to be worth 990 million euros, a number that has almost doubled compared to 2017⁴⁵. A report from November 2021 estimated the combined market value of the top 25 German influencers at 80.7 million euros (ranging from 10.9 million euros for the highest ranked influencer to 0.1 million euros for the influencer at rank 25)⁴⁶. According to a 2021 survey by the German Association for the Digital Economy among companies, 45% increased their annual budget for influencer marketing and 23% maintained the same budget as for the previous year. Only 4% replied that they would reduce their budget, whereas the remaining 27% were still unsure (which could be linked to the lack of planning security due to the COVID-19 pandemic)⁴⁷.

³⁹ MediaGuru, 2020, *Výzkum: Influencer marketing stále řada značek nevyužívá*. Available at:

<https://www.mediaguru.cz/clanky/2020/11/vyzkum-influencer-marketing-stale-rada-znacek-nevyuziva/>.

⁴⁰ Indieplace, 2021, *Vaikuttajamarkkinointi vuonna 2022 – miksi sille kannattaa leikata isompi pala kakkua ensi vuoden budjetista?*

Available at: <https://www.indieplace.fi/vaikuttajamarkkinointi-vuonna-2022/>.

⁴¹ Indieplace, 2021, *Vaikuttajamarkkinointi vuonna 2022 – miksi sille kannattaa leikata isompi pala kakkua ensi vuoden budjetista?*

Available at: <https://www.indieplace.fi/vaikuttajamarkkinointi-vuonna-2022/>.

⁴² Indieplace, 2021, *Vaikuttajamarkkinointi vuonna 2022 – miksi sille kannattaa leikata isompi pala kakkua ensi vuoden budjetista?*

Available at: <https://www.indieplace.fi/vaikuttajamarkkinointi-vuonna-2022/-vuonna-2022/>.

⁴³ Rakuten Advertising, 2021 *Report*. Available at: <https://rakutenadvertising.com/fr-fr/resources/rapport-mondial-influence/%20-%20https://blog.rakutenadvertising.com/fr-fr/insights/etude-influence-marketing-marketeurs/>.

⁴⁴ Reech, 2021, *Annual Report 2022*, 6th edition. Available at: <https://www.reech.com/fr/influence-marketing-creatrice-valeur-marques-etude-2022>.

⁴⁵ Statista, 2021, *Prognose zum Marktvolumen für Influencer Marketing in der DACH-Region für die Jahre 2017 und 2020*. Available at:

<https://de.statista.com/statistik/daten/studie/818786/umfrage/marktvolumen-fuer-influencer-marketing-in-der-dach-region/>.

⁴⁶ Batten & Company, 2021, *Brands im Ringlicht. Der Markenwert von Deutschland erfolgreichsten Influencer:innen*. Available at:

https://www.batten-company.com/fileadmin/media/Studien/Studie_Markenwert_von_Deutschlands_erfolgreichsten_InfluencerInnen_Batten_Company.pdf.

⁴⁷ Bundesverband Digitale Wirtschaft (BVDW), 2021, *Umfrage Influencer Marketing in Unternehmen*. Available at:

https://www.bvdw.org/fileadmin/user_upload/BVDW_Umfrage_Influencer_Marketing_2021.pdf.

Italy: In 2021, influencer marketing generated 450,000 jobs in Italy, both direct and related. Of these, more than 350,000 are influencers and creators, the others are intermediary actors, such as social media platforms, managers, talent agencies, marketing agencies, or media centres⁴⁸. The influencer market value in Italy reached 280 million euros in 2021, and the growth compared to the previous year was 15%⁴⁹. Key sectors are fashion & beauty, which covers almost a third of the entire market (31%), followed by travel, food & lifestyle (18%), heavily impacted by the pandemic, and fitness & wellness (15%). Gaming & tech (10%), followed by business & economy (6%), are in comparison still niche markets, but also on the rise as a result of the pandemic⁵⁰. The remaining 20% include all the other sectors, such as culture, sport, and automotive. There are about 20 million Italians between 18 and 54 who follow at least one influencer on social media⁵¹. 37% say they look at their profiles every day, while another 37% every two to three days.

Netherlands: As influencer marketing is seen as the fastest growing method of gaining new customers, 59% of companies plan to increase their influencer marketing budget, according to market research conducted by Awinq (an affiliate marketing company)⁵². In 2020, the most popular sources through which internet users in the Netherlands discovered new brands and products were search engines and online word-of-mouth recommendations. A quarter of customer survey respondents stated that they found new brands via ads on social media⁵³. Digital ad spending outperformed other types of media advertising in 2020. Advertisers in the Netherlands spent around 2.34 billion euros of their marketing budget on digital advertising⁵⁴.

Spain: In 2018, about 40% of Spanish enterprises have been campaigning with influencers for more than 3 years and 56.5% of those ordered their campaigns with influencers from specialised influencer marketing agencies⁵⁵. In 2016, investment in influencer marketing was less than 3,000 euros on average, spent mainly on very tactical and specific activities. In 2018 and 2019, campaigns of more than 10,000 euros had increased by 14% compared to 2017 and 11.3% of companies were spending budgets between 50,000 euros and 100,000 euros for advertising with influencers. This increase can be linked to the fact that the level of satisfaction of the campaigns is high: 79% of businesses positively valued their campaigns with influencers⁵⁶. More than 95% of companies maintained or increased their investment in influencer marketing in 2018 compared to 2017⁵⁷.

⁴⁸ DeRev, 2021, *Quanto guadagna un influencer?*. Available at: <https://derev.com/2021/07/quanto-guadagna-un-influencer-in-italia/>.

⁴⁹ Il sole 24 ore, 2021, *Cresce il giro d'affari degli influencer in Italia: business da 280 milioni*. Available at: https://www.ilsole24ore.com/art/cresce-giro-d-affari-influencer-nicchia-280-milioni-italia-AE1ZNIx?refresh_ce=1.

⁵⁰ Il sole 24 ore, 2021, *Cresce il giro d'affari degli influencer in Italia: business da 280 milioni*. Available at: https://www.ilsole24ore.com/art/cresce-giro-d-affari-influencer-nicchia-280-milioni-italia-AE1ZNIx?refresh_ce=1.

⁵¹ Buzzoole, Mondadori, Infovalue, 2021, *Italiani & Influencer*. Available at: <https://buzzoole.com/resources/italiani-e-influencer/it>.

⁵² Awinq, 2019, *Wat influencer marketing kan betekenen voor jouw bedrijf*. Available at: <https://www.awinq.com/be/influencer-marketing/wat-influencer-marketing-kan-betekenen-voor-je-merk>.

⁵³ Statista, 2021, *Influencer Marketing Netherlands*, Dossier. Available at: <https://www.statista.com/study/40710/influencer-marketing-in-the-netherlands-statista-dossier/>.

⁵⁴ Vianederland, 2020, *Online ad spend study 2020*. Available at: <https://vianederland.nl/kennisbank/online-ad-spend-study-2020/#>.

⁵⁵ BrandManic, 2018, *Estudio sobre Marketing de Influencers en España, El mercado español de influencers, según los responsables de marketing*. Available at: https://www.esan.edu.pe/conexion/actualidad/2019/05/10/Estudio_Marketing_de_Influencers_en_Espa%C3%B1a_2018.pdf.

⁵⁶ BrandManic, 2018, *Estudio sobre Marketing de Influencers en España, El mercado español de influencers, según los responsables de marketing*. Available at: https://www.esan.edu.pe/conexion/actualidad/2019/05/10/Estudio_Marketing_de_Influencers_en_Espa%C3%B1a_2018.pdf.

⁵⁷ BrandManic, 2018, *Estudio sobre Marketing de Influencers en España, El mercado español de influencers, según los responsables de marketing*. Available at: https://www.esan.edu.pe/conexion/actualidad/2019/05/10/Estudio_Marketing_de_Influencers_en_Espa%C3%B1a_2018.pdf.

Sweden: Nearly 28% of Swedish e-commerce retailers stated to be using Instagram shopping as of 2019⁵⁸. In 2021, there were 17 “multi-channel networks” media agencies for influencers compared to 10-12 media agencies in Sweden⁵⁹. The Swedish media industry is increasingly integrating influencer marketing as an integral part of their marketing strategies. In 2018, the spending on internet advertising took up 12.5% of the total annual domestic advertising budget of approximately 8 billion euros (SEK 81,963 million)⁶⁰.

c. Recent trends show increasing importance of new actors and business models

Across Europe, several key trends related to influencer marketing can be observed. A recent type of influencers worth considering are so-called **virtual, artificial (or AI), digital, or computer-generated imagery (CGI) influencers** which are computer-generated characters resembling a human active on social media. These virtual influencers are fictional characters, hence they do not fundamentally differ from human influencers regarding their impact on consumers. From this perspective, they are similar to pet or meme accounts for example. They collaborate with brands in order to engage with consumers in a creative way. Attention has been drawn to the danger of deceptive information and spreading disinformation⁶¹. A key issue raised about virtual influencers is that they are not subject to reputational damage in the way that human influencers are. Since the most negative consequence for nondisclosure of influencer marketing is in many countries just “naming and shaming”, this represents an important issue considering that **virtual influencers which fall foul of regulations can simply be deleted – and companies can simply create a new one**. The legal responsibility of companies that make and operate virtual influencers is, therefore, a grey area when it comes to influencer marketing regulation. Moreover, there are relevant concerns also about diversity and representation, which are outside of the scope of this study, however worth to be mentioned. For example, the influencer may appear to be representative of a particular ethnic group, gender or (dis)ability but is actually coded and maintained by a white and/or all male team.

Another observation is a **shift from influencers to creators**, which is a category of businesses consisting of independent content creators, curators and community builders that use new monetisation tools to engage with their audience and generate revenues. **The ways in which influencers interact with their audience and make advertisement has gone beyond influencer marketing**, with the emergence of different ways to interact with their followers on platforms and through online communities. Examples of emerging platforms are Amazon Live, Clubhouse, Spotify’s Greenroom, or Twitch, which provide different monetisation tools and give brands the opportunity to connect with a large audience in real-time. The so-called creator economy is thus going beyond influencer marketing, focussing on brands, marketers, investors and content creators which aim to gain the attention of consumers.

Specialised influencer marketing agencies have risen in size and importance, as brands are increasingly hiring marketing agencies to identify influencers able to reach specific audience

⁵⁸ Statista, 2021, *E-commerce retailers who use Instagram shopping in Sweden 2020*. Available at: <https://www.statista.com/statistics/1127648/e-commerce-retailers-who-use-instagram-shopping-in-sweden/>.

⁵⁹ Interview with the Swedish Advertising Ombudsman carried out on the 02/12/2021.

⁶⁰ Abidin, C., Hansen, K., Hogsnes, M., Newlands, G., Nielsen, M., Nielsen, L., Sihvonen, T., 2020, *A Review of Formal and Informal Regulations in the Nordic Influencer Industry*. Nordic Journal of Media Studies. 2. 71-83. 10.2478/njms-2020-0007. Available at: https://www.researchgate.net/publication/342065348_A_Review_of_Formal_and_Informal_Regulations_in_the_Nordic_Influencer_Industry/citation/download.

⁶¹ Baumgarth C., Kirkby A. and Kaibel C., 2021, *When Fake Becomes Real: The Innovative Case of Artificial Influencers*, Pantano, E. (Ed.) *Creativity and Marketing: The Fuel for Success*, Emerald Publishing Limited, Bingley, 149-167. Available at: <https://www.emerald.com/insight/content/doi/10.1108/978-1-80071-330-720211010/full/html>.

demographics. Worldwide, the estimated number of platforms/agencies for influencer marketing has grown from 335 companies in 2016 to around 1,120 estimated companies specialising on influencer marketing in 2019⁶². As the influencer market has matured as an industry, it has attracted new types of actors and business models aiming to simplify the processes for both brands and influencers. As examples, the market has seen the emergence of:

- **Influencer data analytics companies/platforms**, namely companies providing services such as analysing brand performance and traffic or profiling users (e.g., Heepsy, Influencer Marketing Platform, Falcon.io, Social Blade).
- **New advertising intermediaries connecting brands and creators**, such as ambassador management platforms who are managing influencers and matchmaking influencers with brands (e.g., Influency, Fohr, Referral Factory).
- **New services provided by social media platforms**, for example YouTube, Instagram, Facebook or TikTok (e.g., TikTok Hashtag Generator or TikTok Follower Growth Tracker), which offer services for influencers (to increase their exposure for example) and for brands (such as data analytics, profiling, and reporting).

Lastly, influencers are **diversifying their revenue streams** and are more and more often funded directly by their fans. New business models have emerged around social media platforms, such as tokenisation, subscription/crowdfunding, ad revenues, or direct payments. Moreover, influencers are becoming founders of their own brands, building teams and assembling tools to help them start businesses⁶³. Influencer marketing thus becomes only one of many possible activities for influencers, as further discussed in the next sections.

3.1.2. Influencers are not the only actors in the value chain

The exponential growth and maturity of the influencer market have led to the development and growth of the entire eco-system, including the influencers themselves but also other existing and new market actors.

Influencers, who are the foundation of influencer marketing, are creators with fan bases of different sizes who are active in various industries. This category also covers individuals who maintain social media accounts for non-human brand identities which may be associated with the role of an influencer, such as pets or virtual influencers, but also accounts that curate content (e.g., meme accounts)⁶⁴. Similarly to start-ups, the less market exposure an influencer has, the fewer resources are available for business aspects such as management or legal knowledge. In consequence, early in their professional career, influencers will likely represent themselves in negotiations and legal agreements, and they will likely interact directly with brands. An increase in reputation may entail that influencers professionalise their media activity and employ a team of support staff, but there are also a variety of providers that offer services to support influencers with all aspects of their business.

Influencers often make use of services from **multimedia companies and freelancers** who specialise in filming and video editing for different platform parameters (e.g., video size and orientation vary across social media platforms).

⁶² Influencer Marketing Hub, 2020, *Influencer Marketing Benchmark Report 2020*. Available at: https://influencermarketinghub.com/ebooks/Influencer_Marketing_Benchmark_Report_2020.pdf.

⁶³ SignalFire, 2021, *SignalFire's Creator Economy Market Map*. Available at: <https://signalfire.com/blog/creator-economy/>.

⁶⁴ GQ, 2020, *The rise of the Instagram Curator*. Available at: <https://www.gq.com/story/the-rise-of-the-instagram-curator>.

The diversification of actors, business models and platforms created a need for **management/talent agencies and agents**, which provide intermediation services between influencers and brands or vis-à-vis advertising agencies. Initially, influencer agents/manager activity resembled other areas of entertainment such as talent agencies representing actors or models. However, in the past years, specific intermediation and management models developed in the influencer world, such as the model of “influencer houses” (also known as ‘content houses’)⁶⁵. Such models rely on the clustering of creator talent in the same physical space, often rented by one of the members of the influencer group who would also deal with obtaining and negotiating brand deals⁶⁶. One of the earlier such influencer houses emerging in the US, “Team 10”, was likened to a creative incubator that gives rise to questions relating to labour relations between the influencers and legal actors around the creative cluster⁶⁷.

Social media analytics platforms are data companies (e.g., Social Blade) that use social media platform APIs (Application Programming Interfaces) to offer insights into the volatile metrics of social media content creators. These companies monetise data products that help brands and other relevant commercial stakeholders to filter out the influencers who are suitable for advertising and social commerce activities. **Influencer marketing platforms** are a more specific type of social media analytics platforms that, in addition to proposing metrics (e.g., engagement scores) for the purpose of benchmarking the performance of influencers, they also offer other types of services such as influencer management tools⁶⁸. Such platforms have various business models, depending on whether their clients are brands/advertisers or influencers⁶⁹. Legally, the nature of the intermediation provided for by such platforms makes it difficult to determine whether the platforms act upon a mandate of an advertiser or an influencer. In the same vein, the legal obligations of disclosure of these platforms are often unclear.

Multi-channel networks (MCNs) are service providers operating across platforms (and working with platforms) to assist influencers with various aspects of their digital presence such as programming, partner management, digital rights management, or monetisation, in exchange for a commission based on the ad revenue obtained on a social media platform⁷⁰.

Public relations/advertising companies have increasingly adapted to online marketing done through the use of influencers. Advertisers may make use of additional influencer marketing tools or social media analytics platforms to better filter the influencers that can help them reach and engage the target audiences of the brands they represent. Similar to influencer marketing platforms, the consumer rights obligations incumbent on advertisers by virtue of mandatory law are often diffused by the private agreements concluded between them and influencers (or their representatives).

While all the above are market actors that support influencers’ activity, two other types of organisations are essential actors in the influencers’ eco-system. **The first group of key actors are companies who**

⁶⁵ Influencer Marketing Hub, 2021, *What is a Content House? (+ Content House Examples!)*. Available at: <https://influencermarketinghub.com/what-is-a-content-house/>.

⁶⁶ The New York Times, 2020, *Hype House and the Los Angeles TikTok Mansion Gold Rush*. Available at: <https://www.nytimes.com/2020/01/03/style/hype-house-los-angeles-tik-tok.html>.

⁶⁷ Business Insider, 2018, *Rumors are swirling that family drama is making big problems for Team 10, Jake Paul's YouTube star factory*. Available at: <https://www.businessinsider.com/jake-paul-team-10-problems-2018-5?international=true&r=US&IR=T>.

⁶⁸ Upfluence platform. Available at: <https://get.upfluence.com/>. See also Bishop S., 2021, *Influencer Management Tools: Algorithmic Cultures, Brand Safety, and Bias*, Social Media + Society.

⁶⁹ Swedish case against an influencer marketing agency. Available at: <https://www.domstol.se/patent--och-marknadsoverdomstolen/patent--och-marknadsoverdomstolens-avgoranden/2019/59106/>. See also Roschier, 2020, *Influencer marketing in social media – recent Swedish case law offers guidance to companies in Europe*, for information in English. Available at: <https://www.roschier.com/newsroom/influencer-marketing-in-social-media-recent-swedish-case-law-offers-guidance-to-companies-in-europe/>.

⁷⁰ Deloitte and SMIT, 2019, *Study on the implementation of the new provisions in the revised Audiovisual Media Services Directive (AVMSD)*. Available at: <https://op.europa.eu/en/publication-detail/-/publication/6d536c6f-5c68-11eb-b487-01aa75ed71a1/language-en>.

use social media influencers for advertising, and increasingly for social commerce⁷¹. While different influencer business models exist, commercial relationships with companies are still one of the major sources of income for the majority of influencers. From the point of view of the brands, influencer marketing is a tool to increase their brand exposure, engage with their customers, and ultimately increase the sale of their goods or services. **The second group of key actors are social media platforms**, which have created the technical eco-system in which influencers undertake their professional activities. While not all influencer activity takes place on social media (e.g., blogs have played an important role in the emergence of the sector in the 2000s), as of 2021 most influencer activity would not be possible without the use of social media platforms and access to the large number of followers they provide. Given the rise of monetisation on social media platforms, some have gone beyond the classical advertising revenue model of sustaining influencers (e.g., YouTube's Partner Program)⁷² and developed creator funds⁷³. Creator funds entail more direct payments between platforms and creators not solely linked to advertising, but rather to the engagement that creators may be able to generate online. In recent years, social media platforms have embraced content monetisation and social commerce, which raises significant questions about the fitness of current consumer protection rules when discussing the obligations of platforms (e.g., information duties per the CRD or the prohibition of unfair practices as per the UCPD). **Influencers, companies and social media platforms can thus be considered the three cornerstones forming a triangle that is at the core of the influencer marketing industry.**

Lastly, **public authorities** play an increasing role in the sector. As early as 2014, former US president Barack Obama's public relations strategy acknowledged the endorsement potential of YouTube stars using their channels as a platform to popularise Obamacare⁷⁴. Since then, the reliance on social media influencers in political communication has skyrocketed, especially during the COVID-19 pandemic when many governments started relying on influencers for the promotion of pro-social pandemic behaviour such as wearing masks, vaccinating or social distancing. Although such transactions follow the same models as commercial advertising and may pose similar dangers⁷⁵, they are less linked to consumer protection issues and are thus not further explored in this study.

⁷¹ Chinese TikTok is an example of the extent of social commerce integration on the platform, allowing influencers to not only advertise but engage in actual sales. Available at: https://ide.mit.edu/wp-content/uploads/2021/07/Research-Brief_07-02-21.pdf. See also Yang, J., Zhang, J., Zhang, Y., 2021, *First Law of Motion: Influencer Video Advertising on TikTok*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3815124. See also Insider, 2021, *A top Chinese live-streaming influencer known as Viya was fined roughly \$210 million for tax evasion, agency says*. Available at: <https://www.insider.com/huang-wei-viya-chinese-alibaba-streamer-taobao-tax-evasion-2021-12>.

⁷² Fortune, 2021, *YouTube's creator economy is bigger and more profitable than ever*. Available at: <https://fortune.com/2021/06/02/youtube-creator-economy-advertising-revenue-war-for-talent-yt-influencers/>.

⁷³ See for instance the YouTube Shorts Fund. Available at: <https://support.google.com/youtube/answer/10923658?hl=en;https://newsroom.tiktok.com/en-gb/tiktok-creator-fund-your-questions-answered>.

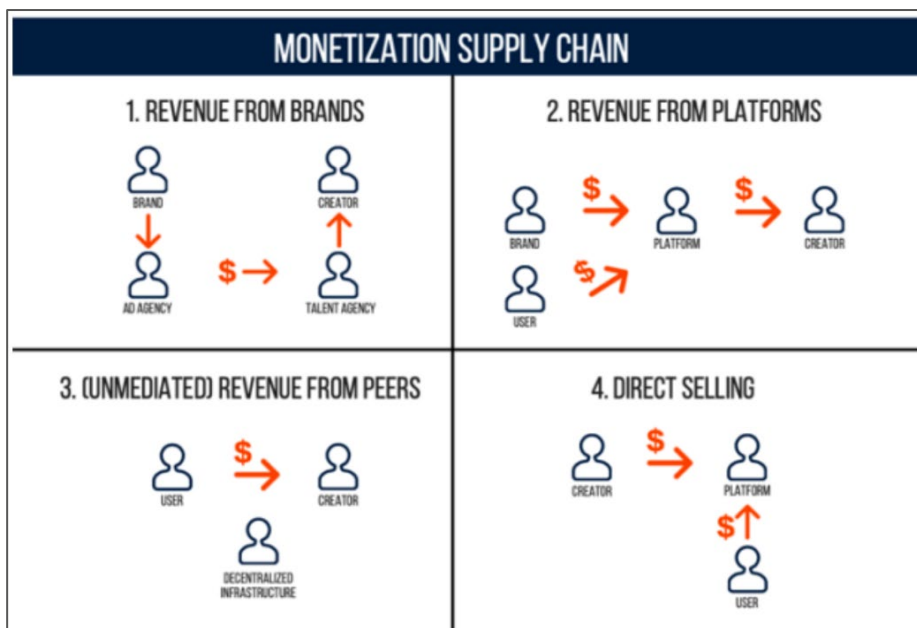
⁷⁴ Spangler, T., 2014, *President Obama Meets with YouTube Stars to Push Obamacare*, Variety. Available at: <https://variety.com/2014/digital/news/president-obama-meets-with-youtube-stars-to-push-obamacare-video-1201127120/>.

⁷⁵ De Gregorio, G., Goanta, C., 2021, *The Influencer Republic: Monetizing Political Speech on Social Media*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3725188.

3.1.3. There are various business models pursued by influencers

In the past decade, the opportunities for regular people to generate money from online content creation were limited. In the early days of social media platforms, users were said to be the product of these companies, because of the profiling of content they generated. More recently, this content has been monetised in novel ways. **When referring to influencer marketing, emphasis is placed on only a part of the business models which entail remuneration. However, for a more holistic perspective aiming to reveal the complexity of the content creator economy, this section focusses on discussing the most significant business models influencers use on social media and the role of the main market actors presented in the previous section.** Based on the monetisation supply chain, business models can be generally divided into four main categories, which are outlined below. Some of the business models are accompanied by visual examples of Instagram and YouTube interfaces. Since the goal of this section is to merely exemplify these business models in their natural environment, and not to analyse any compliance issues, and since the selected influencers are public persons, their identities have not been pseudonymised.

Figure 3: Monetisation business models



Source: Goanta, C., Wildhaber, I, 2019, In the Business of Influence: Contractual Practices and Social Media Content Monetisation, SZW / RSDA 4/2019.

a. Revenue from brands

Revenue from brands refers to the type of revenue that is obtained often through **contracts concluded outside social media platforms, between influencers and brands** (and/or their intermediaries), and generally for advertising purposes. Influencer marketing is the main and most well-known business model that brings revenues from brands. It entails the receiving of direct or indirect revenue for advertising services. Several contractual practices stand out in this category, namely **endorsements, affiliate marketing, and barter**:

- **Endorsements** are transactions whereby an influencer receives money in order to promote a product or service.

Figure 4: Example of endorsement



Source: Instagram.

- **Affiliate marketing** entails a transactional structure whereby the influencer is paid a percentage of referral sales, often identified through discount codes.

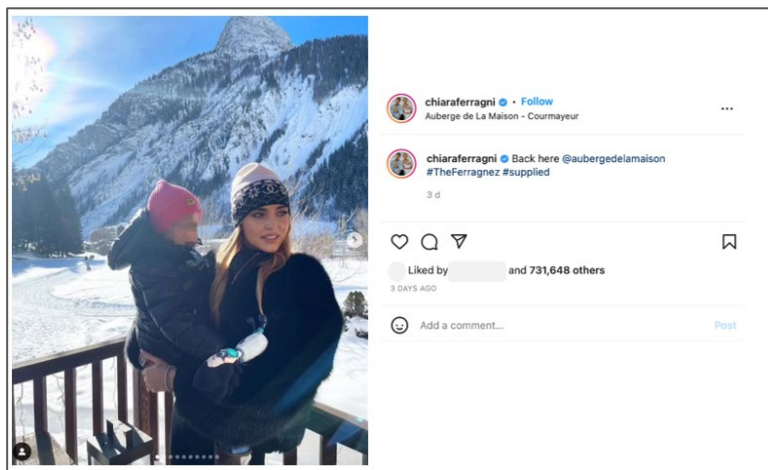
Figure 5: Example of affiliate marketing



Source: Instagram.

- **Barter** transactions entail the exchange of goods or services from a brand or its representatives against an advertising service offered by the influencer.

Figure 6: Example of barter



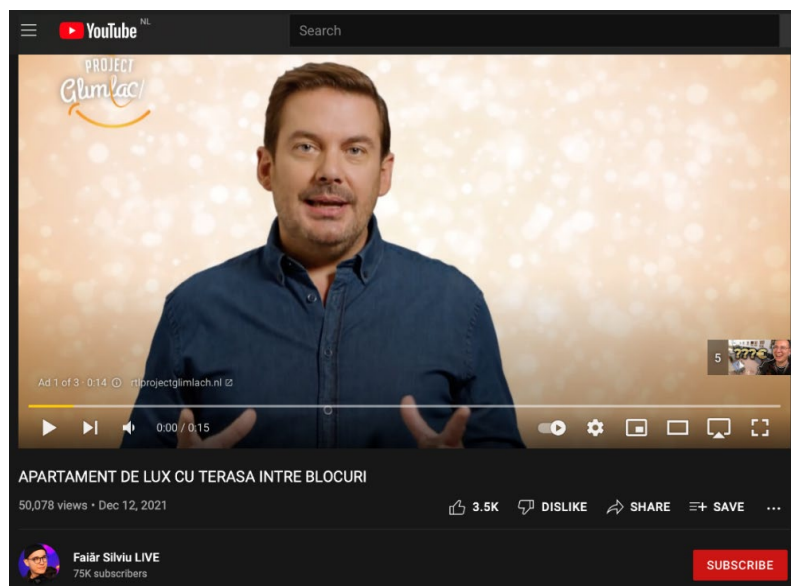
Source: Instagram.

b. Revenue from platforms

Other than directly from brands, **influencers may also receive revenue from platforms through ad revenue, subscription/crowdfunding, or tokenisation.**

Ad revenue: Platforms allow third parties to add their ads to an algorithmically managed ad library. For instance on YouTube, users who want to monetise their content may choose a specific “ad unit” such as display, overlay, video ads (skippable, non-skippable and bumper ads), and sponsored cards. The content of the ad is then selected and shown by the platform based on its algorithms. Influencers must meet specific platform-mandated conditions, some of which have been heavily critiqued based on their potential for discrimination and precarious nature.

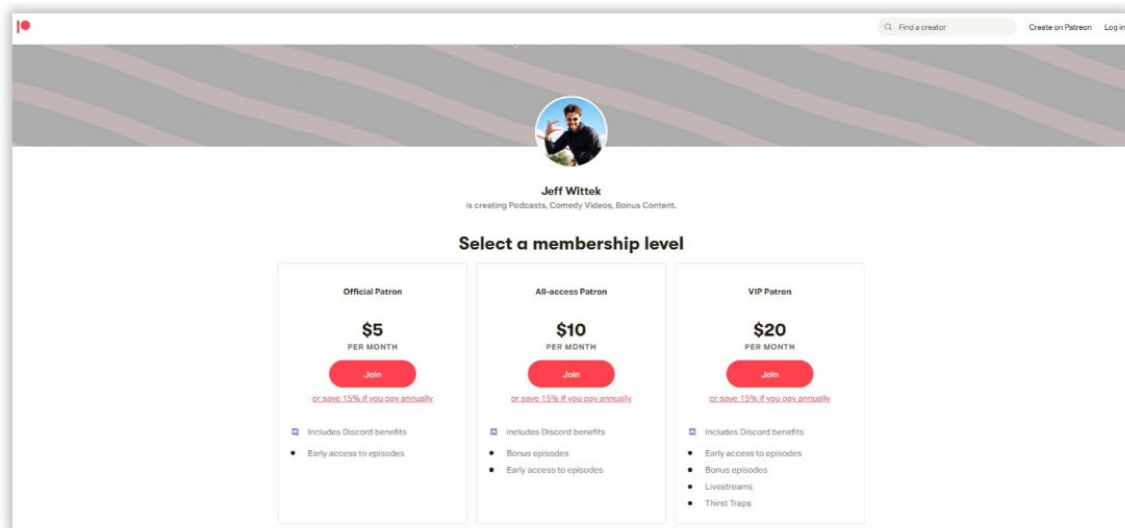
Figure 7: Example of ad featured on YouTube content



Source: YouTube.

1. Subscription/crowdfunding: Some platforms allow users to subscribe to premium content from creators. Using subscription models, influencers can get income on the basis of subscription models on social media platforms such as YouTube, or from their own video streaming platforms. Through crowdfunding models, influencers can also make money by being supported by their Patron peers, who in turn receive a collection of “perks” against a tiered payment system. Other platforms adopting this model operate in very specific industries, such as OnlyFans (adult content) or Spotify (podcast content). There is a fine line between subscription and crowdfunding from a legal perspective. Depending on national private laws, crowdfunding may entail donations, while subscriptions entail a paid service. Yet it is often difficult to distinguish between a paid service used to support a creator, or a donation which may lead to counter-performance.

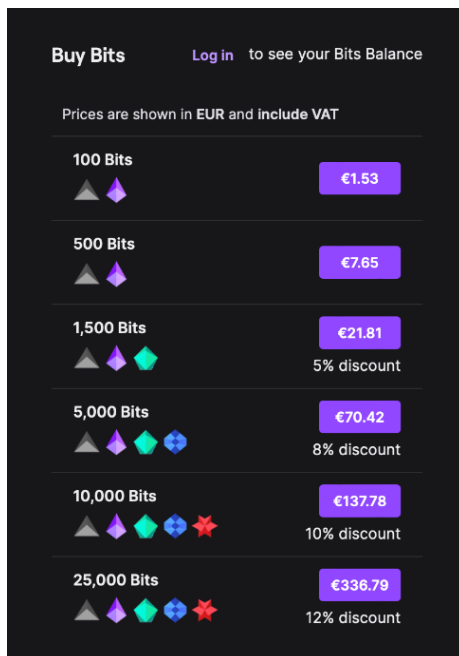
Figure 8: Example of subscription



Source: Patreon.

2. Tokenisation: Platform tokens entail that users viewing content made by influencers can purchase tokens, or alternative “virtual currencies” which they can spend interacting with their favourite creators. Examples include YouTube’s Super Chat or Super Sticker that allow fan messages to be highlighted when interacting on live streams, or YouNow’s “bar” currency which allows fans to “purchase premium gifts that help them further engage with broadcasters and support them”.

Figure 9: Example of tokenisation on Twitch



Source: Twitch.

c. Decentralised payments

Apart from mediated monetisation, creators can also **be supported by their peers more directly through decentralised technologies**. An example of an infrastructure that is starting to gain traction in this respect is the Web Monetisation protocol⁷⁶, a payment standard which allows creators to receive microtransactions from their supporters without any platform acting as an intermediary.

d. Direct selling

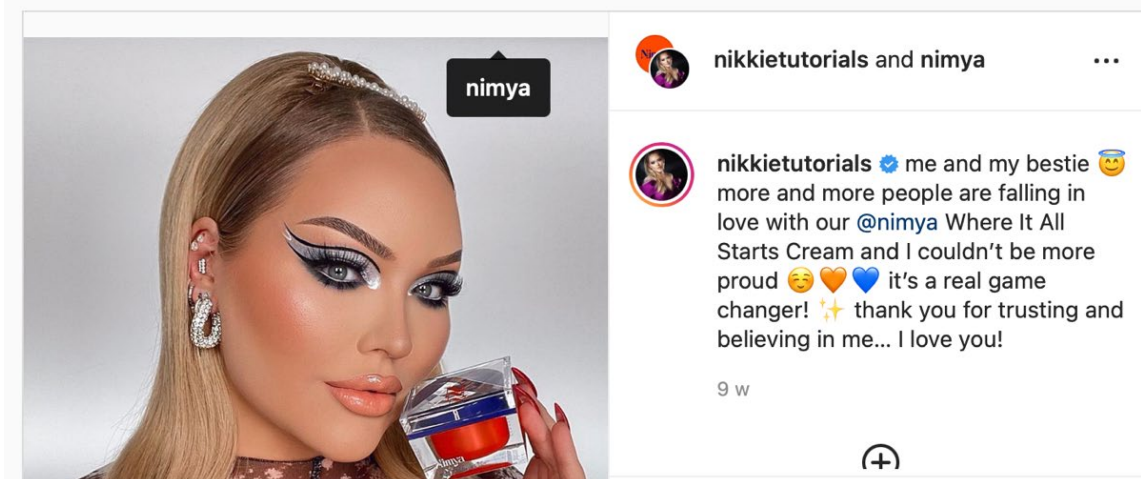
Influencers can also choose to create **their own products and/or branded products** (also known as “merch” or merchandise), and link to their web shops or feature them on social media platforms that have social commerce affordances. This business model often entails additional supply chains in e-commerce, such as those involved in drop shipping. Interestingly, some mega-influencers even open brick and mortar shops or collaborate with retailers to sell their product lines, thereby leaving the digital sphere. As platforms develop more interface and infrastructure options for consumers to engage with social commerce (e.g., the Instagram Checkout⁷⁷ feature or Twitter Shops⁷⁸), this will increasingly facilitate commercial transactions by influencers.

⁷⁶ Goanta, C., 2021, *Monetizing philanthropy: Our browser extension, interdisciplinary research findings & plans ahead*. Available at: <https://community.webmonetization.org/philanthropy/monetizing-philanthropy-our-browser-extension-interdisciplinary-research-findings-plans-ahead-16c8>.

⁷⁷ Instagram, 2019, *Introducing Checkout on Instagram*. Available at: <https://about.instagram.com/blog/announcements/introducing-instagram-checkout>.

⁷⁸ Twitter, 2021, *Twitter Shopping: Testing the Shop Module*. Available at: https://blog.twitter.com/en_us/topics/product/2021/twitter-shopping--testing-shoppable-profiles-on-twitter.

Figure 10: Example of direct selling



Source: Instagram.

3.2. Influencer marketing from a consumer perspective

The previous section shows that influencers, in interaction with brands, social media platforms and intermediaries, have grown to play a significant role in advertising and selling goods and services within the EU. However, **the ultimate target of influencer marketing are the consumers who follow influencers and buy these goods and services**. This section sheds light on how consumers' behaviour is impacted by influencer marketing and identifies the most relevant influencer marketing practices that are potentially harmful to consumers.

3.2.1. Influencer marketing can impact the behaviour of consumers

- a. The relationship between influencers and consumers is characterised by perceived closeness, authenticity and trust

A marketing survey conducted with German consumers showed that the main reasons why consumers follow influencers are because they are perceived as **likeable** (58%), **give good advice** in areas of interest (50%) and **inspire** their followers (41%)⁷⁹. Similar results may be found in a consumer survey from 2018 that was conducted with the general online-population in Germany. Indeed, 21% indicate that they follow influencers because they are **entertaining**, 20% because influencers are **inspiring** and 20% because influencers **provide valuable recommendations**⁸⁰. In 2021, a survey was carried out among Italian consumers who follow at least one macro-influencer on social media. Around 54% of respondents said they followed influencers because of the **advice given by the account**. Moreover, an **influencer's expertise** on a specific topic was cited by 51% of respondents, while 19% said they viewed an influencer as a **reference model**⁸¹.

Moving to the French market, only 42% of French internet users believe that influencers represent an effective means of information on products and brands. However, subscribers are of a completely

⁷⁹ Science GmbH, 2019, *Spotlight Influencer 4.0*. Available at: https://wavemakerglobal.com/de/wp-content/uploads/sites/4/2020/10/mSCIENCE_Spotlight-Influencer-4.0_Oktober-2019.pdf.

⁸⁰ pwc, 2018, *Zwischen Entertainer und Werber – Wie Influencer unser Kaufverhalten beeinflussen*. Available at: <https://www.pwc.de/Influencer-Marketing>.

⁸¹ Statista, 2021, *Reasons why Italian consumer followed influencers as of February 2021*, Available at: <https://www.statista.com/statistics/1260042/reasons-italians-follow-influencers/>.

different opinion: 77% consider that following influencers is a **good way to stay informed**. In summary, influencers manage to effectively reach their subscribers, but their influence is more limited with all internet users⁸².

The **academic literature** provides further insights on the relevant attributes and characteristics that define the **relationship between influencers and their followers**: firstly, influencers are valued due to sharing intimate experiences from their personal life and hence, are perceived as **authentic and real**⁸³. This social presence ("they feel real") has been measured to be significantly higher for influencers in comparison to traditional celebrities⁸⁴.

The relationship between influencers and their followers is often referred to as a "parasocial interaction"⁸⁵ which is one-sided since the follower mainly observes the influencer. Nevertheless, the possibility of participating in the influencer's life can create a strong bond, a **feeling of intimacy** and the illusory effect of an actual relationship. This parasocial interaction has been confirmed to increase purchase intentions of consumers⁸⁶. In a similar light, **(perceived) closeness** defines the relationship between followers and influencers. It is grounded in attachment theory which aims at explaining interpersonal relationships and expands to online relationships by the feeling of relatedness and closeness to the influencer⁸⁷. Furthermore, followers perceive influencers they engage with on social media as similar and select them due to a **high congruence in views**⁸⁸. This (perceived) similarity includes demographic profiles as well as shared interests and values, and therefore can also increase the **trust** they put into influencers and their advice and how strongly they **identify** with them⁸⁹. Hence, experimental evidence shows that influencers are also perceived as more trustworthy compared to traditional celebrities⁹⁰.

The content provided by influencers is highly valued by followers. This is attributed to the **credibility, competence and expertise, legitimacy, and honesty** of the influencer⁹¹. Therefore, advocated content is especially effective when it is perceived as informative and provides information on product

⁸² Ipsos, 2017, *Quel rôle jouent les influenceurs auprès des consommateurs?*. Available at: <https://www.ipsos.com/fr-fr/enquete-sur-le-role-des-influenceurs-sur-les-reseaux-sociaux-aupres-des-consommateurs#:~:text=Seulement%2042%25%20des%20internautes%20fran%C3%A7ais,bon%20moyen%20pour%20s'informer>.

⁸³ Argyris, Y. A., Wang, Z., Kim, Y., & Yin, Z., 2020, *The effects of visual congruence on increasing consumers' brand engagement: An empirical investigation of influencer marketing on Instagram using deep-learning algorithms for automatic image classification*, *Computers in Human Behavior*, 112, 106443; Lisichkova, N., & Othman, Z., 2017, *The Impact of Influencers on Online Purchase Intent (Dissertation)*, School of Business, Society & Engineering, Mälardalen University.

⁸⁴ Jin, S. V., Muqaddam, A., & Ryu, E., 2019, *Instafamous and social media influencer marketing*, *Marketing Intelligence & Planning*.

⁸⁵ Lueck, J. A., 2015, *Friend-zone with benefits: The parasocial advertising of Kim Kardashian*, *Journal of Marketing Communications*, 21(2), 91-109; Horton, D., & Richard Wohl, R., 1956, *Mass communication and para-social interaction: Observations on intimacy at a distance*, *Psychiatry*, 19(3), 215-229.

⁸⁶ Sokolova, K., & Kefi, H., 2020, *Instagram and YouTube bloggers promote it, why should I buy? How credibility and parasocial interaction influence purchase intentions*, *Journal of Retailing and Consumer Services*, 53.

⁸⁷ Deci, E. L., & Ryan, R. M., 2000, *The "what" and "why" of goal pursuits: Human needs and the self-determination of behavior*, *Psychological inquiry*, 11(4), 227-268; Taillon, B. J., Mueller, S. M., Kowalczyk, C. M., & Jones, D. N., 2020, *Understanding the relationships between social media influencers and their followers: the moderating role of closeness*, *Journal of Product & Brand Management*.

⁸⁸ Wiedmann, K. P., & von Mettenheim, W., 2020, *Attractiveness, trustworthiness and expertise – Social influencers' winning formula?* *Journal of Product & Brand Management*; Acikgoz, F., & Burnaz, S., 2021, *The influence of 'influencer marketing' on YouTube influencers*, *International Journal of Internet Marketing and Advertising*, 15(2), 201-219.

⁸⁹ Lou, C., & Yuan, S., 2019, *Influencer marketing: how message value and credibility affect consumer trust of branded content on social media*, *Journal of Interactive Advertising*, 19(1), 58-73; Peltola, L., 2019, *Making sense of the relationship between social media influencers on Instagram and the consumers who follow them*, Working Paper, Department of Business and Management, Marketing Hanken School of Economics, Helsinki.

⁹⁰ Jin, S. V., Muqaddam, A., & Ryu, E., 2019, *Instafamous and social media influencer marketing*, *Marketing Intelligence & Planning*.

⁹¹ Lisichkova, N., & Othman, Z., 2017, *The Impact of Influencers on Online Purchase Intent (Dissertation)*, School of Business, Society & Engineering, Mälardalen University.

features⁹². Consumer surveys support this finding, e.g., in a survey among German online-users 41% indicate that it is important that influencers are honest and credible. Furthermore, 38% say that it is important that influencers “know what they are speaking about”⁹³.

Following the behavioural science literature there exist several **overarching drivers** and mechanisms that aim at explaining the impact of influencers on consumer behaviour:

1. Opinion leadership: Rogers (1983) defines opinion leadership as the “degree to which an individual is able informally to influence other individuals' attitudes or overt behaviour in a desired way with relative frequency”⁹⁴. The behavioural science literature has demonstrated this driver to be influential for all sorts of decision-making (e.g., social behaviour or consumption). In the context of social media influencers, they therefore serve as opinion leaders and are able to generate persuasive messages which have an impact on the followers' attitudes and further on their intention to buy a certain product⁹⁵.

2. Social norm conformity: According to psychology and behavioural economics, social norms are a powerful mechanism shaping consumers' decisions. A social norm describes expectations on behaviour in group contexts⁹⁶. Therefore, the group defines an appropriate behaviour and rewards **conformity** while sanctioning deviations. These social norms can be promoted in the context of influencer marketing (social proof practices)⁹⁷, i.e., the appropriate behaviour is following a trend. Furthermore, new social norms can be established by influencers, i.e., a specific product is valuable. Consumers reciprocate this behaviour and conform to the norm by purchasing advertised products⁹⁸.

3. Social learning: Further theoretical background which is grounded in development psychology, is the so-called **social learning theory**. Social learning is frequently observed in children, but also powerful in adult behaviour. The theory states that “socially appropriate” behaviour is imitated⁹⁹. Again, transferred to the context of influencer marketing this means that followers identifying strongly with an influencer are more likely to imitate their behaviour.

4. Peer pressure: Similarly, peer pressure can play a role to promote purchasing behaviour under influencer advertisements. In general, peer pressure describes the pressure on an individual which is caused by their peer group. Especially, divergent behaviour is sanctioned and can be often observed in social media (cyber-bullying)¹⁰⁰.

⁹² Acikgoz, F., & Burnaz, S., 2021, *The influence of 'influencer marketing' on YouTube influencers*, International Journal of Internet Marketing and Advertising, 15(2), 201-219.

⁹³ agof e.V. / DMEXCO, 2021, *Influencer Marketing: Der Follower, das unbekannte Wesen. Ein Sonderbericht der agof und der Koelnmesse zur DMEXCO 2021*. Available at: https://www.agof.de/download/Downloads_FactsundFigures/dmexco/agof_DMEXCO_2021_Sonderbericht_Influencer_Marketing.pdf.

⁹⁴ Rogers, E., 1983, *Diffusion of Innovations (3rd ed.)*, New York: Free Press.

⁹⁵ Huhn, R., Ferreira, J., Freitas, A., & Leão, F., 2018, *The effects of social media opinion leaders' recommendations on followers' intention to buy*, Review of business Management, 20, 57-73.

⁹⁶ Sherif, M., 1936, *The psychology of social norms*, Harper; Cialdini, R. B., & Trost, M. R., 1998, *Social influence: Social norms, conformity and compliance*. In D. T. Gilbert, S. T. Fiske, & G. Lindzey (Eds.), *The handbook of social psychology* (pp. 151–192), McGraw-Hill.

⁹⁷ Lee, A., 2011, *Social proof is the new marketing*. Available at: <https://techcrunch.com/2011/11/27/social-proof-why-people-like-to-follow-the-crowd/?guccounter=1>.

⁹⁸ McDonald, R. I., & Crandall, C. S., 2015, *Social norms and social influence*, Current Opinion in Behavioral Sciences, 3, 147-151.

⁹⁹ Bandura, A., Ross, D., and Ross, S. A., 1961, *Transmission of aggression through imitation of aggressive models*, J. Abnorm. Soc. Psychol. 63, 575–582. Bandura, A., Grusec, J. E., and Menlove, F. L., 1966, *Observational learning as a function of symbolization and incentive set*, Child Dev. 37, 499–506. doi: 10.2307/1126674.

¹⁰⁰ Sheth, S., & Kim, J., 2017, *Social media marketing: The effect of information sharing, entertainment, emotional connection and peer pressure on the attitude and purchase intentions*, GSTF Journal on Business Review (GBR), 5(1); Kowalski, R. M., Limber, S. P., & Agatston, P. W., 2012, *Cyberbullying: Bullying in the digital age*, John Wiley & Sons.

5. Herd behaviour: Similarly to peer pressure and norm conformity, herd behaviour describes a psychological phenomenon on behavioural changes of individuals within groups, specifically large groups¹⁰¹. It is frequently observed in consumption decisions but also in economic decision-making. Therefore, individuals align their own behaviour on other members of the “herd” / group. The mechanism works similarly as social norm conformity but is especially relevant for large size groups consisting also of non-personal peers. Within social media, herd behaviour can be frequently observed as well. If many other consumers purchase a product or at least “like” or comment on it¹⁰², consumers tend to follow the masses and imitate purchasing behaviour.

6. Conditional cooperation: Conditional cooperation describes a behavioural economics phenomenon where individuals are more willing to contribute to a common goal if they expect others also to cooperate¹⁰³. This behaviour has been frequently observed in different social contexts such as tax payments¹⁰⁴ but can also be transferred to decision making in social media. If other followers support the paid content of an influencer, consumers are conditionally willing to do so as well. Especially, since the “common goal” is to receive further influencer content, i.e., participation in the influencer’s private life and recommendations.

b. Both the influencer-follower-relationship and the influencer-brand-relationship affect consumers’ attitudes towards brands

Following the academic literature, there exist several factors that have an effect on consumers’ attitudes towards brands. These positive attitudes have been demonstrated not only to influence consumers’ purchase intentions but can also result in actual purchases (see next section). The first set of factors are inherent to the influencer-follower-relationship, e.g., they regard how source credibility or congruence affect the promotional effect of the influencer. The second set of factors regards the influencer-brand-relationship, which is observed by the consumer, e.g., how cooperation is disclosed and how congruent influencer and promoted brand are perceived.

Influencer-follower-relationship: The overarching success of influencer marketing can be attributed to the so-called **electronic word-of-mouth (eWOM) effect** which is a powerful tool to **promote brands**¹⁰⁵. The eWOM-effect within the influencer-follower-relationship is mainly successful because consumers are more likely to **trust** their “peers” opinion (influencer opinion) than a commercial advertiser opinion¹⁰⁶. As indicated before, consumers often anticipate input by influencers to be “own opinions” or “personal expressions” that could be more trusted compared to company-sourced advertisements. In contrast, “picture perfect” images, i.e., not as authentic as “own opinions”, have a negative effect on both the trustworthiness of the content and the influencer¹⁰⁷.

A review by Vrotis et al. (2020) showed that influencers’ **credibility, attractiveness** (physical as well as familiarity and likability), **expertise, trustworthiness, popularity, prestige** and high **influential**

¹⁰¹ Shiller, R., 1995, *Conversation, Information, and Herd Behavior*, The American Economic Review, 85(2), 181-185.

¹⁰² Depending on the influencers range and number of followers this can be more than hundred-thousand interactions per post.

¹⁰³ Gächter, S., 2006, *Conditional cooperation: Behavioral regularities from the lab and the field and their policy implications*, CeDEx Discussion Paper Series (No. 2006-03); Frey, B. S., and Meier, S., 2004, *Social Comparisons and Pro-social Behavior: Testing “Conditional Cooperation” in a Field Experiment*, American Economic Review, 94 (5), 1717-1722.

¹⁰⁴ Frey, B. S., & Torgler, B., 2007, *Tax morale and conditional cooperation*. *Journal of comparative economics*, 35(1), 136-159.

¹⁰⁵ Yesiloglu, S., & Costello, J. (Eds.), 2020, *Influencer marketing: building brand communities and engagement*, Routledge.

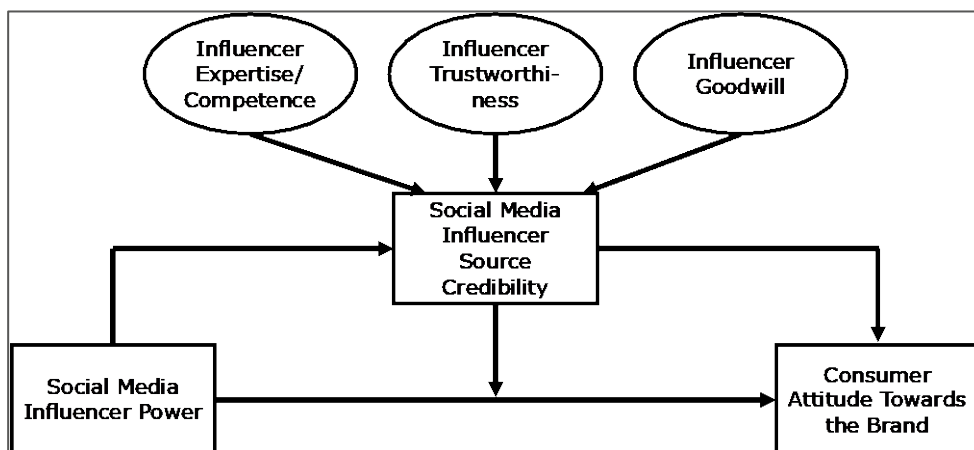
¹⁰⁶ Veirman, M. de, Cauberghe, V., & Hudders, L., 2017, *Marketing through Instagram influencers: the impact of number of followers and product divergence on brand attitude*, International Journal of Advertising, 36(5), 798–828; Yogesh, D., Shareef, M. A., Mukerji, B., Dwivedi, Y., Rana, N., & Islam, R., 2017, *Social media marketing: Comparative effect of advertisement sources*, Journal of Retailing and Consumer Services.

¹⁰⁷ Martensen, A., Brockenhuus-Schack, S. and Zahid, A.L., 2018, *How citizen influencers persuade their followers*, Journal of Fashion Marketing and Management, 22(3), 335-353.

power had the most impact on consumers’ attitudes and behavioural intentions – by that also strengthening brand preferences and purchasing behaviour¹⁰⁸. Similarly, Martensen et al. (2018) constitute the influencers’ characteristics to include **expertise, trustworthiness, likeability, similarity** and **familiarity**, which all were found to enforce the persuasiveness of the influencer and thereby promote consumers’ brand attitudes¹⁰⁹.

In this context, Nafees et al. (2020) built a conceptual model of the effect of influencers on brand attitude (see the figure below)¹¹⁰. The authors assume that the power the influencer has on the consumers’ attitude towards the brand is itself influenced (mediated) by **perceived source credibility**. This perceived source credibility is conceptualised as a three-dimensional construct which includes **(1) expertise / competence, (2) trustworthiness and (3) goodwill**. Expertise / competence describes the degree to which the perceiver believes the source to know the truth, i.e., is an expert for the decision to take. Trustworthiness is defined as the extent a perceiver believes the source will tell the truth as they know it. Goodwill describes the degree to which the perceiver believes a source has the perceiver’s best interests in mind. Hence, if these three characteristics are perceived as high for an influencer, they can strengthen credibility and thereby also brand perception.

Figure 11: Influencer effect on brand attitude



Source: Adapted from Nafees, Cook & Stoddard, 2020, p. 12¹¹¹.

Further models provided by the academic literature come to similar conclusions on the high influence of source credibility. Lee and Kim (2020) conceptualise source credibility to be affected by the expertise, trustworthiness and attractiveness of the influencer. In this light, they argue not only a positive effect of attitudes towards an advertorial post but also on purchase intentions¹¹². Similarly, Xiao et al. (2018) conceptualise source credibility to be derived from **(1) trustworthiness, (2) social advocacy, (3) argument quality and (4) information involvement**, thereby also capturing the social functions

¹⁰⁸ Vrontis, D., Makrides, A., Christofi, M., & Thrassou, A., 2021, *Social media influencer marketing: a systematic review, integrative framework and future research agenda*, International Journal of Consumer Studies.

¹⁰⁹ Martensen, A., Brockenhuus-Schack, S. & Zahid, A.L., 2018, *How citizen influencers persuade their followers*, Journal of Fashion Marketing and Management, 22(3), 335-353.

¹¹⁰ Nafees, L., Cook, C. M. & Stoddard, J. E., 2020, *The Impact of the Social Media Influencer Power on Consumer Attitudes toward the Brand: The Mediating/Moderating Role of Social Media Influencer Source Credibility*, Atlantic Marketing Journal, 9(1).

¹¹¹ Nafees, L., Cook, C. M. & Stoddard, J. E., 2020, *The Impact of the Social Media Influencer Power on Consumer Attitudes toward the Brand: The Mediating/Moderating Role of Social Media Influencer Source Credibility*, Atlantic Marketing Journal, 9(1).

¹¹² Lee, S., & Kim, E., 2020, *Influencer marketing on Instagram: How sponsorship disclosure, influencer credibility, and brand credibility impact the effectiveness of Instagram promotional post*, Journal of Global Fashion Marketing, 11(3), 232-249.

within the social media platforms¹¹³. As above, trustworthiness refers to the perceived integrity of the influencer to share honest assertions. Social advocacy refers to the degree of social influence, which is signalled by the functioning of the platforms, i.e., comments or likes by others. The higher this social influence, i.e., the more support influencer posts receive from others, the higher the credibility. Argument quality refers to how convincing the information is perceived by the follower and information involvement to the degree of being fascinated by the content itself as well as how valuable it is perceived (among others). In an online survey, the authors find the four factors to influence source credibility and can demonstrate a positive correlation between this source credibility and brand attitudes, i.e., the higher perceived credibility, the higher also the appreciation of the brand.

Furthermore, the **congruence** between influencer and follower highly matters for consumers' attitudes and perceptions¹¹⁴. A fit in attributes, views and interests therefore is associated with a strong personal bond and by this, more favourable attitudes towards the product, higher purchase intentions as well as recommendation intentions can be observed. Furthermore, the consumer will also be more likely to perceive the created **relationships** to be **credible** as well as **natural**.

Influencer-brand-relationship: The second set of factors determining the effect of influencers on consumers' attitudes regards the influencer-brand-relationship observed by the consumer. Firstly, the **disclosure** of the relationship matters, i.e., whether the sponsorship or collaboration is disclosed to the follower and if yes, whether it is disclosed explicitly or implicitly. In general, disclosure of advertisements affects **conceptual persuasion knowledge**, i.e., consumers are aware of the persuasive nature of an advertisement and based on this knowledge they are able to critically evaluate the product and take their consumption decision¹¹⁵. Depending on the degree of disclosure it is therefore possible that consumers do not acknowledge a sponsored post as an advertisement or do not capture the collaboration between the brand and the influencer. Hence, they potentially consider a sponsored post not as an advertisement but rather as a personal recommendation.

Consumer surveys provide insights into consumers' preferences for disclosure. In a study among the German online-population, 32% claim that they are not bothered by the fact that influencers earn money for their recommendations and 40% say they are not bothered as long as advertisements are transparently labelled as such¹¹⁶. Another 22% are generally bothered by compensation for recommendations. A study by Stubb et al. (2019) sheds further light on disclosure and adds another component, i.e., **justification for the collaboration** between brand and influencer¹¹⁷. Therefore, a justification for a collaboration could be the necessity to receive monetary compensation from a brand in order to produce further content on the platform, i.e., the influencer needs money / income in order to share further insights on their private life. In an experiment the authors show that disclosure with justification is perceived more positively by the consumer and increases source credibility, compared to simple disclosure.

¹¹³ Xiao, M., Wang, R., & Chan-Olmsted, S., 2018, *Factors affecting YouTube influencer marketing credibility: a heuristic-systematic model*, Journal of media business studies, 15(3), 188-213.

¹¹⁴ Belanche, D., Casaló, L. V., Flavián, M., & Ibáñez-Sánchez, S., 2021, *Understanding influencer marketing: The role of congruence between influencers, products and consumers*, Journal of Business Research, 132, 186-195.

¹¹⁵ Lee, S., & Kim, E., 2020, *Influencer marketing on Instagram: How sponsorship disclosure, influencer credibility, and brand credibility impact the effectiveness of Instagram promotional post*, Journal of Global Fashion Marketing, 11(3), 232-249.

¹¹⁶ BVDW, 2019, *Digitale Trends. Umfrage zum Umgang mit Influencern*. Available at: https://www.bvdw.org/fileadmin/bvdw/upload/studien/190409_BVDW_Kontakte_mit_Influencern.pdf.

¹¹⁷ Stubb, C., Nyström, A. G., & Colliander, J., 2019, *Influencer marketing: The impact of disclosing sponsorship compensation justification on sponsored content effectiveness*, Journal of Communication Management.

As indicated before, congruence is a relevant factor defining the relationship between influencers and their followers. Next to this, the congruence between the influencers and the promoted brand matters, i.e., **influencer-brand-fit**. The higher perceived fit between the two, the better followers' attitude towards the brand¹¹⁸. In this light, a consumer survey among UK and US consumers between the age of 18 and 34 revealed that 25% say that they would trust and purchase sponsored products more often if the partnership between the influencer and the brand is a "natural fit"¹¹⁹.

c. **Influencer marketing has an impact on consumer purchase decision-making, in particular with younger consumers who use social media more frequently**

Next to the effects of influencers on consumers' attitudes and brand perceptions, consumer survey data shows that influencers also influence **actual purchasing decisions**. A general population survey conducted in Sweden, Germany, and the UK (among other countries) shows that consumers were **convinced** by an Influencer **to purchase** a product¹²⁰. This holds for 20% of the Swedish, 20% of the German and 30% of UK-consumers. Additionally, 19% of the Swedish consumers indicated that they **clicked on the Influencer-ad and purchased** the product **directly** via the provided link. The share in Germany was 20% and in the UK it was 25%. A consumer survey conducted in Italy examined influencers' level of incidence in buying propensity. The results pinpointed that 85% of consumers interviewed claim to **take the opinions of influencers into consideration when buying a product**¹²¹.

Hence, this data shows that consumers not only purchase products immediately by receiving a direct purchase-link from a social media platform, but also from other, indirect sources, e.g., selecting the product in a shop or from another source.

Of those who **actively engage in social media platforms**, the share of **influenced purchases** is even **higher**. In a global survey in France, Germany, the UK, Australia and the US that was conducted with online shoppers that are rather active on social media, 41% indicated that they frequently discover new brands and products through influencers¹²². Indeed, 80% of those also purchased the product directly via the influencer link provided on the social media platform and 88% said that they were at least inspired by the post. Furthermore, 61% indicated that they will click on a sponsored post of an influencer to find out more about the product, while only 39% indicated that they explicitly avoid sponsored posts.

Influencers' impact depends on **socio-demographic factors** as well as the **product type**. In a German survey, 43% of young social media users (aged 15 to 24) indicated to have bought a product because an influencer promoted it. In contrast, the share among consumers above the age of 45 was below 10%¹²³. According to a survey conducted in Italy, social media and celebrities had the largest influence on the purchases of the youngest group of respondents. Around 23% of consumers aged between 18

¹¹⁸ Chopra, A., Avhad, V., & Jaju, A. S., 2021, *Influencer Marketing: An Exploratory Study to Identify Antecedents of Consumer Behavior of Millennial*, Business Perspectives and Research, 9(1), 77-91; Belanche, D., Casaló, L. V., Flavián, M., & Ibáñez-Sánchez, S., 2021, *Understanding influencer marketing: The role of congruence between influencers, products and consumers*, Journal of Business Research, 132, 186-195; Wiedmann, K. P., & von MettenAheim, W., 2020, *Attractiveness, trustworthiness and expertise – Social influencers' winning formula?* Journal of Product & Brand Management.

¹¹⁹ Xeim, 2020, *What consumers think about influencer marketing*, White Paper. Available at: <https://www.influencerintelligence.com/insights/24/what-consumers-think-about-influencer-marketing>.

¹²⁰ Episerver, 2021, *Reimagining Commerce 2020 – Toolkit for Creating Customer-Centric Digital Experiences*. Available at: <https://www.optimizely.com/insights/reimagining-commerce-report/#download-form>.

¹²¹ Buzzoole, Mondadori, Infovalue, 2021, *Italiani & Influencer*. Available at: <https://buzzoole.com/resources/italiani-e-influencer/it>.

¹²² Rakuten Marketing, 2019, *Influencer Marketing – Global Survey – Consumers*. Available at: <https://www.iab.com/wp-content/uploads/2019/03/Rakuten-2019-Influencer-Marketing-Report-Rakuten-Marketing.pdf>.

¹²³ BVDW, 2019, *Digitale Trends - Umfrage zum Umgang mit Influencern*. Available at: https://www.bvdw.org/fileadmin/user_upload/190404_IM_Studie_BVDW_2019.pdf.

and 34 years bought a given product at an influencer's suggestion in 2019, in contrast with 16% of consumers aged between 25-64 and 5% of consumers above the age of 65¹²⁴. This age effect is also confirmed by Hilker (2020) that finds that **younger consumer** groups (up to 30 years) are **particularly receptive** to influencer marketing and therefore more frequently purchase products that are advertised under an influencer marketing strategy¹²⁵.

While gender does not systematically matter on overall influencer purchases, the **interaction of gender and product type** appears to be significant. A German survey shows that a large share of female consumers (66%) indicated to have bought beauty products because of an influencer in social media while the share among men was 22%. This gender difference is reversed when looking at technical products (45% male, 19% female) as well as computer games (29% male, 12% female)¹²⁶.

Lastly, influencer advertisement not only influences purchases but also **“activates”** consumers by other means. Survey data shows that more than 40% of social media users are willing to inform themselves about a product that has been presented by an influencer. A similarly high share indicated their willingness to visit the product's website after an influencer ad¹²⁷. Hence, commercial posts can also strengthen **brand perception and loyalty**.

d. **Young consumers, notably children, and consumers with low education and/or low income are particularly vulnerable to influencer marketing**

As indicated before, **young consumers appear to be particularly prone to influencer marketing**. On the one hand, this might be due to the fact that they use social media platforms more frequently, but on the other hand, in very young years they also may have lower advertising literacy skills (see below). Further data from European consumer surveys manifest the relationship between age and being influenced. A study among the UK-population from 2018 shows that the share of millennials (<35 years old) making a purchase based on an influencer's recommendation was 25%, while it was only 8% among those who were 35-years or older¹²⁸. Even more pronounced is the difference among younger consumers. In a German online population survey, 32% of the participants indicated that a product was brought to their attention because of an influencer¹²⁹. The share among participants between the age of 16 and 19 was 76% and deteriorated with age. A survey from Austria that was conducted with Generation Z consumers (between 15 and 22 years old) supports these results¹³⁰. Indeed, 52% indicated that they purchased a product because it was presented by an influencer. In a survey carried out among Generation Z consumers in Italy, around 37% of respondents said they discovered new brands through television ads. Ads on social media were cited by 37% of respondents, while 30% said they came across new brands through ads on websites¹³¹.

¹²⁴ Statista, 2022, *Italy: influences on consumer goods purchase 2019, by age group*. Available at: <https://www.statista.com/statistics/987017/influences-on-consumer-goods-purchase-in-italy/>.

¹²⁵ Hilker, C., 2020, *Aktuelle Studien zum Influencer Marketing | Digital Marketing: Beratung, Agentur, Akademie (hilker-consulting.de)*. Available at: <https://www.hilker-consulting.de/digital-marketing/aktuelle-studien-zum-influencer-marketing>.

¹²⁶ Splendid Research, 2019, *Wie beeinflussen Influencer die Kaufwahrscheinlichkeit?* Available at: <https://www.splendid-research.com/de/studie-influencer.html>.

¹²⁷ Science GmbH, 2019, *Spotlight Influencer 4.0*. Available at: https://wavemakerglobal.com/de/wp-content/uploads/sites/4/2020/10/mSCIENCE_Spotlight-Influencer-4.0_Oktober-2019.pdf.

¹²⁸ McCarthy, J., 2018, *SurveyMonkey data shows how brand trust influences millennials and over-35s differently*. Available at: <https://www.thedrum.com/news/2018/11/06/surveymonkey-data-shows-how-brand-trust-influences-millennials-and-over-35s>.

¹²⁹ pwc, 2018, *Zwischen Entertainer und Werber – Wie Influencer unser Kaufverhalten beeinflussen*. Available at: www.pwc.de/Influencer-Marketing.

¹³⁰ mindtake, 2019, *Consumer-Check zur Generation Z*, Commissioned by the Austrian Retail Association. Available at: https://www.handelsverband.at/fileadmin/content/images/publikationen/Studien/HV_ConsumerCheck_GenerationZ_2019.pdf.

¹³¹ Statista, 2021, *Ad formats driving brand discovery of Gen Z in Italy 2021*. Available at: <https://www.statista.com/statistics/1260040/ad-formats-gen-z-brands-italy/>.

When asked for the **reasons of purchase**, 82% of the Generation Z consumers in Austria indicated **product presentation** by the influencer, 76% said because the influencer **inspired** them, 71% because they **trust** the influencers' opinion. Additionally, 63% indicated that a **discount offered** by the influencer posts was the reason for purchase and 41% said that by purchasing they were **part of a community**¹³². Further support may be found in a German survey conducted with consumers below the age of 25 for instance¹³³. Here 46% indicated that they have the feeling that they **receive good and helpful recommendations** by influencers. This share is even higher among those young consumers that hold a low formal education (64%). Nevertheless, young consumers also appear reflective about the consumer-influencer-relationship and **express** their **discomfort with advertorial posts**. Therefore, 55% say that they think that influencers are annoying because their content is solely based on advertisements for products.

As indicated in the academic literature on influencer marketing, the impact of influencers on children is currently not fully investigated and there still exist research gaps on this vulnerable consumer group¹³⁴. Nevertheless, De Veirman et al. (2019) point out that **children** overall have **low advertising literacy skills** and thereby it is possible that they could be **more influenced** by this type of marketing strategy, especially because their trust in peers is comparatively high and influencers often are perceived as authentic.

Furthermore, marketing strategies implemented by influencers are adapted to specific consumer groups such as children. Therefore, certain **product presentations** are especially **tailored to young consumers** and influencers targeting children allow them to participate in their everyday life which is often very appealing to children as influencers share their experiences and personal stories¹³⁵. For example, a conceptual study from Austria shows that influencers targeting children let their followers participate in situations regarding school life and thereby are considered as friends. Hence, they are also viewed as trustworthy and in this perceived circle of friends, followers aim to be part of this community.

Overall, there exist several **negative impacts** of influencer marketing on children that impact both consumption behaviour as well as the development of traits and attitudes¹³⁶: Firstly, influencer marketing is expected to **affect brand attachment** of children and thereby future purchases. Secondly, being confronted with many advertorial posts could also **increase** overall **materialistic behaviour** and if not regulated by guardians can even lead to **indebtedness** in adult life. Thirdly, influencer marketing can cause children to be **confronted with content** that is **not age appropriate** (e.g., alcohol, overconsumption of certain products such as sweets, or adult content). Lastly, influencer marketing as a whole can **affect role perceptions** and expectations towards the body image (e.g., being skinny).

¹³² mindtake, 2019, *Consumer-Check zur Generation Z*, Commissioned by the Austrian Retail Association. Available at: https://www.handelsverband.at/fileadmin/content/images_publicationen/Studien/HV_ConsumerCheck_GenerationZ_2019.pdf.

¹³³ DIVSI, 2018, *DIVSI U25-Studie – Euphorie war gestern – Die "Generation Internet" zwischen Glück und Abhängigkeit*. Available at: <https://www.divsi.de/wp-content/uploads/2018/11/DIVSI-U25-Studie-euphorie.pdf>.

¹³⁴ De Veirman, M., Hudders, L., & Nelson, M. R., 2019, *What is influencer marketing and how does it target children? A review and direction for future research*, *Frontiers in psychology*, 10, 2685.

¹³⁵ Österreichisches Institut für angewandte Telekommunikation, 2018, *Kinder im Visier von Influencer-Marketing. Auf YouTube, Instagram und Snapchat*. Available at: https://www.saferinternet.at/fileadmin/redakteure/Footer/Studien/Kinder_im_Visier_von_Influencermarketing.pdf.

¹³⁶ Sterreichisches Institut für angewandte Telekommunikation, 2018, *Kinder im Visier von Influencer-Marketing. Auf YouTube, Instagram und Snapchat*. Available at: https://www.saferinternet.at/fileadmin/redakteure/Footer/Studien/Kinder_im_Visier_von_Influencermarketing.pdf.

Next to young age, two other vulnerable consumer groups should be highlighted as they are either particularly prone to marketing practices or in danger of negative consequences that might follow increased consumption behaviour. The first is **low education**, not only low formal education in general, but **low advertising literacy** in particular. As indicated above conceptual persuasion knowledge is important with respect to being able to identify the advertising purpose of strategies such as influencer marketing¹³⁷. If consumers are not well educated in this manner, it might therefore be more difficult for them to distinguish between objective and subjective influencer messages and therefore, they also can be specifically targeted. A field experiment by Nelson (2016) shows that overall advertising literacy is low – especially among young consumers – but can be trained¹³⁸.

Another vulnerable consumer group that should be highlighted is the one of **low income**. Overall, influencer marketing, as marketing and advertising in general, aims to increase consumers' consumption. It also appeals to consumers' affinity to follow trends and promotes materialistic behaviour. Social media platforms make consumption very easy and accessible, i.e., features allow to shop products with one click from an app. Especially for consumers with low financial literacy and income, this poses the threat of over-consuming and not staying within individual financial limitations. Furthermore, social media shopping often offers payment methods such as "buy-now-pay-later" which may contribute to entrap consumers in debt. In this light, a consumer survey shows that 60% of consumers from Austria and Germany would purchase something of higher value when given the buy-now-pay-later-option; 63% would purchase something more spontaneously¹³⁹. Certainly, the latter is not only problematic in the context of social media but also applies to other forms of shopping online. Nevertheless, easy transactions within social media and influencer posts pose a particular threat to this vulnerable group.

To conclude, the specific features of influencer marketing that exacerbate these vulnerabilities more than other forms of media (e.g., fashion/lifestyle magazines) which are the lack of regulatory oversight and monitoring (especially for young consumers) and the perceived authenticity.

e. **The COVID-19 pandemic has led to more time spent online and thereby possibly to an increase of exposure to influencer marketing**

According to an EU-wide survey, the **use of social media** has been increasing steadily in the past years, especially in the COVID-19-pandemic. Therefore, the number of daily users increased in the pandemic, while the share of non-users decreased¹⁴⁰. During the pandemic, the amount of **online shopping** increased as well – in 2020, 72% of consumers were shopping online¹⁴¹. Lastly, during the COVID-19-pandemic the percentage of brands that dedicated a separate **budget for content marketing** worldwide has further increased by 4% (Influencer Marketing Hub, 2021)¹⁴².

¹³⁷ Lee, S., & Kim, E., 2020, *Influencer marketing on Instagram: How sponsorship disclosure, influencer credibility, and brand credibility impact the effectiveness of Instagram promotional post*, Journal of Global Fashion Marketing, 11(3), 232-249.

¹³⁸ Nelson, M. R., 2016, *Developing persuasion knowledge by teaching advertising literacy in primary school*, Journal of Advertising, 45(2), 169-182.

¹³⁹ Credi2, 2021, *Konsumentenfinanzierung neu gedacht*. Available at: https://www.credi2.com/wp-content/uploads/2021/10/Studie_Konsumentenfinanzierung-neu-gedacht_2021.pdf.

¹⁴⁰ European Commission, 2021, *Standard Eurobarometer 94. Media use in the European Union*. Available at: <https://europa.eu/eurobarometer/surveys/detail/2355>. See also Eurostat, 2021b, *Individuals using the internet for participating in social networks* (online data code: TIN00127). Available at: https://ec.europa.eu/eurostat/databrowser/product/view/ISOC_CI_AC_I.

¹⁴¹ Eurostat, 2021c, *Online shopping ever more popular in 2020*. Available at: <https://ec.europa.eu/eurostat/de/web/products-eurostat-news/-/ddn-20210217-1>.

¹⁴² Influencer Marketing Hub, 2021, *The State of Influencer Marketing 2021: Benchmark Report*. Available at: <https://influencermarketinghub.com/influencer-marketing-benchmark-report-2021/>.

Whether this trend is stable and whether a causal relationship between increased social media traffic, online shopping and influencer marketing in the COVID-19-pandemic exists, is not yet clear. Nevertheless, there exist indicative studies observing and measuring the impact of consumers' social media behaviour and **influencer advertisement growth** in the COVID-19-pandemic¹⁴³.

In general, consumers in "lockdown" were probably less influenced by stimuli from the analogue world, i.e., friends, family or colleagues recommending products, but rather by digital means in social networks. Hence, digital influencers might have substituted real-world contacts and influencers' impact on purchasing behaviour was strengthened. In this light, Taylor (2020b) describes certain market trends that could have been influential for this growth of influencer marketing in the COVID-19-pandemic¹⁴⁴. The first is the **increase in engagement** of consumers with the influencers in social networks. Given an increase in the time spent on social media as well as in communication such as likes and comments, the relationship between influencers and their followers strengthened – potentially via the behavioural drivers that have been identified above (e.g., opinion leaders, social norms etc.).

Additionally, Taylor (2020b) identified a second trend that is related to the technical possibilities of advertisement in social media. **Micro-targeting** of influencer messages became more efficient due to technical developments and by that, influencers were able to target specific groups for their content, hence, increasing conversion rates¹⁴⁵. This technical trend is only possible as more data on consumers' preferences is available – which is again correlated with the time spent in social media itself.

3.2.2. Certain influencer marketing practices pose risks to consumers

The behavioural mechanisms explained above **translate into concrete marketing practices that may exploit consumer behaviour in a potentially harmful way**.

Overall, **not many official consumer complaints on influencer marketing are lodged in the EU**. This might be due to the novelty of the trend and the absence of monitoring tools before 2019 on this topic. Moreover, the lack of awareness of consumers to bring the complaint to the right authority or to identify a breach of consumer protection is an important factor. A good example underlining this is the investigation conducted in Poland in 2021 by the UOKiK¹⁴⁶ (Office of Competition and Consumer Protection). On average, there have been around 10 consumer complaints about influencer marketing in a year. However, after a press release published by the UOKiK on 29 November 2021, which also included a telephone and email contact for consumers to report violations, more complaints were received within two days than in the entire last quarter.

Desk research, interviews and social media monitoring were performed for this study in order to gather data on different market practices used by influencers. In particular, **the social media monitoring exercise was designed to gather qualitative insights on potentially harmful influencer marketing practices** when promoting goods and/or services online. Influencers of different sizes (in terms of followers), from several EU Member States and specialised in different sectors (such as fashion,

¹⁴³ Francisco, E., Fardos, N., Bhatt, A., & Bizel, G., 2021, *Impact of the COVID-19 Pandemic on Instagram and Influencer Marketing*, International Journal of Marketing Studies, 13(2); Taylor, C. R., 2020a, *The urgent need for more research on influencer marketing*, Editorial, International Journal of Advertisement.

¹⁴⁴ Taylor, C. R., 2020, *Is COVID making marketing influencers more influential?*, Forbes. Available at: <https://www.forbes.com/sites/charlesrtaylor/2020/07/30/is-COVID-making-marketing-influencers-more-influential/-237d789f4200>.

¹⁴⁵ Taylor, C. R., 2020, *Is COVID making marketing influencers more influential?*, Forbes. Available at: <https://www.forbes.com/sites/charlesrtaylor/2020/07/30/is-COVID-making-marketing-influencers-more-influential/-237d789f4200>.

¹⁴⁶ Urzędu Ochrony Konkurencji i Konsumentów.

travel, gaming, family, food etc.) were identified and monitored on social media platforms (Instagram, TikTok, YouTube, Facebook)¹⁴⁷.

The main practices posing risks to consumers that were identified are the following:

- Lack of transparency and unclear disclosure;
 - Lack of separation between advertising and content;
 - Misleading messages; and
 - Targeting vulnerable consumer groups.
- a. **Lack of transparency and unclear disclosure**

The first practice is **lack of transparency and unclear disclosure on the contractual relationship between the influencer and the brand endorsed**, namely market practices where influencers do not mention their commercial relationship with the company, or the label is not clearly recognisable as advertising. These market practices also include cases where no formal agreement has been made between the influencer and the company, but there might nevertheless be a commercial interest behind the post and the commercial interest is not explicitly disclosed as advertising (e.g., for gifts or event invitations). Concerning unclear disclosure, examples are advertising labels which are not visible at a first glance, clearly recognisable (with acceptable labels, such as advertisement) and appropriate for the channel and suitable for the different types of devices.

Lack of transparency and unclear disclosure are the most common consumer complaints together with lack of separation between advertising and editorial content. For example, in **Czechia** unmarked advertising (lack of transparency/separation between advertising and editorial content) was the most common issue reported by consumers (40% of the consumer complaints received by the Association for Internet Progress (SPIR)¹⁴⁸. In **Finland**, the Council of Ethics in Advertising Finland (MEN) stated that most of their cases are on hidden advertising, which is also very common to other types of marketing, not only influencer marketing. Consumers tend to be more aware of this issue (compared to some of the other practices presented below). For example, in **Ireland**, according to a study conducted by ASAI (Advertising Standard Authority for Ireland), over half of the people (51%) in Ireland are concerned by a lack of transparency in influencer marketing¹⁴⁹. As reported in another article, the same research put in evidence that only 7% of respondents trust influencer posts, and for 59% of them the content appears false when presented by influencers¹⁵⁰. **France** is one of the few countries with an established monitoring system of consumer complaints specifically for influencer marketing. According to the French Consumer Authority, 280 consumer complaints were identified as being related to influencer practices for the period 2020-2021. The number of complaints has almost tripled in 2021 (the authority received 77 complaints in 2020, while in 2021 the number of complaints reached 204). The most recurrent complaints received are about lack of transparency and disclosure on the commercial nature of the communication. In 2021, the French advertising self-regulatory organisation (ARPP) has performed an analysis of 30,000 proven commercial communications published by more than 7,000 influencers. The findings highlighted that non-compliance is more common among influencers with a

¹⁴⁷ Details on the methodology for the social media monitoring are provided in the Annex.

¹⁴⁸ Interview with SPIR, conducted in November 2021.

¹⁴⁹ ASAI, 2021, *Complaints Bulletin*. Available at: <https://www.asai.ie/press-releases/over-half-51-of-people-in-ireland-say-they-are-concerned-by-a-lack-of-transparency-in-influencer-marketing-according-to-research-conducted-by-the-advertising-standards-authority-for-ireland/>.

¹⁵⁰ AdWorld, 2020, *ASAI Research Highlights Lack of Trust in Influencer Marketing*. <https://www.adworld.ie/2020/12/18/asai-research-highlights-lack-of-trust-in-influencer-marketing/>.

small audience (less than 10,000 followers), where the rate of non-compliance with the rules of transparency of commercial partnerships between influencers and brands is 43.07%. In general, the larger the audience of influencers is (more than 1 million followers), the more professional the influencers become and the more they comply with transparency rules. This is likely due to the fact they have access to talent managers and legal support who will ensure that their content is compliant. Only 12.55% of content does not reveal its commercial intent¹⁵¹. Moreover, the ARPP's Responsible Influencer Observatory reviewed 500 commercial campaigns published on social media platforms by influencers. This monitoring exercise revealed that 12% of the content analysed did not indicate the existence of a partnership between influencers and brands. Moreover, according to a survey run by Reech, a French agency connecting influencers and brands, only 53% of respondents require the commercial partnership to be mentioned in a transparent manner by the influencer. 44% of companies/brands still do not require influencers to mention the commercial collaboration, whereas 3% of brands surveyed even require influencers not to disclose the existence of a commercial partnership to their audience¹⁵².

In **Poland**, issues related to consumer protection are largely the same as other types of marketing (mainly lack of transparency and misleading messages), however the scale is greater due to the general growth of this sector. The Office of Competition and Consumer Protection authority (UOKiK) initially observed that a great share of commercial content on influencers' profiles was not labelled as advertising at all. In **Belgium**, the JEP (Jury for Ethical Practices) treated in total 13 complaints. The majority of them (9 complaints) involved unclear or no statements of the relevant relationship between advertiser and influencer. In **Italy**, there have been several cases contested by the AGCM, the Italian competition authority, on unclear disclosure of the relationship between the influencer and the brand in 2019-2020. Examples range from using unclear labels for advertising, hiding the commercial intent of the post, and product placement in music videos, without making clear the advertisement¹⁵³. According to the **European Commission's** behavioural study on advertising and marketing practices in online social media, unclear disclosure and lack of transparency is the most rising concern due to the lack of awareness of consumers. In particular, the study published in 2018 found that consumers' self-reported confidence in correctly identifying advertising was not supported by findings from the behavioural experiments¹⁵⁴. The study findings stressed that consumer awareness on the presence of advertisement was particularly low in cases where a clearly visible brand or product in the content was absent, there was not a link to the trader's website, and the use of text or visuals that were not immediately associated with commercial purposes was not clear¹⁵⁵.

Moreover, the interfaces of applications differ from one operating system to another. These differences in the display of information may have an impact on disclosure practices. As an example, the iOS Instagram interface has an "x" to close Instagram stories on the top right side of the screen, while the Android interface does not have it. In this regard, one of the harmful practices identified was concealing the label by hiding the text behind the "x" (to close an Instagram story), which is only possible on the iOS operating system.

¹⁵¹ Stakeholder Interview conducted in December 2021.

¹⁵² Stakeholder interview conducted in December 2021.

¹⁵³ Unione Nazionale Consumatori, 2019, *Influencer marketing, è possibile maggiore trasparenza?*. Available at: <https://www.consumatori.it/tv/selfie-pubblicitari-social/>.

¹⁵⁴ European Commission, 2018, *Behavioural study on advertising and marketing practices in online social media*. Available at: https://ec.europa.eu/info/sites/default/files/osm-final-report_en.pdf.

¹⁵⁵ European Commission, 2018, *Behavioural study on advertising and marketing practices in online social media*. Available at: https://ec.europa.eu/info/sites/default/files/osm-final-report_en.pdf.

Box 1: Examples of lack of transparency and unclear disclosure

The monitoring exercise has shed light on the different practices related to lack of transparency and unclear disclosure. Below some examples are provided to explain practices found in different Member States.

One clear example of lack of transparency was a post from a French influencer on Instagram. The influencer has around 6.9 million followers (mega-influencer) and she mostly creates content related to beauty and fashion, parenting and home. The target audience are women. In several Instagram stories and one post, she praises a Phillips Trainer cleaner. The influencer offers a discount code to her followers for the purchase of the product. The Instagram stories contain a link to the product on the brand's website and a hashtag of the brand Philips. However, there is no mention of the advertising nature of the publications and the commercial relationship with the brand, neither in the verbal description nor in writing that the publication is sponsored. Offering discount codes is considered affiliate marketing, since the code is linked to the influencer profile, which then receives a percentage of the sales based on how many customers have clicked the link.

Another clear example concerns the post on Instagram of a German mega-influencer (1.5 million followers). She is mostly posting on beauty, fashion, travel and lifestyle, targeting women. This mega-influencer is very professional and consistent with linking posts as advertisements (German "Anzeige"). However, generally it may be criticised that she somewhat conceals the label by hiding the text behind the "x" (to close an Instagram story). Also, the ad label is usually in white font which makes it less apparent. Furthermore, she uses the labels rather inflationary, i.e., even when she purchases products herself and a compensation by the brand is not expected.

Another interesting example concerns an Italian influencer with over 1.7 million followers posting about fashion, lifestyle and health, who recurrently writes "ad" at the end of the post, without using the hashtag and/or the Italian version "pubblicità". The unclear practice was already denounced by a consumer protection association, however, the influencer has not changed her way of posting.

Other practices concern the improper disclosure of the commercial relation. For example, a Polish influencer made several posts on baby products and shops, linking them to the website and including discount codes, but only mentioning that she was chosen for the project to test the product, or she was "encouraged" by the brand to use the product.

b. Lack of separation between advertising and editorial content

Lack of separation between advertising and editorial content concerns cases where the advertising is not separated from editorial content (for example fashion or travel blogs which are primarily intended to express the influencer's personal point of view on the products/services and the influencer has not received any consideration from the company whose products are mentioned). As mentioned in the chapter above, **depending on the degree of disclosure it is therefore possible that consumers do not acknowledge a sponsored post as an advertisement or do not capture the collaboration between the brand and the influencer.** Hence, they potentially consider a sponsored post not as an advertisement but rather as a personal recommendation. Authorities also struggle to correctly identify violations and misleading omission, due to the lack of disclosure and separation between editorial content and advertising.

Consumer protection associations and academics have stated that a rising concern for consumer protection relates to the use of disguised advertising. Several stakeholders mentioned interviewed that **the lack of separation between the advertisement and the influencer point of view/rating of the product or the service makes it difficult for consumers to recognise the advertisement** and thus

leaves consumers unaware of the commercial intent of the content. According to stakeholders from the advertising sector interviewed for this study, the lack of separation between the advertising and editorial content of an influencer is indeed a core feature of influencer marketing itself. According to those interviewed, strictly separating the content from the advertisement is often not possible, the only obligation for influencers could thus be to disclose the collaboration and commercial nature of the publication.

According to the Consumers' Union of **Finland**, it is crucial for consumers to understand the difference between advertising and when influencers genuinely compliment products. In **Sweden**, the most common subject the Advertising Ombudsman deals with are, next to the lack of transparency and clear disclosure, a lack of distinction between advertising and editorial content.

Box 2: Examples of lack of separation between advertising and editorial content

Several examples of this practice were identified in the monitoring exercise. An example of a lack of separation between advertising and editorial content concerns a Polish influencer with 48,000 followers. She mostly creates content on health and fitness on YouTube. In one of her videos, the influencer is showing her followers how to prepare a healthy juice using a slow juicer. She is using the latest model of a juicer brand (the brand is clearly visible in the video), however, she does not inform in the video or in the description below that it is promotional material. Moreover, there are links to a website where the juicer can be bought with a discount. In another video, the influencer is interviewing a guest, a professional runner, who is preparing juice according to their own recipe. The guest is using a juicer and wearing a t-shirt with the name of the juicer brand recommending the equipment, saying he will take it with him to the Olympics and other training camps. In the video description, there is also the link to the website where the juicer can be obtained with a discount, however, no information is included about advertisement or cooperation with the brand.

Another example concerns a Belgian influencer with 443,000 followers. She is mostly active on Instagram and posts on family and parenting topics. In general in her posts, the separation between advertising and editorial content is often unclear. As an example, she posted pictures of her vacation in a beach resort, including links to the resort's Instagram page and the travel agencies in the text. However, there is no mention of advertisement or any other relationship with the brands (free accommodation). Another example concerns a Spanish influencer with 30,000 followers on TikTok. The influencer shared a video promoting while visiting a product retailer of toys and showing different types of their goods without any clear indications on the collaboration with the brand. During this video, the influencer talked about the high quality of the toys commercialised by the brand in her story and inducing her followers to visit this location.

Other examples concern mostly influencers with less than 10,000 followers, providing extremely positive reviews in a way that resembled advertising about products and/or promoting brands, with no mention of the relationship with the brand and the commercial nature. Several interviewees have mentioned that it is an increasing trend of influencers at their initial stage of the career who may tend to fake content to gain credibility, for example by promoting brands as if they were sponsored and pretending to have brand deals. As several interviewees mentioned, for small influencers or someone who wants to start this profession, it can be difficult to attract an initial sponsor, especially if they do not have a high number of followers. As an example, while looking at an Italian food supplement brand, several posts were made by influencers with less than 10,000 followers, tagging the brand without any mention of paid partnership or advertisement. The posts analysed highlighted that several Instagram users were tagging the brand in their posts and described the products and the related benefits in a way that resembled advertisement. As an example, an Instagram user with 1,000 followers posted herself drinking herbal tea and describing its benefits, ranging from increasing the basal metabolism, easy sense of satiety and relieving the sense of hunger. It can be assumed, considering her low number of followers, that the post was not paid for by the brand. However, from the style of the post, it looked like a fake paid sponsorship.

c. Misleading messages

Misleading messages on the good/service sponsored include for example false trademarks, false trade descriptions in respect of goods and services, or misleading omissions. **This practice concerns posting reviews on goods and services providing incorrect, ambiguous, exaggerated or inaccurate information** on the goods and services sponsored. The practice, while also common in influencer marketing, is similar to the use of misleading messages in other types of marketing.

In **Belgium**, one complaint involved the use of misleading information by an influencer promoting a drink product of Nestlé. The complainant cited that the advertisement stated, on the one hand, that the ingredients of the drink helped with "post-natal ailments". However, it was not clear which ailments were meant by this so the statement could not be verified. On the other hand, it was claimed that the same ingredients helped to "boost the immune system". According to the complainant, this was an empty statement and there was no scientific evidence that specific foods or ingredients could influence the immune system in any way¹⁵⁶. In **Germany**, over the past years, there were several cases that raised doubts on the content of the influencer advertising. As an example, a German singer promoted an over-the-counter birth control pill called "prio.one" via her Instagram account. However, such products require a prescription in Germany, hence, the advertisement violated applicable law¹⁵⁷. In **Lithuania**, VVTAT¹⁵⁸ (the State Consumer Rights Protection Authority) receives on average up to 30 complaints a year regarding the services of influencers. All complaints are related to either the unclear disclosure of advertisements or misleading messages. In **France**, several complaints were also registered on unclear information on product characteristics. In **Italy**, a consumer protection association reported several breaches to the competition authorities on food supplements. According to their investigation¹⁵⁹, several influencers were posting false information on the benefits of food supplements and herbal tea, which were misleading and inducing the follower to believe erroneous information on the properties of the products.

¹⁵⁶ JEP, Beslissingen. Available at: https://www.jep.be/nl/beslissingen-van-de-jep?combine=influencer&field_decision_advertiser_tid=&field_decision_product_service_tid=&field_decision_category_tid=All&field_decision_criteria_tid=All&field_decision_media_tid=All&field_decision_type_tid=All&date_filter%5Bvalue%5D%5Bdate%5D=&date_filter_1%5Bvalue%5D%5Bdate%5D=&field_decision_initiative_tid=All.

¹⁵⁷ Verbraucherzentrale, 2021, *Prio.one: Beware of birth control pills on the Internet*. Available at: <https://www.verbraucherzentrale.de/aktuelle-meldungen/gesundheit-pflege/prioone-vorsicht-vor-antibabypille-aus-dem-internet-60944>).

¹⁵⁸ Valstybinė vartotojų teisių apsaugos tarnyba.

¹⁵⁹ Metta M., 2020, *Integratori sui social l'inganno e' servito*. Available at: <https://www.altroconsumo.it/alimentazione/sicurezza-alimentare/news/integratori-e-influencer>.

Box 3: Examples of misleading messages

From the monitoring exercise, misleading messages concerned posts related to fake discount prices or overstatements on the quality and the properties of products.

For example, a Spanish influencer with 650,000 followers creating content on Instagram on health and fitness communicated with his followers the message that a product were "the best supplement for eliminating fluid retention". This message can be misleading as this influencer provided exaggerated and inaccurate information on a sponsored product. Moreover, he did not mention any commercial relationship with the brand, and the story featured an indication requiring action by the user: "a link to the purchase the product". Due to the frequency of posts promoting products of the same brand, it can be assumed that there was a paid sponsorship.

Another example concerns a Belgian influencer with 100,000 followers mostly targeting teenagers on TikTok. In several videos, she advertises beauty products with no clear disclosure of the commercial intent. However, it seemed evident that she was sponsored by the brand, due to the fact that she posted discount codes for the products advertised. In one of her posts, she promoted the product in a way that might overestimate the quality, by mentioning that it was the best lipstick she had ever worn and that she was planning to wear it every day. Considering that the target audience were minors it could be considered as a misleading message targeting vulnerable consumers.

Several practices also related to discount codes, sometimes not providing a "real discount", since the products were already discounted on the brand website, or providing false information on the use of discount codes. As an example, a German influencer on Instagram, active in creating content on lifestyle and travel, posted an advertisement for a dog camera with a promotional code and link to the brand shop. However, the label was not clearly visible at first sight, i.e., hidden behind the "x" to close the window and in a white and tiny font. Furthermore, she claimed in the story that her followers could "test" the product. Testing would mean that they do not purchase it, but on the linked shop website such an offer was not available.

d. Targeting vulnerable consumer groups

This practice describes **influencer marketing that targets specifically vulnerable groups and induces them to buy a good or a service**, exploiting their inexperience or credulity. This applies in particular to influencers whose group of followers consists mainly of **young people or even children**.

As shown above, young consumers and children are more vulnerable to influencer marketing practices than older consumers, while they are also increasingly active on social media. As highlighted by BEUC¹⁶⁰, despite the fact that TikTok's privacy policy claims to not be directed at children under the age of 13, **in several EU Member States and abroad, underage users are active on the platform**. In France, 45% of children below 13 have indicated using the app. In Czechia, a 2019 study found that TikTok is very popular among children aged 11-12.

In **Sweden**, the Advertising Ombudsman received several complaints regarding advertising aimed towards children with a direct urge for a child to buy a product, in breach of EU regulation. Moreover, a recent practice that the ombudsman has been looking at consists of affiliate links that can be included in the content or in the bio of the influencers. Affiliate marketing consists in rewarding the influencer for each visitor or customer brought to the page. According to the Swedish ombudsman, this is a practice to be considered as reinforcing a lack of transparency and targeting vulnerable consumer groups. Indeed, those practices make consumption very easy and accessible by inducing consumers to click to check information on the influencers (e.g., bios), which, however, turns out to be a link to specific websites.

¹⁶⁰ Beuc, 2021, *TikTok without filters*. Available at: https://www.beuc.eu/publications/beuc-x-2021-012_tiktok_without_filters.pdf.

In a notable case from **Belgium**, a complaint lodged by a consumer concerned the malpractice of a Belgian influencer who promoted merchandise in his YouTube video and asked his followers to “steal the credit card of their parents and buy his merchandise”. According to the complainant, this was an unfair commercial practice towards children, as direct exhortation of children is prohibited by law. In addition, the influencer emphasised that there were only a few of the stated merchandise items available, that they were only meant for “real brothers” (real fans) and that there would be no new items when they were sold out. By doing so, he was considered to be putting pressure on his teenage viewers. While the public services of first instance did not take this complaint into consideration, the Jury for Ethical Practices (JEP), upon assessing the complaint, stated that the influencer was indeed targeting persons who are still under parental authority and, in particular, by his use of language and target audience clearly incited children directly to buy the advertised product, which is contrary to applicable law. The jury also considered that advertising, through the use of statements such as the above, gives the impression that possession of the advertised products will give a child or adolescent social advantages over other children or adolescents and is also of a nature that undermines the authority, responsibility, judgement or preferences of parents, which is again contrary to legislation¹⁶¹.

Box 4: Examples of practices targeting vulnerable consumer groups

Findings from the monitoring exercise have shown a variety of practices targeting vulnerable consumers. An interesting example concerns a German influencer (3,100 followers), mostly active on YouTube but also using TikTok and Instagram. He creates content on beauty, gaming and lifestyle, and his target audience are teenagers. The problematic aspect concerns his videos on alcohol consumption due to the young follower target group. As an example, in one of his videos he advocates alcohol consumption while playing a drinking game. Furthermore, the influencer has several videos where he claims that “having a good party” is preferable to working. Some videos indirectly mention drug use (cannabis). From the same influencer, another problematic practice targeting vulnerable consumers is advocating buy-now-pay-later apps, which mostly target teenagers and low-income groups, as also explained in the previous section. As an example, in one of his TikTok's video he is advocating for a buy-now-pay-later-app (with the hashtag #Klarna) without mentioning this to be advertisement. It is expected that there exists no commercial relationship, but it remains unclear because there is no label. Furthermore, several purchased products are displayed but not linked. It is expected that the products are self-purchased.

Other interesting practices relate to underaged influencers. Potentially not only them but also their followers have a very low advertising literacy and can be manipulated easily. As an example, a 10-year-old influencer from Belgium with around 220,000 followers has a channel on YouTube where she creates content mostly on toys. Her target audience are mostly children. In one of her videos, she makes a review of the hamburgers of a well-known fast food chain in Belgium. In addition to the fact that there is no mention of a relevant relationship between the influencer and advertiser, nor the use of an #Ad label, this seems to be an advertisement video for unhealthy foods targeted children.

A similar case concerns a German 10-year-old influencer, who is active on YouTube and Instagram. The most problematic aspect is that she herself is a child and managed by her mother (also for advertorials etc.). Potentially not only she, but also her followers, have a very low advertising literacy and can be manipulated easily. For the majority of her YouTube videos, the description marks the use of affiliate links. The use is rather transparent, but the framing applied might be particularly appealing and/or not well understood by vulnerable consumers. Another example concerns a video where the influencer lets her followers participate in a challenge (playing children's games). In the middle of the video, an advertisement is inserted. The sponsorship is clearly labelled but for the target group, it might be rather challenging to identify this as a sponsored opinion. Furthermore, the description below the video says that the video is sponsored and that it contains unpaid brand-mentioning. It remains unclear to which product either of the two labels applies.

¹⁶¹ Interview with Nadia Feci, KU LEUVEN.

e. Other potentially harmful influencer marketing practices

While the above are the most relevant and common influencer marketing practices that are potentially harmful for consumers, other types of consumer complaints related to influencer marketing were also identified. Around Europe, complaints concerned the advertisement of **harmful products** such as alcohol and tobacco, **gambling** and the **use of nudity and sexual content**. As an example, in Belgium, two consumer complaints involved the advertisement of harmful products, namely alcohol. The complaint related to the breach of the rules for the advertising and marketing of alcoholic beverages by a Belgian influencer on Instagram¹⁶². Other complaints related to the use of nudity and sexual content by an influencer to advertise a washing detergent.

In **France**, a relevant share of consumer complaints (200 out of 240 complaints) between 2020 and 2021 concerned products often ordered with a promotional code following the publication of the influencer. The consumers who ordered the product with the promotional code did in most cases not receive the goods. Other complaints related to **fake accounts and fraudulent** messages. For example, in the **Netherlands**, a complaint was filed regarding a vlog in which a text messaging service was promoted without mentioning that the service costs money (in contradiction to the Advertising Code and in breach of the SMS Code). The Dutch Authority for Consumers and Markets (ACM) imposed an order under penalty clause on the vlogger and forced the web shop of the vlogger to stop using fake likes and followers to promote its products via social media like Instagram¹⁶³. Similarly, in summer 2021 the ACM took the YouTube vlogger Snapking off the air. The vlogger encouraged callers to call a number without it being clear under what conditions they would get to speak to him. The callers were then put on hold for a long time without getting anyone on the line. While being on hold, the callers had to pay by the minute. The total call charges amounted to more than 13,000 euros. In **Poland**, the Office of competition and consumer protection (UOKiK) imposed a penalty for promoting **pyramid schemes** in social media. The person charged was a youtuber who had to pay a fine of 95,100 euros and had to inform about his unfair practices and about the decision of the UOKiK on his website and on his YouTube channel. In the latter, the statement had to be also audio recorded and labelled by appropriate hashtags¹⁶⁴. In 2021, the UOKiK charged three more influencers advertising pyramid schemes on social media¹⁶⁵. Several examples of practices from **the UK** include misleading weight loss advertising particularly to children, the use of beauty filters in the marketing of cosmetic products to exaggerate their effects¹⁶⁶, the advertising of gambling to children¹⁶⁷, or influencers running competitions and giveaways without sticking to 'fairness' rules and regulations for such promotions¹⁶⁸.

¹⁶² Interview with Belgian stakeholder conducted in December 2021.

¹⁶³ Autoriteit Consument en Markt, 2020, *ACM legt last onder dwangsom op aan Bicep Papa voor gebruik nepvolgers en neplikes* | ACM.nl. Available at: [ACM legt last onder dwangsom op aan Bicep Papa voor gebruik nepvolgers en neplikes](https://www.acm.nl/nieuws/2020/12/15/acm-legt-last-onder-dwangsom-op-aan-bicep-papa-voor-gebruik-nepvolgers-en-neplikes) | ACM.nl.

¹⁶⁴ Office of Competition and Consumer Protection, 2021, *Pierwsza kara za naganianie na systemy typu piramida*, Press release. Available at: https://www.uokik.gov.pl/aktualnosci.php?news_id=17172.

¹⁶⁵ Office of Competition and Consumer Protection, 2021, *Kolejni naganiacze z zarzutami za promowanie systemów typu piramida*, Press release. Available at: https://www.uokik.gov.pl/aktualnosci.php?news_id=17309.

¹⁶⁶ ASA, 2021, *The (mis)use of social media beauty filters when advertising cosmetic products*. Available at: <https://www.asa.org.uk/news/the-mis-use-of-social-media-beauty-filters-when-advertising-cosmetic-products.html>.

¹⁶⁷ VOX, 2019, *YouTube stars promoted gambling to kids. Now they have to answer to their peers*. Available at: <https://www.asa.org.uk/news/the-mis-use-of-social-media-beauty-filters-when-advertising-cosmetic-products.html>.

¹⁶⁸ ASA, 2021, *ASA Ruling on Molly-Mae Hague*. Available at: <https://www.asa.org.uk/rulings/molly-mae-hague-g20-1078674-molly-mae-hague.html>.

3.3. The increasing role of influencers on the market raises legal questions

In view of the growing importance of influencer marketing, the impact it can have on consumer behaviour and purchasing decisions raises the question **to what extent consumers in the EU are sufficiently protected**. Consumer protection issues, however, only reflect one layer of the regulatory discussion to be had on this matter. **Questions relating to other fields of law underline the difficulties in interpreting existing legislation**. For instance, influencers sometimes crowdfund their income, which raises questions regarding the nature of this income: if influencers offer perks against money (e.g., tokens), is this a service or is it a donation? Similarly, if practices which are supposed to grow engagement, such as giveaways, are used by influencers, do they constitute games of chance? What technologies are suitable for the monitoring of influencer activity, and how can this be harmonised or optimised in a complex multi-layered governance system?

Moreover, in many ways, **influencers are themselves also vulnerable small businesses or freelancers who engage in highly volatile markets**, and losses incurred by them¹⁶⁹. In a 2021 case before the Bucharest Tribunal, two food youtubers took part in a dispute generally relating to losses suffered by one of them as a result of allegedly unjustified measures taken by the other through the YouTube copyright dispute resolution system. As a result, the complainant argued, her video was taken down and she found herself in a position of not being able to fulfil her contractual agreement with the company sponsoring some of her cooking videos. While this case focussed on contract and intellectual property questions, it also reflects important connections between the sponsorship contracts and potential losses incurred by influencers. The court saw no causal link between the initial taking down of the video by YouTube as a result of the other influencer's actions. This case illustrates how **losses arising in the influencer economy are very difficult to prove**, and this raises concerns relating to the fairness of the bargains undertaken in privately negotiated contracts between influencers and other parties¹⁷⁰.

The vast variety of legal issues arising from the activity of influencers, as well as the fast-paced nature of the market in which they operate, makes it difficult to establish influencer typologies. Factors such as size, platform or industry have been traditionally used to cluster influencers. Yet the professionalisation of this space shows the development of highly varied business models across industries and platforms. From a consumer protection perspective, however, one essential distinction can be made between **influencers as advertisers** and **influencers as sellers/producers**. The first category reflects the initial dimension of influencer marketing, i.e., brands hiring influencers to advertise goods and products. However, with the increasing diversification of business models and revenue, influencers have also moved into the space of establishing their own companies that produce consumer goods (e.g., merchandise) as well as services (e.g., webinars on influencer marketing). For consumer protection in the EU, this distinction also reflects the applicability of different instruments, with advertising being generally governed by the UCPD, and consumer sales by the Consumer Rights Directive, the Digital Content Directive, and the Consumer Sales Directive.

¹⁶⁹ Goanta, C., Spanakis, J., 2020, *Influencers and Social Media Recommender Systems: unfair Commercial Practices in EU and US Law*, Stanford Law School. Available at: <https://law.stanford.edu/publications/no-54-influencers-and-social-media-recommender-systems-unfair-commercial-practices-in-eu-and-us-law/>.

¹⁷⁰ Tribunalul Bucuresti, 2021. Available at: <http://rolii.ro/hotarari/6104af5de49009300d000029>. For information in English, see Computational social media, 2021, *Fight over a cake recipe*. Available at: <https://computationsocialmedia.tech/index.php/2021/12/04/fight-over-a-cake-recipe/>.

4. THE REGULATION OF INFLUENCERS

KEY FINDINGS

At EU level, no specific legislation focussing on influencer marketing is in place, but horizontal legislation on consumer protection applies. Concerning transparency requirements under consumer law applicable to influencers who are active as advertisers, the **Unfair Commercial Practices Directive (UCPD)** in particular provides the overall framework on practices infringing consumer protection rules. The UCPD can be applied to frame the issue of misleading advertising in influencer practices. The **Consumer Rights Directive (CRD)** and other legislation on consumer contracts apply to influencers who act as sellers with regard to the obligations of online traders to disclose a wide array of information to consumers before the conclusion of a contract.

The **Digital Services Act (DSA)** proposal addresses some of the new challenges that emerged with recent market trends and aims to complement the existing set of horizontal EU legislative instruments. The relevant changes in the DSA concern transparency issues in respect of online advertising and traceability of traders, intermediary liability, due diligence, and enforcement.

In terms of the legal framework in EU Member States and non-EU countries, influencer marketing activities are not addressed through tailored and specific legislation but in general they fall within the scope of advertising regulation. **The application of existing rules to influencer marketing by courts and authorities** has therefore become an important factor.

Overall, the main practices from legislators, authorities and the industry to tackle influencer marketing are:

- Adopting specific influencer legislation,
- Applying existing consumer protection legislation to influencers,
- Publishing guidelines and codes of conduct to establish good practices,
- Using digital monitoring and enforcement tools,
- Offering training and certification of influencers,
- Raising awareness and providing support to consumers, and
- Facilitating compliance on platforms via standardised disclosure tools.

Having analysed, in the previous chapter, the importance of influencers on the Single Market from the industry and consumer side, and having identified a variety of influencer marketing practices that are potentially harmful to consumers, this chapter focusses on how such practices are currently regulated and could be further regulated in consumer protection legislation. This chapter thus provides an overview of the **current consumer protection legislation affecting influencer marketing** at both European and national level. An analysis of the key pieces of legislation at European level, including the Digital Services Act proposal, is provided along with an overview of the legal panorama in several Member States and non-EU countries. **Key practices** are then presented to show the main approaches adopted by legislators, authorities and the industry.

4.1. Influencers are subject to existing legislation, regulatory practice and industry self-regulation at EU and national level

The EU has considerable competencies in the area of consumer protection, which is why it is necessary to first understand how **the EU consumer *acquis* applies to influencers**. Based on that, this section then sheds light on **what Member States do** in addition, how they interpret and apply the existing legislation, and **which other, non-regulatory measures exist**. Lastly, this section will take a glance at **practices from other jurisdictions outside the EU**.

4.1.1. EU consumer protection rules apply also to influencer marketing practices

At **EU level**, no specific legislation focussing on influencer marketing is in place. Consumer protection being a horizontal matter, there are several pieces of EU legislation to take into account when analysing the regulation of influencers. Certain rules apply more to influencer marketing as an advertising activity, while others cover influencers who act as sellers.

a. EU legislation on commercial practices and media set rules for influencers as advertisers

The **Unfair Commercial Practices Directive (UCPD)**¹⁷¹ provides an immediate and preferred framework to frame the issue of misleading advertising in influencer practices, further classified into misleading actions (Article 6) and misleading omissions (Article 7). As such, **Article 7(2) of the UCPD regards the failure to disclose the commercial intent of a trader as a misleading omission**, if not already apparent from the context, and where this causes or is likely to cause the average consumer to take a transactional decision that they would not have taken otherwise. As recalled in the 2021 European Commission Guidance on the interpretation and application of the UCPD¹⁷² and following the CJEU ruling in Case-371/20, these rules also apply in case of non-monetary payment to the influencer and the presence of a “consideration with an asset value” for the publication of editorial content is crucial to trigger the application of the rules¹⁷³.

Further to that, under Article 5(2) of the UCPD, a commercial practice is deemed unfair if it is contrary to the requirements of professional diligence and if it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers. Thus, **an influencer that is deemed to be a trader, or acting on behalf of a trader, would be subject to the transparency requirements of Articles 6 and 7 of the UCPD**, and could breach the trader’s professional diligence requirements under Article 5(2) of the UCPD. Moreover, in accordance with Articles 8 and 9 of the UCPD, they would have to refrain from using aggressive commercial practices that use harassment or coercion or exploit a position of power, thereby limiting the consumer’s ability to make an informed purchasing decision.

¹⁷¹ 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).

¹⁷² European Commission, 2021, *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*, 2021/C 526/01. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)&from=EN).

¹⁷³ CJEU, Case C-371/20, *Peek & Cloppenburg*, 2 September 2021. Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=249248&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=226592>.

Yet, there has been considerable debate over the possibility of qualifying influencers as traders within the meaning of the UCPD¹⁷⁴, which are defined as any natural or legal person who is acting for purposes relating to their trade, craft, business or profession and anyone acting in the name of or on behalf of a trader. For example, such a qualification would not be retained in the case of consumers who provide information about their experience with products or services, unless they are acting “in the name of or on behalf of a trader”. In contrast, in cases where there is a clear agreement between the trader and the influencer, under which the influencer must promote the trader’s products, the influencer would be perceived as acting on behalf of the trader¹⁷⁵. However, when the influencer is acting in their own name as self-employed, this qualification is not as straightforward since the UCPD requires business-to-consumer commercial practices to be directly connected with the promotion, sale, or supply of a product to consumers¹⁷⁶.

The European Commission Guidance on the interpretation and application of the UCPD released on 29 December 2021¹⁷⁷ provides further clarification on when, for the purposes of the UCPD, an influencer would qualify as a trader or, alternatively, as a person acting in the name of or on behalf of a trader. It considers that persons that frequently carry out promotional activities towards consumers on their social media accounts are likely to qualify as traders, regardless of the size of their following. Besides, a set of non-exhaustive and non-exclusive criteria must be taken into account by the national courts to assess whether a seller qualifies as a trader on a case-by-case basis, such as a received remuneration or other compensation for acting on behalf of a given trader, the number, amount and frequency of transactions, or the legal status of the seller. In this regard, the Guidance makes clear that **persons engaging in commercial endorsement activities online, such as influencer marketing, could qualify as traders if they engage in such practices on a frequent basis, regardless of the size of their audience.** Alternatively, they may qualify as acting on behalf of the trader. However, should the activities carried out by influencers not be recognised as commercial practices and not be attributed to them as traders according to national courts, there is still a risk that they will fall outside the scope of the UCPD¹⁷⁸.

The application of the above-mentioned provisions to influencer practices can also be problematic as the **causality of the influencer’s misleading practice on the behaviour of the average consumer**, namely the transactional decision they would not have taken otherwise, must be demonstrated for the application of Articles 5, 6 and 7 of the UCPD¹⁷⁹. In cases where this is not possible, **Annex I of the UCPD which lists commercial practices that are considered unfair in all circumstances (without the need to demonstrate any causality) can capture some of the influencer practices** and give an immediate enforcement response to the lack of adequate disclosure by influencers breaching

¹⁷⁴ See for example: Ducato, S., *One Hashtag to Rule Them All? Mandated Disclosures and Design Duties in Influencer Marketing Practices*, in Ranchordás, S. and Goanta, C. (Eds), 2019, *The Regulation of Social Media Influencers*, 4. Trzaskowski, J., 2018, *Identifying the Commercial Nature of ‘Influencer Marketing’ on the Internet*, *Scandinavian Studies in Law*, Volume 65, 81-100. Available at: <https://scandinavianlaw.se/pdf/65-4.pdf>.

¹⁷⁵ Trzaskowski, J., 2018, *Identifying the Commercial Nature of ‘Influencer Marketing’ on the Internet*, *Scandinavian Studies in Law*, Volume 65, 81-100. Available at: <https://scandinavianlaw.se/pdf/65-4.pdf>.

¹⁷⁶ Article 2(d) of the UCPD.

¹⁷⁷ European Commission, 2021, *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*, 2021/C 526/01. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC1229(05)&from=EN).

¹⁷⁸ Riefa, C., Clausen, C., 2019, *Towards fairness in digital influencers’ marketing practices*, 8 (2019) *EuCML Journal of European Consumer and Market Law*. Available at: <https://kluwerlawonline.com/journalarticle/Journal+of+European+Consumer+and+Market+Law/8.2/EuCML2019012>.

¹⁷⁹ Riefa, C., Clausen, C., 2019, *Towards fairness in digital influencers’ marketing practices*, 8 (2019) *EuCML Journal of European Consumer and Market Law*. Available at: <https://kluwerlawonline.com/journalarticle/Journal+of+European+Consumer+and+Market+Law/8.2/EuCML2019012>.

consumer protection. Such blacklisted commercial practices include the use of editorial content in the media to promote a product where a trader has paid for its promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer¹⁸⁰, and to falsely claim or create the impression that the trader is not acting for purposes relating to their trade, business, craft or profession, or falsely representing oneself as a consumer¹⁸¹. Also relevant in the context of influencer marketing and the potential impact on vulnerable consumers, a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them is prohibited as unfair commercial practice¹⁸².

The **e-Commerce Directive**¹⁸³ currently offers in a complementary manner indirect protection to consumers when influencers perform commercial communications on the internet through their social media accounts and blogs. The transparency requirement under Article 6 of the e-Commerce Directive, according to which **commercial communication must be clearly identifiable as such as well the natural or legal person on whose behalf that commercial communication is made**, applies to influencer communications as part of an information society service. In this regard, the e-Commerce Directive has been considered to have a broader scope of application allowing to overcome possible gaps in consumer protection when compared to the UCPD because the definition of commercial communication **includes indirect promotion of another trader's product or image**¹⁸⁴. This is deemed to also cover situations where an influencer disseminates editorial content that is designed to promote the trader's products¹⁸⁵. However, the definition of commercial communication explicitly excludes communication relating to the goods, services or image of the company "compiled in an independent manner, particularly when this is without financial consideration"¹⁸⁶. Although it seems to be admitted that communication could be compiled when the trader has paid for it, or when the influencer received in return a remuneration, this provision specifically aims to exclude product or service reviews produced in an independent manner, i.e., independently of the trader's economic interest¹⁸⁷.

From a media law perspective, the 2018 **Audiovisual Media Services Directive (AVSMD)**¹⁸⁸ modernised the legal framework for audiovisual services by extending the regulation originally applicable to linear services only (regular TV broadcasting) under the 2010 AVSMD to non-linear services (to include on-demand audiovisual media services), thereby potentially covering many services provided in the context of influencer marketing. The introduction of specific rules applicable

¹⁸⁰ Annex I of the UCPD, Point 11.

¹⁸¹ Annex I of the UCPD, Point 22.

¹⁸² Annex I of the UCPD, Point 28.

¹⁸³ 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').

¹⁸⁴ Article 1(1)(f) of the e-Commerce Directive.

¹⁸⁵ Trzaskowski, J., 2018, *Identifying the Commercial Nature of 'Influencer Marketing' on the Internet*, *Scandinavian Studies in Law*, Volume 65, 81-100. Available at: <https://scandinavianlaw.se/pdf/65-4.pdf>.

¹⁸⁶ Article 2(f) of the e-Commerce Directive.

¹⁸⁷ Trzaskowski, J., 2018, *Identifying the Commercial Nature of 'Influencer Marketing' on the Internet*, *Scandinavian Studies in Law*, Volume 65, 81-100. Available at: <https://scandinavianlaw.se/pdf/65-4.pdf>.

¹⁸⁸ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities.

to a new category of “video-sharing platform services” (VSPs)¹⁸⁹ such as YouTube indirectly impacts influencers’ obligations. The coverage of these services is justified, among other things, by the recognition that VSPs have a considerable impact in shaping and influencing the opinions of the users, in particular young people¹⁹⁰. In this regard, Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures, by means of self-regulation, for the protection of minors online, and to comply with the new rules on audiovisual commercial communications that are marketed, sold or arranged by those video-sharing platform providers¹⁹¹, such as commercial communications from influencers. **This implies a range of additional transparency obligations towards influencers, i.e., their audiovisual commercial communications shall be readily recognisable as such**, but also, as an example, they shall not target minors, nor encourage dangerous behaviours, such as the immoderate consumption of alcoholic beverages¹⁹².

Furthermore, influencers delivering services on VSPs that meet the criteria of the definition of on-demand audiovisual media services¹⁹³ shall comply with several requirements laid down in both the 2010 and 2018 Directives. These include **the application of rules dealing with sponsorship¹⁹⁴ and product placement¹⁹⁵, and notably that these should be clearly recognisable as such¹⁹⁶**.

b. Influencers acting as sellers or producers are governed by EU rules on consumer contracts

Still from a consumer law perspective, the **Consumer Rights Directive (CRD)**¹⁹⁷ applies to influencers acting as online sellers or producers. This implies the application of **pre-contractual information requirements** that all traders should disclose to consumers for distance (including online) and off-premises contracts. These information requirements are listed in detail under Articles 7 and 8 of the CRD. The **Omnibus Directive**¹⁹⁸, which amended both the UCPD and the CRD, also affects influencer marketing. The Directive introduced **specific information requirements for providers on online marketplaces¹⁹⁹, which is particularly relevant when considering the rise of social media marketplaces that are used by influencers**. For instance, “providers of online marketplaces should inform consumers whether the third party offering goods, services or digital content is a trader or non-

¹⁸⁹ Under the 2018 AVSMD, cumulative conditions need to be fulfilled to fall within the scope of the definition of VSPs, i.e. VSP is regarded as a service provided for remuneration, where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public; for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of electronic communications networks and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

¹⁹⁰ Recital 4 of the 2018 AVSMD.

¹⁹¹ Article 28b of the 2018 AVSMD.

¹⁹² Article 9(1) of the AVSMD.

¹⁹³ Under Article 1(1)(a) of the AVSMD, to be qualified as on demand audiovisual media service, several elements should be fulfilled: a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union; the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, to the general public, in order to inform, entertain or educate, by means of electronic communications; the provider has editorial responsibility of a media service provider; and the service must cover mass media.

¹⁹⁴ Article 10 of the 2018 AVSMD.

¹⁹⁵ Article 11 of the 2018 AVSMD.

¹⁹⁶ For further details on the application of the AVSMD to influencer marketing, see: De Cock Buning, M., 2020, *Life after the European Audiovisual Media Services Directive: social media influencers through the looking-glass*, The regulation of social media influencers, 47-73. Available at: <https://www.elgaronline.com/view/edcoll/9781788978279/9781788978279.00011.xml>.

¹⁹⁷ Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

¹⁹⁸ Directive (EU) 2019/2161 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules (Omnibus Directive) [2019] OJ L 328.

¹⁹⁹ Defined as services provider that “allows consumers to conclude distance contracts with other traders or consumers”, according to Article 2(4) of the Omnibus Directive.

trader, based on the declaration made to them by the third party” and that the consumer rights stemming from EU consumer protection law do not apply to the contract if the third party offering the goods, services or digital content declared themselves to be not a trader.²⁰⁰ This stimulates influencers to declare and disclose on social media platforms to the consumers their legal status of trader or non-trader²⁰¹.

Further to that, as influencer activities can lead to the conclusion of contracts with a digital component, all the rules stemming from the **Digital Content Directive**²⁰² come into play, i.e., rules on the conformity of digital content or a digital service with the contract, remedies in the event of a lack of such conformity and traders’ liability rules towards consumers. The same goes for the **Consumer Sales Directive**²⁰³. Overall, influencers acting as sellers are not different from any other trader selling goods or services online, so the same consumer protection rules apply.

c. The Digital Services Act (DSA) will introduce new rules to address latest challenges

To address some of the challenges outlined above and complement the existing set of horizontal EU legislative instruments, the European Commission released in 2020 the new Digital Services Act package²⁰⁴, proposing new rules on digital markets. Within the package, two legislative initiatives are proposed: the **Digital Services Act (DSA)**, focussing on further transparency and accountability for digital services content moderation processes and consumer protection in the digital economy, along with the **Digital Markets Act (DMA)**, regulating so-called gatekeepers, which are platforms with at least 45 million monthly active users.

With regard to the DSA proposal, the IMCO Committee adopted its position on 14 December 2021 and the Committee report was tabled for final vote on 21 December 2021. The European Parliament’s plenary position was adopted in the January 2022 session²⁰⁵, in order to enable the start of negotiations with the Council.

In essence, the improvements proposed by the DSA, by regulating new market practices risen with the emergence of online platforms, come also with challenges with regard to the emergence of unclarity on how new DSA requirements will fit into existing disclosure obligations borne by traders, lack of the inclusion of influencer marketing in the proposal, and inconsistencies with other horizontal EU legislation.

Concerning the **transparency issue in respect of online advertising and traceability of traders**, the DSA proposal mandates transparency in advertising displayed by online platforms in **Article 24**. The DSA proposes new rules to give users of online platforms meaningful information on the ads they see online, including information on why an individual has been targeted with a specific advertisement. In addition, **Article 22** introduces new obligations for online platforms to collect accurate and complete information on traders prior to allowing them to use their services, and to disclose them to the users in a clear, easily accessible and comprehensible manner, where those online platforms allow consumers to conclude distance contracts with those traders.

²⁰⁰ Article 6a of the Omnibus Directive.

²⁰¹ Member States shall adopt and publish the measures necessary to comply with the Omnibus Directive, and these measures shall enter into force in May 2022.

²⁰² Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services.

²⁰³ Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC.

²⁰⁴ Proposal for a regulation on a Single Market for Digital Services (digital Service Act), COM/2020/825 final.

²⁰⁵ European Parliament, 2022, *Digital Services Act, Amendments adopted by the European Parliament, P9_T4(2022)0012*. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0014_EN.pdf.

The plenary amendments of the European Parliament on the DSA do include **a reference to standardised approaches for advertising** (Article 24(1)(a)) whereby a new obligation is created for platforms to display information “through prominent and harmonised marking”. More general aspects of online interface design are covered by Article 13a, which specifies that “[p]roviders of intermediary services shall not use the structure, function or manner of operation of their online interface, or any part thereof, to distort or impair recipients of services’ ability to make a free, autonomous and informed decision or choice”.

Specific aspects relating to platforms that intermediate consumer sales can be found in Article 22, which, following the plenary amendments, now also **refers to a more detailed obligation incumbent on platforms to verify information duties placed on traders using the platform towards the platform itself** (paragraph 2). Similarly, the newly introduced paragraph 3b also refers to an obligation to standardise the digital interface to “ensure that the identity, such as the trademark or logo, of the business user providing content, goods or services is clearly visible alongside the content, goods or services offered”. These obligations are independent from the information duties sellers have directly towards consumers.

While it is clear that the DSA is paving the way for more transparency by making platforms responsible for handling information about traders, **this new approach also poses challenges in terms of coherence with existing EU consumer legislation**²⁰⁶. For instance, the e-Commerce Directive (in Articles 5 and 6) obliges traders to disclose information about themselves, while the CRD (in Articles 5 and 6, and Article 6a coming into force in May 2022) obliges traders to provide specific information on the details of a contract at the pre-contractual stage. Both acts regulate the information provided by traders to consumers. **The DSA differs from this approach in that it does not directly oblige traders to disclose information but rather obliges the platforms to collect (and verify) the information from traders. It also does not require that the information is made available to consumers, but only to authorities on request.** While the DSA’s approach is in principle designed to complement the requirements from existing legislation, it also complexifies the information flow and duties between the different actors involved: “[f]rom the trader’s perspective, information needs to be provided to platforms (non-public) and consumers (public). From the consumers’ perspective, they will be given information about traders on the marketplaces and websites operated by said traders, and perhaps (but not necessarily) on other platforms (e.g., social media). From the platforms’ perspective, there may be disclosure obligations owed to consumers in the case of offering goods or services directly, but also when merely intermediating these offers, as well as the duty to investigate, verify and share this information with public authorities”²⁰⁷. It thus remains to be seen how this complementary will work out in practice.

The IMCO draft report on the DSA of 28 May 2021²⁰⁸ **highlighted the exclusion of influencer marketing from the Commission proposal and in order to address this omission, amendments were proposed to raise consumer protection standards in this regard.** Overall, further transparency duties, aiming to harmonise the marking of ads and facilitate the monitoring of platform compliance were proposed. In particular, three amendments were proposed to remedy the absence of influencer

²⁰⁶ Cauffman C., Goanta, C., 2021, *A new order: The Digital Service Act and Consumer Protection*, *European Journal of Risk Regulation*, 1-17. doi:10.1017/err.2021.8.

²⁰⁷ Cauffman C., Goanta, C., 2021, *A new order: The Digital Service Act and Consumer Protection*, *European Journal of Risk Regulation*, 1-17. doi:10.1017/err.2021.8.

²⁰⁸ IMCO draft report on the proposal for a regulation on a Single Market for Digital Services (Digital Services Act) 2020/0361 (COD), 28 May 2021.

marketing in the DSA. First, the draft report acknowledged “digital influencers” and calls all providers of intermediary services to ensure that content, published by digital influencers for which they have received a remuneration, is clearly identifiable by recipients of services as an advertisement and to make available to them any element of the contractual relationship that might be relevant to the content²⁰⁹. Second, it is suggested that the definition of “advertisement” should encompass information promoting both “directly and indirectly” the message of a legal or natural person, with the aim of tackling hidden influencer marketing²¹⁰. Finally, regarding transparency reporting obligations of providers in relation to online advertising, the draft report pointed at the lack of provisions specific to influencer marketing, while it was acknowledged that “users often fail to recognise the presence of commercial content, especially when it comes to commercial influencer content”, and suggested further transparency duties²¹¹.

The explicit references to advertising by influencers or other specific forms of content monetisation that were proposed by the IMCO draft report were not included in the amendments that were adopted by the plenary of the European Parliament in January 2022. Nevertheless, **Article 24 of the DSA proposal, in its amended form, integrates the most essential points made in the IMCO draft report with respect to advertising business models undertaken by influencers.** While Article 24 refers to advertising and not specifically to influencers, according to Article 2(1)(n) advertisements are “information designed and disseminated to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and displayed by an online platform on its online interface against remuneration specifically in exchange for promoting that message”. In turn, Article 2(1)(n a) defines remuneration as “economic compensation consisting of direct or indirect payment for the service provided, including where the intermediary service provider is not directly compensated by the recipient of the service or where the recipient of the service provides data to the service provider, except where such data is collected for the sole purpose of meeting legal requirements”. In this new interpretation, Article 24 covers platform ads registered in platform databases, but also native advertising such as influencer marketing.

One of the most important points about the DSA and its links to other instruments relevant for content monetisation by influencers is the definition of illegal content. In Article 2(1)(g), the amended version of the DSA proposal now defines illegal content as “any information or activity, including the sale of products or provision of services which is not in compliance with Union law or the law of a Member State, irrespective of the precise subject matter or nature of that law”. This definition establishes a bridge between the DSA and other national or European regulations governing online content. Particularly for influencer marketing, the interpretation arises that if European (and national) law mandate advertising disclosures and other information duties, failure to comply with these standards may render such content illegal. This interpretation shows how the DSA can contribute to a new narrative around platform governance, namely that of digital legal compliance.

The question of **intermediary liability** is further tackled in the DSA, building on the e-Commerce Directive²¹². In particular, the Commission proposal removes the risks for intermediary service providers, such as online platforms, to carry out voluntary monitoring of the activities on their

²⁰⁹ Amendment 19 (Recital 39d) in the IMCO draft report on the proposal for a regulation on a Single Market for Digital Services (Digital Services Act) 2020/0361(COD), 28 May 2021.

²¹⁰ Amendment 57 (Article 2(1)) in the IMCO draft report on the proposal for a regulation on a Single Market for Digital Services (Digital Services Act) 2020/0361(COD), 28 May 2021.

²¹¹ Amendment 91 (Article 13c) in the IMCO draft report on the proposal for a regulation on a Single Market for Digital Services (Digital Services Act) 2020/0361(COD), 28 May 2021.

²¹² Directive 2000/31/ EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on Electronic commerce).

platforms. However, it does not acknowledge that platforms offer functionalities for businesses to reach out to a large number of consumers, and on the other hand, consumers often rely on the brand image of the platform to make purchase decisions.

An important new aspect of the DSA is the **due diligence** provision, which has clarified responsibility and accountability for providers of intermediary services, in particular online platforms such as social media and marketplaces. For example, concerning illegal content, the DSA supports the detection of illegal content and its removal from the online platform, together with the obligation of setting internal complaint-handling systems for online platforms. This poses questions with regards to freedom of speech, and as noted by the European Parliament Legal Affairs Committee a clear distinction between illegal and harmful content should be made, since the latter should be also addressed and protected under the freedom of speech rules, such as fake news or disinformation²¹³.

In terms of **enforcement**, the Commission proposal foresees the creation of new national bodies tasked with the enforcement of the regulation, such as the Digital Service Coordinators. This new framework poses questions related to the readiness of EU Member States to comply with the new requirements stemming from the regulation, considering the heterogeneity in the digital readiness of EU Member States²¹⁴, as well as to how the coordination envisaged by the DSA will solve the transnational issues arising out of the cross-border nature of the content creator economy.

4.1.2. Advertising definitions determine how national rules are applied to influencers

When looking at the national **legal framework in EU Member States, influencer marketing activities are not addressed through tailored and specific legislation**. Therefore, similarly to the situation at EU level, national horizontal legislation on advertising and consumer protection is applicable. While national legislation in this domain is already harmonised to a large extent by the abovementioned EU legislation, especially when it comes to specific national rules on advertising the activities of influencers are covered to the extent that they meet the national criteria of advertising. The application of national rules to influencers may thus vary from one country to another, and **case law (in the form of court rulings and decisions from regulatory authorities) has become an important factor in interpreting the existing rules and applying them to influencer marketing**.

Of the Member States that were investigated for this study, some emerged as having a fairly robust legal framework regarding the obligations surrounding influencer marketing activities. In particular, those with more comprehensive and detailed legislation are more likely to characterise influencers' activities as advertising, leading to the application of the existing rules on advertising. The examples below show an overview of the **contrast for recognising influencers' activities as advertising in various countries**.

On the one hand, as an example of an **all-encompassing definition**, in **France**, Law No. 2004-575 for confidence in the digital economy of 21 June 2004 requires in Article 20 that any form of advertising accessible via an online public communication service must be clearly identified as such, as well as the identity of the natural or legal person on whose behalf it is carried out. Therefore, any posts published on any online media by an influencer which meet the abovementioned criteria may be qualified as advertising and comply with the legal provisions related to advertising. Law No 2008-776 of 4 August

²¹³ European Parliament, 2020, *Digital Services: managing harmful content while protecting freedom of expression*. Available at: <https://www.europarl.europa.eu/news/en/press-room/20200925IPR87926/digital-services-managing-harmful-content-while-protecting-freedom-of-expression>.

²¹⁴ Cauffman C., Goanta, C., 2021, *A new order: The Digital Service Act and Consumer Protection*, *European Journal of Risk Regulation*, 1-17. doi:10.1017/err.2021.8.

2008 on the modernisation of the economy, reflected in the French Consumer Code, makes it a misleading commercial practice (and a criminal offence) not to make clearly identifiable the person on whose behalf a commercial communication is made. Therefore, the existence of a commercial collaboration with an advertiser for the publication of content must in all cases be made known by the influencer to the public.

On the other hand, in **Finland**, there is **no single all-encompassing definition of what constitutes advertising**, and concepts are often used interchangeably. Overall, marketing measure to promote a company's sales or raise the profile of the brand is qualified as advertising²¹⁵. Similarly, in **Poland the legal definition of advertising results from several pieces of legislation**: the Act of 29 December 1992 on Broadcasting, the Act of 16 April 1993 on Combating Unfair Competition, and the Act of 23 August 2007 on Combatting Unfair Market Practices, for example. The Polish Supreme Court has provided a **broad definition of advertisement** as "any statement addressed to potential consumers relating to goods, services, as well as to an entrepreneur who offers goods or services, aimed at encouraging them to purchase goods or services. The encouragement may be expressed directly, e.g., by the use of terms referring to specific acts which will result in the sale of goods or services, or indirectly. The latter means a creation of an evocative image of the goods and services or the trader himself, to the extent that the recipients may have a compelling urge to purchase the goods and services"²¹⁶. In such a case, the qualification of an influencer post as advertising appears to depend on its **aim of encouraging or inclining consumers to purchase goods or services**, whereas the existence of a consideration does not seem to be a necessary condition to qualify as advertisement. However, misleading advertising that contains false, unclear or ambiguous information about the goods or services that could impact the consumer's purchasing decision remains equally prohibited²¹⁷. Besides, if an influencer does not inform the audience of the relationship with the brand of recommended goods or services, it may also constitute impermissible surreptitious advertising²¹⁸.

Nevertheless, in most cases, the most common conditions to qualify influencer marketing as advertising in national legislations involve the **differentiation between advertising and editorial content**. This is the case in **Italy** where influencer marketing is treated as advertising as "any kind of communication, distributed by whatever means qualifies as advertising if it directly or indirectly promotes the sale of goods or services", pursuant to the legislative decree 206/2005 integrated into the Italian Consumer Code²¹⁹. Online communication does not constitute advertising if it can be considered as editorial content, i.e., if it is primarily intended to express the influencer's personal point of view on the products and the influencer has not received any consideration from the company whose products are mentioned. In **Spain**, under the Advertising Act 34/1988, the legal definition of "advertising" is quite encompassing and refers to any form of communication by a natural person or legal entity, public or private, in the exercise of a commercial, industrial, craft or professional activity, in order to promote directly or indirectly the acquisition of goods or properties, services, rights and obligations. In **Czechia**, according to the provisions of Section 1(2) of the Advertising Regulation Act, advertising is an "announcement, demonstration or other presentation disseminated mainly by communication media, aimed at supporting business activities, especially promoting consumption or sale of goods, construction, rental or sale of real estate, sale or the exercise of rights or obligations, the

²¹⁵ KKV, 2019, *Influencer marketing in social media*. Available at: <https://www.kkv.fi/en/consumer-affairs/facts-and-advice-for-businesses/the-consumer-ombudsmans-guidelines/influencer-marketing-in-social-media/>.

²¹⁶ Judgement of the Supreme Court of 16 January 2006, case no. V CSK 83/05.

²¹⁷ Judgement of Supreme Court of 25 May 2012, case no. I CSK 498/11.

²¹⁸ Judgment of the Supreme Court of 6 December 2007, case no. III SK 20/07.

²¹⁹ Legislative Decree no. 206 of 6 September 2005 – Consumer Code.

promotion of the provision of services, the promotion of a trademark, unless otherwise provided". If the aim of an influencer's activity is not just to pass on their personal impressions, but to support the seller's business, it will be classified as an advertisement and its labelling will be necessary. In **Sweden** as well, according to the Marketing Act²²⁰, content published by an influencer qualifies as advertising if the "content and objective behind it is in the course of business activities which are intended to promote the sale of and access to products including a trader's actions, omissions or other measures or behaviour before, during or after sale or delivery of products to consumers or traders", encompassing any advertising of commercial nature. Therefore, posts that constitute editorial content do not constitute advertising, i.e., if the influencer expresses their personal point of view on a product or a service.

Yet, an **example of a strict distinction between a post containing commercial and editorial content** is **Germany** where a post by an influencer also qualifies as "advertising" if it directly or indirectly promotes the sale of goods or services. However, whether a post is considered to promote the sale of goods and services depends on **additional conditions**, i.e., the existence of a **consideration** received by the influencer for the post; or in the absence of consideration, any **instruction** an influencer received from the seller to post about a product or a service free of charge for their presentation²²¹. Thus, all advertising content must be labelled by influencers in Germany as all posts were usually considered as commercial content. **The lack of definition and specific rules applicable to influencer marketing** has led to a general application of the strict statutory labelling requirements under the German Act against Unfair Competition, the Telemedia Act, and the Broadcasting Treaty, to all advertising on social media made by influencers. Retrospectively, on the basis of this all-encompassing approach and of a strict disclosure obligation of advertisement, there have been a significant number of legal actions brought against influencers and German courts have usually applied a restrictive practice, considering most publications of influencers as commercial content with an obligation to disclose²²². Critical remarks have been made as to the inconsistent approach of German courts issuing various restrictive orders against influencers during recent years for insufficient or missing labelling of their posts as advertising on social media²²³. Such inflationary use of advertising labels is also not in the interest of consumers, as the label becomes meaningless as a tool to identify advertisement, and as there is a risk that users will just get used to or become dulled by the ad labels. In this regard, on 9 September 2021, the **German Federal Supreme Court**²²⁴ **has clarified that influencers can, under certain conditions, promote products without having to indicate that it is an advertisement**. According to the court, this is acceptable when: (i) the activity of influencers does not constitute a commercial communication or advertising because they do not get any consideration from the manufacturer, (ii) they do not present the product in an overly advertisement-like way (e.g., praising the advantages of a product of a company without any critical distance in such a way that the

²²⁰ Swedish Marketing Act, 2008. Available at: [https://www.government.se/4abc0a/contentassets/747603b3d1a04351b1773524c7de3c84/2008486-marketing-act#:~:text=The%20purpose%20of%20this%20Act,unfair%20to%20consumers%20and%20traders.&text=comparative%20advertising%20\(OJ%20L%20376%2C%2027.12](https://www.government.se/4abc0a/contentassets/747603b3d1a04351b1773524c7de3c84/2008486-marketing-act#:~:text=The%20purpose%20of%20this%20Act,unfair%20to%20consumers%20and%20traders.&text=comparative%20advertising%20(OJ%20L%20376%2C%2027.12).

²²¹ DLA Piper, 2021, *Influencer Marketing Guide*. Available at: <https://passle-net.s3.amazonaws.com/Passle/5c61908fabdf912ccc9057c/MediaLibrary/Document/2021-09-02-11-41-04-364-GlobalInfluencerGuide-January2021UPDATEv35.pdf>.

²²² See Karlsruhe Regional Court, judgment of March 21, 2019, docket no. 13 O 38/18 KfH; Braunschweig Court of Appeal, court order of January 8, 2019, docket no. 2 U 89/18; and Munich Regional Court I, judgment of April 29, 2019, docket no. 4 HK O 14312/18.

²²³ See for example: Feldman, J. P. et. al., 2020, *Update on transparency requirements for influencers in Germany, the United Kingdom and the United States*. Available at: <https://www.reedsmith.com/en/perspectives/2020/07/update-on-transparency-requirements-for-influencers-in-germany-uk-us>.

²²⁴ BGH, judgment of 09 September 2021 – I ZR 90/20 (Influencer I), I ZR 125/20 (Influencer II), I ZR 126/20 (Influencer III).

presentation leaves the framework of factually prompted information). It has to be examined on a case-by-case basis whether the message shows such an “advertising surplus”. However, according to the German Federal Supreme Court, the mere fact that pictures depicting the product are provided with “tap tags” is not sufficient for the assumption of an “advertising surplus”. Conversely, a link to a website of the manufacturer of the product depicted regularly constitutes “an advertising surplus”. In light of the first condition raised by the Federal Supreme Court, one can question whether an influencer posting content promoting a brand's product in the context of a long-standing partnership with the brand, for example if the product was gifted a long time ago, could be considered as “advertising”.

To clarify the question of what is advertisement and what is non-commercial content also from a legislative point of view, whilst taking into account the concerns from influencers, the Act against Unfair Competition (“Gesetz gegen den unlauteren Wettbewerb, UWG”) was amended on 10 August 2021, and will come into force on 22 May 2022²²⁵. Once in force, the amendment will regulate that activities are not considered commercial (and therefore must not be disclosed as advertising) if there has been no remuneration or other kind of consideration. Applied to influencers, this means they can publish editorial content even if it includes brand promotion without tagging it as ads if they have no commercial relationship with the brand. The burden of proof that there has been no remuneration/consideration however lies with the influencer. **It thus remains to be seen if this provision will have any impact or if influencer will continue with the “better safe than sorry approach”** when labelling their publications.

4.1.3. Soft-law and self-regulation measures aim to fill gaps

In order to complement existing legislation and to compensate for the lack of legal definitions of influencer marketing, the last few years have seen **a proliferation of soft law (in the forms of guidelines issued by authorities) and industry self-regulatory measures** to regulate influencer marketing activities, to ensure consumer protection, and to provide clarity and greater transparency.

Some guidelines and self-regulatory standards for influencer marketing advertising have been adopted at global level. The ICC Marketing Code²²⁶ introduced by the International Chamber of Commerce (ICC) codifies what are considered accepted marketing communications and practices, and provides a cornerstone for many national, regional and local advertising self-regulatory codes. Since its 10th revision in 2018, it was made clear that the code applies to market influencers, bloggers and vloggers. The code includes a set of specific obligations, making influencers responsible for the marketing communications of the products and services they promote. Moreover, the International Council for Advertising Self-Regulation (ICAS), whose purpose is to unite all national self-regulatory organisations, promotes and implements self-regulatory standards. At the European level, the European Advertising Standards Alliance (EASA), that is also a member of the ICAS where European advertising SROs cooperate, has gone one step further by developing a best practice recommendation on influencer marketing²²⁷.

From the point of view of regulators, members of the International Consumer Protection and Enforcement Network (ICPEN), which is a membership organisation consisting of consumer protection

²²⁵ Gesetz zur Stärkung des Verbraucherschutzes im Wettbewerbs- und Gewerberecht vom 10. August 2021. Available at: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl121s3504.pdf%27%5D_1641579959304.

²²⁶ International Chamber of Commerce, 2018, *ICC Advertising and Marketing Communications Code*. Available at <https://iccwbo.org/publication/icc-advertising-andmarketing-communications-code>.

²²⁷ EASA, 2018, *Best Practice Recommendation on Influencer Marketing*. Available at: https://www.easa-alliance.org/sites/default/files/EASA%20BEST%20PRACTICE%20RECOMMENDATION%20ON%20INFLUENCER%20MARKETING_2020_0.pdf.

law enforcement authorities from all over the world, have developed **guidelines for digital influencers**²²⁸ in 2016 to provide influencers and bloggers with general guidance for trustworthy advertising, online reviews and endorsements that respects the interests of consumers. Through these guidelines, digital influencers are reminded of their obligation to disclose, clearly and prominently, all paid-for content and to give genuine views on markets, businesses, goods or services.

At Member State level, similar attempts have been made by national authorities and industry bodies. Some examples from Member States investigated for this study are presented in this section. First, in some Member States, **national authorities**, such as consumer authorities and media regulatory authorities, have taken the initiative to develop **administrative guidelines in the field of influencer advertising**, as showcased below in examples from Finland, Germany, Lithuania and Sweden. These guidelines are intended to help influencers, but also other market actors like brands, to correctly understand their obligations and use the right practices to disclose advertisements.

Finland: The Finnish Consumer Ombudsman issued in 2019 Guidelines on Influencer Marketing in Social Media. These guidelines aim to inform both companies/brands and influencers. The document contains guidance on the disclosure requirements to be compliant with the Finnish Consumer Protection Act (38/1978), especially on the recognisability of marketing on social media, the labelling requirements for advertising on different types of platforms, and minors as a target group and marketing to minors.

Germany: The media agencies of the Länder (Landesmedienanstalten), who are the responsible media authorities in Germany, have adopted guidelines for advertisement in television in 2012. To take account of changes in internet media, they have complemented these with guidelines on advertisement in social media, i.e.:

- The FAQ advertisement in social media issued in 2017²²⁹ are directed at influencers and provide examples of different scenarios (e.g., the influencer buys a product, the brand sends the influencer a product, the brand pays the influencer etc.) and advice how to disclose information in each case.
- The Guidelines for disclosing advertisement in social media adopted in 2021²³⁰ are also intended for influencers and provide, in the form of a table, an overview of the different types of content/advertisement that are possible in the different media forms (text, video, pictures, audio) with advice on what and how to disclose.

Lithuania: The State Consumer Rights Protection Authority (SCRPA) published guidelines on the disclosure of advertising in social media in 2019 that were compiled after monitoring influencer social media accounts. The guidelines aim to ensure that advertising on social networks is clearly identifiable to consumers and that advertisers disclose the true purpose of the content they post in a fair and responsible manner. In the guidelines, the authority provides different recommendations for advertising on social networks like Facebook, Instagram, YouTube, as well as recommendations for the proper disclosure of advertisements in limited-time social networking features (stories). The guidelines encourage influencers to use markings of advertisements for Lithuanian and foreign audiences separately and notes that the entry must be marked as an advertisement every time a product or service is mentioned. These guidelines also define when social media posts should be considered as

²²⁸ International Consumer Protection Enforcement Network, 2016, *Guidelines for Digital Influencers*. Available at <https://icpen.org/sites/default/files/2017-06/ICPENORE-Guidelines%20for%20Digital%20Influencers-JUN2016.Pdf>.

²²⁹ Die Medienanstalten, 2017, *Antworten auf Werbefragen in sozialen Medien*. Available at: https://www.die-medienanstalten.de/fileadmin/user_upload/Pressemitteilungen/KEK/Dokumente/FAQ-Flyer_Werbung_Social_Media_02.pdf.

²³⁰ Die Medienanstalten, 2021, *Leitfaden der Medienanstalten, Werbekennzeichnung bei Online-Medien*. Available at: https://www.die-medienanstalten.de/fileadmin/user_upload/Rechtsgrundlagen/Richtlinien_Leitfaeden/ua_Leitfaden_Medienanstalten_Werbekennzeichnung_Online-Medien.pdf.

advertising, e.g., when a commentator is paid for a product or service being promoted, the product or service is given to the influencer for free, the influencer becomes the brand's "ambassador", the product was lent, and so on.

Sweden: The Swedish Consumer Agency (Reklamombudsmannen) released guidance on marketing in blogs and other social media in 2018. It primarily recalls principles for bloggers and companies promoting their products on blogs and social media in order to comply with the Swedish Marketing Practices Act (MPA). According to these guidelines, the mere fact that the blogger received a compensation for promoting a company's products or services implies that the message constitutes marketing.

The second observed trend consists of the development and adoption of standards of best practices through **self-regulatory codes, guidelines or recommendations specific to influencer marketing** in a significant number of Member States by **national self-regulatory organisations (SROs)** that are responsible for enforcing the set of voluntary rules and standards to which the advertising industry committed to. Examples of self-regulatory measures from **nine Member States (Belgium, Czechia, France, Germany, Ireland, Italy, the Netherlands, Romania and Spain)** are detailed below.

Belgium: In 2018, the Belgian Advertising Council (Raad voor de Reclame/Conseil de la Publicité) published Recommendations for Online Influencers²³¹. Influencer marketing is defined as a form of marketing in which companies use the online influence and relevant sector knowledge of individuals or "influencers". Influencers are influential people who have built up a large online community. On social media, websites and forums, people refer to influencers using terms such as bloggers, instagrammers, youtubers, twitterers, streamers, podcasters, or pinterest influencers. Furthermore, the term influencer is being more broadly defined as a person who has built a reputation based on their knowledge of a specific topic. An online influencer communicates via social media posts (text, speech, video and photo) with an engaged and relevant audience of followers. Well-known personalities, political and business leaders, bloggers as well as micro-influencers all fall under this denominator. The recommendations also recall the influencers' obligations as to the clear identification of the commercial communication, the loyalty of the commercial communication with regard to misleading information for instance. Online influencers, companies or advertisers are liable for any violation of the recommendations. The Jury of Ethical Advertising (Jury voor Ethische Praktijken inzake Reclame/Jury d'Ethique Publicitaire) is then competent to handle complaints related to influencer marketing.

Czechia: The Ethical Influencer's Code of Conduct²³² provides guidance for influencers who engage in paid or barter cooperation with companies (brands). The Code is based on the draft of the Recommended Rules of Cooperation between Sponsor and Influencer, which was created as part of a self-regulatory action by the Association for Internet Progress (SPIR) in response to the need to standardise market behaviour and clarify norms in the rapidly developing influencer marketing sector. At the time of the document's creation, the SPIR noted that there were violations of the law in the field of influencer marketing. The original document, Recommended Rules of Cooperation between the Advertiser and the Influencer, was the result of an expert roundtable discussion.

²³¹ Belgian Advertising Council (Raad voor de Reclame/Conseil de la Publicité), 2018, *Recommendations for Online Influencers*. Available at: https://www.jep.be/sites/default/files/rule_recommandation/recommandations_du_conseil_de_la_publicite_influenceurs_en_ligne_fr.pdf.

²³² Association for Internet Progress, *Influencer's Code of Conduct*. Available at: <https://ferovynfluencer.cz/kodex>.

France: The French professional self-regulatory authority for advertising ('ARPP') issued in 2010 the "Digital Advertising Communication Recommendation"²³³, updated in 2017. This recommendation specifies the rules common to all digital advertising communication. An annex to this recommendation is dedicated to guidelines on influencer and brand communication²³⁴, i.e., influencer communication in the context of a collaboration with a brand. First, these guidelines provide a definition of an influencer (blogger, vlogger, etc.) as an individual expressing a point of view or giving advice, in a specific field and according to a style or treatment that is specific to them and that their audience identifies as such. An influencer can act in a purely editorial context or in collaboration with a brand for the publication of content (e.g., product placement, participation in the production of content, distribution of advertising content, etc.). Therefore, the ARPP distinguishes between:

- influencers posting in the frame of a collaboration with a brand, who must inform the consumers of the existence of this collaboration, and
- influencers posting in the frame of real partnerships organising the conditions of creation and publishing of a promotional content by the influencer, under the control and after the approval of the brand, in return for a financial or material retribution. In this second case, the ARPP qualifies such posts as "advertisements" with all the consequences this entails, i.e., the application of all of the ethical rules of the ARPP and of the legal provisions regulating commercial communications.

Germany: The German Advertisement Council (Deutscher Werberat) is the self-regulation body put in place by the German Advertising Federation (Zentralverband der Deutschen Werbewirtschaft). It has adopted an ethical code for advertisement²³⁵ and can reprimand companies who do not adhere to the code. However, the code focusses mainly on the content of advertisement (sexist, violent, discriminatory content, advertisement for alcohol or gambling etc.) but not on marketing practices, so it does not specifically address influencer marketing.

Ireland: The Irish self-regulatory body for the advertising industry (Advertising Standards Authority for Ireland) set out a Code of Standards for Advertising and Marketing Communications²³⁶, which applies to all commercial marketing communications, regardless of the medium in which they appear. It states that although material may not resemble traditional marketing communications, because the advertisers have paid for and controlled the content it must in fact be considered as marketing communications.

²³³ ARPP, *Digital Advertising and Marketing Communications Code (digital advertising)*. Available at: <https://www.arpp.org/nous-consulter/regles/regles-de-deontologie/digitaladvertising-and-marketing-communications-code/>.

²³⁴ It should be noted that the ARPP received a Best Awareness-Raising Initiative ICAS Global Award on 15 April 2019 in Paris "for its powerful communication campaign on the guidelines for social media influencers" by the International Council for Advertising Self-regulation.

²³⁵ Deutscher Werberat, 2007, *Leitfaden zum Werbekodex*. Available at: <https://www.werberat.de/file/98265/download?token=ZCtKszNq>.

²³⁶ ASAI, 2016, *ASAI Guidance Note on the Recognisability of Marketing Communications*. Available at: <https://www.asai.ie/wpcontent/uploads/ASAI-Guidance-Note-on-Recognisability-inadvertising-V1-Nov-16.pdf>.

Italy: The national advertising self-regulatory authority (Istituto di Autodisciplina Pubblicitaria) released “Digital Chart Guidelines”, updated in 2019²³⁷, which are now part of the Italian Code of Marketing Communication Self-Regulation, thus becoming binding for members of the advertising associations. Definitions are provided of “endorsement” which refers to a form of accrediting a product or a brand undertaken by “celebrities” as people who have acquired public prominence and credibility for their competency in a given field (called “influencers” such as, by way of example, bloggers or vloggers), and ordinary users who express their opinion or judgement online (via what is known as user generated content). These endorsements yield benefits in terms of a product/brand’s visibility, credibility and reputation.

Netherlands: On top of the general self-regulatory rules for advertising (Reclame Code Commissie), since 2014 there has been an additional advertising code for advertising via social media, formerly the Advertising Code Social Media (RSM). Due to new developments in marketing, this code was updated in 2019 and renamed Advertising Code Social Media & Influencer Marketing²³⁸.

Romania: The Romanian Advertising Council (RAC) has updated their best practice code of advertising practice to include special provisions for influencer marketing advertising, with the aim to protect consumers from harmful influencer practices²³⁹. As such, an influencer (e.g., bloggers, vloggers or referral initiators) is defined as a person who makes public their point of view and/or advice on some of the advertiser’s products and/or services on the basis of a contractual report in a manner and style which are their own. An influencer can intervene in the form of editorial context or in collaboration with a brand in order to publish specific commercial content.

Spain: On 1 January 2021, the new Code on the Use of Influencers in Advertising²⁴⁰ signed by the Spanish Government, the Spanish Advertisers Association (AEA), and the national SRO (AUTOCONTROL) came into force. It includes a set of rules that bind advertisers and influencers who voluntarily adhere to it. By virtue of it, all adhered advertisers must establish in their contracts with influencers the need to comply with the rules contained therein. This code of conduct provides a definition of the influencers that is: people who are considered to have a high level of influence over the public due to their high number of followers on social networks and/or digital communications media and who interact through tweets, videos and posts, as well as through messages in blogs or others. This group includes the so-called “social media influencers”: bloggers, youtubers, instagrammers and facebookers.

Finally, in cases where no self-regulatory measures have been adopted by national SROs to regulate the activities of influencers or to complement such measures, **advertising industry actors** have also been active in providing guidance to influencers, as shown in the example below.

²³⁷ IAP, 2019, *Social Network and Content Sharing Section of the IAP Digital Chart. Endorsement*. Available at: <https://www.iap.it/digital-chartpubblicita-sui-social/endorsement/>.

²³⁸ Stichting Reclame Code, 2019, *Reclamecode Social Media & Influencer Marketing (RSM)*. Available at: <https://www.reclamecode.nl/nrc/reclamecode-socialmedia-rsm/>.

²³⁹ RAC, 2018, *Code of Advertising Practice*. Available at: <https://www.rac.ro/en/cod/the-code-of-advertisingpractice>.

²⁴⁰ AUTOCONTROL, 2020, *Código de Conducta sobre el uso de Influencers en la publicidad*. Available at: <https://www.autocontrol.es/wp-content/uploads/2020/10/codigode-conducta-publicidad-influencers.pdf>.

Poland: An initiative to enhance influencer marketing transparency came from a national advertising industry organisation (Interactive Advertising Bureau (IAB) Poland). In their Guide to Influencer Marketing, a definition of an influencer has been formulated as a person influencing their community (regardless of its size) through content published on their social media profiles or on digital content distribution platforms. Influencer activities consist of creating and conducting promotional campaigns via social media (e.g., through the mediums of a blog, vlog, or social media profile). The main activities of influencers are also clarified, i.e., these include the following activities: preparing content, photography session, selection and photo processing, preparing graphic design of the post, posting content on blog, vlog or social media accounts, and maintaining content. Consequently, the following influencer practices are considered: sponsored posts, product placement, advertorials (advertising articles resembling press materials), competitions/giveaways, affiliate marketing, affiliate links, promotional codes, and discounts.

4.1.4. Non-EU countries follow similar approaches

Much like in the European Union, the lack of specific legislation on influencer marketing has triggered the emergence of soft law and advertising self-regulatory measures in many third countries. This section highlights selected examples of the **legal and self-regulatory advertising standards applicable to influencers in Australia, the United States, the United Kingdom, India and China.**

In **Australia**, the Competition and Consumer Act 2010 (CCA) contains the Australian Consumer Law (ACL) providing the legal provisions regulating marketing and advertising. Sections 18 and 29 of the CCA especially provides that content of advertising should not be misleading or deceptive, or likely to mislead or deceive consumers, as well as contain false representations of the products or services advertised. These legal provisions apply to advertising at large, including television, radio, print media or internet and social media.

In terms of business self-regulation, **Australia is, at international level, one of the most active countries** with several guidelines and best practices set forth by the industry to provide guidance for influencers. As an example, the Australian Association of National Advertisers (AANA) has put in place a system of advertising self-regulation through a **Code of Ethics**²⁴¹, with clear definitions of economic activities performed by influencers that are considered advertising, and published a guidance document on best practices on minimum disclosure. In this regard, influencer marketing is treated under Section 2.7 of this Code, asserting that advertising must be clearly distinguishable. It also emphasises that where an influencer or affiliate accepts payment of money or free products or services from a brand in exchange for promoting that brand's products or services, the relationship must be clear, obvious and upfront to the audience and expressed in a way that is easily understood (e.g., #ad, Advert, Advertising, Branded Content, Paid Partnership, Paid Promotion).

Of great relevance was also an Australian industry initiative in 2019 in the field of influencer marketing to create the Australian Influencer Marketing Council (AIMCO). In 2020, the **AIMCO Code of Practice for influencer marketing**²⁴² was published, including a set of best practices to guide companies when they want to engage in influencer marketing (e.g., vetting process of influencers, contract, advertising

²⁴¹ AANA, *Code of Ethics and accompanying Practice Note*. Available at: <https://aana.com.au/self-regulation/codes-guidelines/code-of-ethics/>.

²⁴² AIMCO, 2020, *Australian Influencer Marketing Code of Practice*. Available at: https://jooocd.com/wp-content/uploads/2020/09/AIMCO_Code_of_Practice_July-1-2020.pdf.

disclosure). Beyond that, the AIMCO developed a Guide to Gifting and Ad Disclosure²⁴³ to clarify and provide advice to influencers on when and how disclosure should be made on content posted on social media. The latter provides that gift or value-in-kind arrangement also qualify as a commercial relationship and therefore need to be disclosed. Advice is presented on how to disclose in a clear manner, for example by using hashtags or clear written captions. This document is complemented by an Ad Disclosure Cheat Sheet²⁴⁴, a one-page graphic representation to help influencers identify when content on social media is considered an advertisement and must be labelled as such.

In the **United States**, the Federal Trade Commission Act²⁴⁵ is the overarching legal framework regulating advertising and marketing. Under these rules, advertisements must be truthful, evidence-based, and cannot be deceptive or unfair. In addition, the Federal Trade Commission (FTC) has also drafted Endorsement Guides, relating to the use of endorsements and testimonials in advertising, providing administrative guidance to the public to carry out advertisements in conformity with the law²⁴⁶. **Both the law and the guidance** encompass advertising on all media, including social media and blogs, but **do not mention specifically influencer marketing**.

Therefore, the FTC specifically published the guidance “**Disclosures 101 for Social Media Influencers**”, to provide influencers with guidance on when and how to make disclosures on social media and comply with advertising and marketing rules set out in the FTC Act and Endorsement Guides²⁴⁷. The guiding principle for influencers on social media is to make it clear when there is a “material connection” with the brand, encompassing personal, family, employment, or financial relationships. To this purpose, the FTC provides principles and advice to make disclosures clear, for example with the use of specific terms such as “ad” or “sponsored”, and to be featured with the endorsement message itself. The FTC is particularly involved in enforcing the rules for influencer marketing and has started taking enforcement action against online influencers²⁴⁸. In 2017, they have sent more than 90 warning letters to influencers and brands to remind them of the disclosure obligations, and in September 2017, 21 of those influencers received a follow-up letter for posts that the FTC was concerned to still be non-compliant²⁴⁹.

In the **United Kingdom**, the Consumer Protection from Unfair Trading Regulations 2008²⁵⁰ is the instrument containing the general legal provisions to prevent advertisers to mislead or harass consumers, for example with misleading omissions or aggressive sales tactics. In addition, the Competition and Markets Authority (CMA) has published a guide for businesses on the Consumer

²⁴³ AIMCO, *Code of Practice, Guide to Gifting and Ad Disclosure*. Available at: <https://static1.squarespace.com/static/5f741c44029c373fe632e647/t/61111de241faeb13e9532553d/1628560933058/AiMCO+Guide+to+Gifting+%26+Ad+Disclosure%2C+Aug+2021.pdf>.

²⁴⁴ AIMCO, *Ad Disclosure Cheat Sheet*. Available at: <https://static1.squarespace.com/static/5f741c44029c373fe632e647/t/611318d0d4bd580414bae481/1628641489020/Cheat+sheet+-+Ad+Disclosure.pdf>.

²⁴⁵ Federal Trade Commission Act, Incorporating U.S. SAFE WEB Act amendments of 2006. Available at: https://www.ftc.gov/sites/default/files/documents/statutes/federal-trade-commission-act/ftc_act_incorporatingus_safe_web_act.pdf.

²⁴⁶ Code of Federal Regulations, Title 16, Part 255 – Guides concerning use of endorsements and testimonials in advertising. Available at: <https://www.ecfr.gov/current/title-16/chapter-I/subchapter-B/part-255>.

²⁴⁷ FTC, 2019, *Disclosures 101 for Social Media Influencers*, 5. Available at: https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf.

²⁴⁸ FTC, 2017, *CSGO Lotto Owners Settle FTC's First-Ever Complaint Against Individual Social Media Influencers*. Available at: <https://www.ftc.gov/news-events/press-releases/2017/09/csgo-lotto-owners-settle-ftcs-first-ever-complaint-against>.

²⁴⁹ FTC, 2017, *FTC Staff Reminds Influencers and Brands to Clearly Disclose Relationship*. Available at: <https://www.ftc.gov/news-events/press-releases/2017/04/ftc-staff-reminds-influencers-brands-clearly-disclose>.

²⁵⁰ Consumer Protection from Unfair Trading Regulations 2008. Available at: <https://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>.

Protection from unfair Trading Regulations²⁵¹ to help businesses understand and comply with the regulations. These **legal rules** encompass commercial practices at large, including advertising and marketing, **without targeting specifically influencer marketing or content on social media**.

Besides, in 2019, the CMA has published the specific guidance **“Social media endorsements: being transparent with your followers”**²⁵² to help influencers identify when and how they need to disclose to their followers that they have been rewarded in any way to promote a product or a service, in order to not be in breach of consumer protection law. In this guidance, a reward can take different forms: money, gifts, loan, even when products have been sent for free without asking. In any case, the disclosure should follow two guiding principles: being easy to understand for consumers and being visible without having to look for further information (additional clicks).

The Advertising Standards Authority (ASA), the UK’s independent regulator of advertising across all media, has developed Advertising Codes, including the UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP Code).²⁵³ It contains self-regulatory rules for non-broadcast advertisements, sales promotions and direct marketing communications. Even if it does not directly refer to influencers, **it encompasses marketing communications on social media** when they meet one of the following criteria: non-paid-for content by a company with a UK registered company address, paid-for content by a company targeting people in the UK, or content appearing on websites with a “.co.uk” top-level domain. Under the Committee of Advertising Practice (CAP) Code, advertisements “must be obviously identifiable as such”. More specifically on influencer marketing, to complement the CAP, the ASA organised an “Influencer Responsibility” event, and published advice online specially targeted at influencers, including the influencers guide²⁵⁴ and a cheat sheet²⁵⁵, to clarify to influencers what are the requirements from consumer protection legislation they need to follow, and how to follow them. To assess whether influencers are sticking to the rules, the ASA produced an Influencer Monitoring Report,²⁵⁶ which found out that influencers’ rate of compliance of ad disclosure on Instagram is lower than expected and that therefore there is still a long way to go for rules to be complied with in influencer marketing.

In addition to the work being done by the ASA, the **Incorporated Society of British Advertisers’ (ISBA) also produced an Influencer Marketing Code of Conduct in 2021**²⁵⁷, to be applied to contracts by brands using influencer marketing. It specifically targets and details best practices to be followed by brands, talent agencies, and influencers. It is an interesting initiative coming from a trade body representing brand advertisers, because major brands are part of ISBA, and some have already signed this new Code of Conduct (e.g., Lidl, Tesco, PepsiCo, L’Oréal), as well as five influencers and one talent agency (Cirkle).

²⁵¹ BERR, 2008, The Consumer Protection from Unfair Trading Regulations: a basic guide for business. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284446/of979.pdf.

²⁵² CMA, 2019, *Social media endorsements: being transparent with your followers*. Available at: <https://www.gov.uk/government/publications/social-media-endorsements-guide-for-influencers/social-media-endorsements-being-transparent-with-your-followers>.

²⁵³ ASA, 2014, *The CAP Code, The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing*. Available at: <https://www.asa.org.uk/static/47eb51e7-028d-4509-ab3c0f4822c9a3c4/bbca4ed3-9b41-4c6b-8d13299664f119be/The-Cap-code.pdf>.

²⁵⁴ ASA, 2020, *Influencers’ guide to making clear that ads are ads*. Available at: <https://www.asa.org.uk/resource/influencers-guide.html>.

²⁵⁵ ASA, 2020, *The influencer’s cheat sheet to declaring ads on social media*. Available at: <https://www.asa.org.uk/resource/infographic-influencers-cheat-sheet.html>.

²⁵⁶ ASA, 2021, *Influencer Monitoring Report*. Available at: <https://www.asa.org.uk/resource/influencer-monitoring-report-march-2021.html>.

²⁵⁷ ISBA, 2021, *Influencer Marketing Code of Conduct*. Available at: <https://www.isba.org.uk/system/files/media/documents/2021-10/ISBA%20Influencer%20Marketing%20Code%20of%20Conduct%201021.pdf>.

In **India**, the Consumer Protection Act 1986 contains the general legal provisions for the protection of consumer deals, including against unfair trade and practice²⁵⁸. Once again, the lack of specific rules in national legislation concerning influencer marketing or advertising on social media has given rise to the development of self-regulation laid down by different authorities such as the Advertising Standards Councils of India (ASCI). **The ASCI, the self-regulatory industry body, has developed a Code for Self-Regulation of Advertising Content** in India²⁵⁹ as well as guidelines for specific categories of advertisements, including Guidelines for Influencer Advertising in Digital Media²⁶⁰. The guidelines provide an obligation for influencers to make a clear disclosure on their content when it is an advertisement. This disclosure is required as soon as there is a material connection between a brand and the influencer, including monetary compensation, but also other benefits and incentives, such as free products, discounts, contests, trips etc. The guidelines also highlight that the disclosure should be done in a way that is visible enough to not be missed by the average consumer, for example with specific disclosure labels such as “ad”, “promo”, or “sponsored”.

The Consumer Complaints Council of the ASCI acts as the watchdog of the sector, for example by filing complaints against misleading advertisements, including against big brands such as Unilever, Uber, or Hindustan Petroleum. Additionally, to monitor potential violations of the rules contained in the guidelines, the ASCI uses a French technology provider using artificial intelligence to identify potential infringements of the disclosure obligations from influencers²⁶¹.

In **China**, the Advertisement Law, introduced in 1995 and revised in 2015 contains the general legal provisions regarding advertising. If it does not specifically mention influencers or digital marketing, although they are encompassed in the definition of advertiser as “any natural person, legal person or other organisation that designs, produces and publishes advertising on its own or by commissioning others to promote commodity or service”. In 2021, the government of China made public its plan to issue rules for influencers on how to speak and dress when they market products in live streaming on online shopping platforms²⁶². These rules could include the following principles: not violate public order or good morals, reflect the characteristics of the products or services marketed, speak Mandarin, as well as be objective and honest.

²⁵⁸ Consumer Protection Act 1986. Available at: <https://www.indiacode.nic.in/bitstream/123456789/1868/1/A1986-68.pdf>.

²⁵⁹ ASCI, 2021, *The Code for Self-Regulation of Advertising Content in India*. Available at: https://ascionline.in/images/pdf/code_book.pdf.

²⁶⁰ ASCI, 2021, *The Guidelines for Influencer Advertising in Digital Media*. Available at: <https://asci.social/>.

²⁶¹ Financial Express, 2021, *ASCI issues final guidelines for influencer advertising on digital media*. Available at: <https://www.financialexpress.com/brandwagon/asci-issues-final-guidelines-for-influencer-advertising-on-digital-media/2260148/>.

²⁶² CNN Business, 2021, *China now wants to tell influencers how to speak and dress when live-streaming*. Available at: <https://edition.cnn.com/2021/08/19/tech/china-live-streaming-regulations-intl-hnk/index.html>. Underlying issues in China include the imposition of unprecedented fines for tax evasion towards online influencers who have grown wildly popular in recent years. See in this regard Aljazeera, 2021, *China fines top influencer \$210m for tax evasion*. Available at: <https://www.aljazeera.com/economy/2021/12/21/china-fines-top-influencer-210m-for-tax-evasion>.

4.2. Practices from legislators, authorities and the industry

As the above analysis shows, legislators, authorities and the industry have been active at global, EU and national level to tackle influencer marketing with the objective to ensure the protection of consumers.

While each jurisdiction develops solutions that are tailored to their specific national framework, there are nevertheless many commonalities between the approaches taken around the world.

This section distils the variety of measures taken into a set of main practices:

- Adopting specific influencer legislation;
- Applying existing consumer protection legislation to influencers;
- Publishing guidelines and codes of conduct to establish good practices;
- Using digital monitoring and enforcement tools;
- Offering training and certification of influencers;
- Raising awareness and providing support to consumers; and
- Facilitating compliance on platforms via standardised disclosure tools.

4.2.1. Adopting specific influencer legislation

As shown in the previous section on the legal framework at EU and national level, currently there is no specific encompassing legislation focussing on influencer marketing. However, some countries have incorporated specific elements into their horizontal legislation with the aim to tackle certain aspects of influencer marketing. Overall, **amendments to consumer protection and/or unfair market practices legislations clarify or/and provide additional obligations and rights to different actors in the realm of online advertising**, with a focus on influencer marketing.

For example, the Finnish legislative framework has a specific focus on protecting vulnerable consumer groups in the realm of online advertising²⁶³. In particular underage persons (children and adolescents under the age of 18) enjoy a special position in the Consumer Protection Act, and marketing targeted at underage persons is subject to stricter rules, namely companies engaged in influencer marketing must also take the age of the target audience into account when choosing cooperation partners, marketing methods and products being marketed. Germany has also amended their legislation on advertising with a view to clarify when the conditions under which editorial content must be labelled as advertising.

4.2.2. Applying existing consumer protection legislation to influencers

In the absence of legislation tailored to influencer marketing, an emerging trend across Europe is the **proliferation of national courts and market or consumer authorities' decisions on key issues around influencers and consumer protection**. These decisions aim to clarify consumer protection and market competition legislation and interpret them to find solutions in cases related to influencer marketing. Usually, unfair market practices made by influencers are brought to the attention of national courts or market authorities by consumer protection associations, national ombudsmen or in rare cases, by individuals. **Enforcement authorities and the jurisprudence have thus become key actors**

²⁶³ KKV, 2019, *Influencer marketing in social media*. Available at: <https://www.kkv.fi/en/consumer-affairs/facts-and-advice-for-businesses/the-consumer-ombudsmans-guidelines/influencer-marketing-in-social-media/>.

in adapting existing legislation to recent market trends and in limiting gaps in the protection of consumers.

In an example from Italy, the Italian Competition Authority (AGCM) has started in 2017 to control and contrast the phenomenon of the diffusion of forms of hidden advertising through social networks. AGCM activities began with some *moral suasion*²⁶⁴ activities in 2017 and 2018, which were followed by two important proceedings concluded with commitments that defined the fundamental principles on the subject:

- Provision no. 27787 of 22 May 2019, in the *AEFFE-Alitalia* proceeding, related to influencers²⁶⁵. It concerned several Instagram posts in which the Alitalia logo (Italian airline) was artificially framed on clothing signed by Alberta Ferretti (with a consequent clear evocation of both brands). Several influencers were considered responsible for disseminating, through social media, disguised advertising messages that could not be recognised as such.
- Provision no. 28167 of 25 February 2020, in the *Barilla-Insanity* proceeding, related to the activity of micro-influencers²⁶⁶. In particular, the contested practice consisted of disseminating posts reproducing Barilla's products and referencing them on the Instagram profiles of micro-influencers, without mentioning any commercial relationship with the brand.

In both cases, to clarify rules on labelling, the AGCM has specified the obligation to make the promotional purpose clearly recognisable, where applicable, in relation to all the contents disseminated through social media, through the inclusion of warnings, such as, by way of example, #advertising, #sponsored, #inserzioneapagamento, or, in the case of supply of the goods free of charge, #prodottofornitoda, #endorsements which must always be followed by the brand's name. In its decisions, **the AGCM thus established clear practices of how influencers must disclose advertising on social media.**

In another example, a 2019 decision of the Swedish Patent and Market Court of Appeal²⁶⁷, the court dealt with the unfairness of practices reflecting sponsored posts that might be difficult to recognise as advertising. In the case, the Swedish Consumer Ombudsman (KO) asked the court to determine whether certain marketing practices in posts on social media (in a blog and on Instagram) were unfair in the light of Articles 9(1) (advertising identification) and 9(2) (sender identification) of the Swedish Marketing Act. Particularly with respect to the latter point, this case illustrates the difficulty of interpreting consumer protection legislation in a way that it should be applicable to intermediaries such as influencer marketing platforms. The Patent and Market Court found that the influencer's own company was responsible for the blog and Instagram account and could thus be held liable for consumer law violations. However, **the influencer marketing platform that brokered the advertising contract** between the influencer's company and the brand wishing to advertise via the

²⁶⁴ Moral suasion are soft law measures used by the Italian antitrust authority to find a solution to ensure consumer protection without necessarily starting a proceeding. Moral suasion activities consist of recommending to actors to change their behaviour before initiating a proceeding.

²⁶⁵ Autorita Garante della Concorrenza e del mercato, PS11270 – AEFEE-ALITALIA Provvedimento n. 27787. Available at: [https://www.agcm.it/dotcmsCustom/tc/2024/6/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/E6B624BBD0F6A573C12584150049D1EE/\\$File/p27787.pdf](https://www.agcm.it/dotcmsCustom/tc/2024/6/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/E6B624BBD0F6A573C12584150049D1EE/$File/p27787.pdf).

²⁶⁶ Autorita Garante della Concorrenza e del mercato, PS11435 – INSANITY PAGE-Pubblicita occulta Barilla, provvedimento n. 28167. Available at: [https://www.agcm.it/dotcmsCustom/tc/2025/3/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/F29799B6815A0C30C125852E003A479E/\\$File/p28167.pdf](https://www.agcm.it/dotcmsCustom/tc/2025/3/getDominoAttach?urlStr=192.168.14.10:8080/C12560D000291394/0/F29799B6815A0C30C125852E003A479E/$File/p28167.pdf).

²⁶⁷ Patent and Market Court of Appeal, 2019, PMT 2054-18, Available at: <https://www.domstol.se/patent--och-marknadsoverdomstolen/patent--och-marknadsoverdomstolens-avgoranden/2019/59106/>.

influencer's services **was not considered to either act on behalf of the trader or materially contribute** to the unfair marketing practices.

Complementary to national legislation, court and consumer or market authorities' decisions can thus provide interpretation and clarification on the approach to be taken by brands and influencers when advertising products or services through social media. One of the main benefits of this practice consists in the **flexibility of the approach which allows authorities to focus on the most relevant cases and harmonise practices** at the national level. However, as the practice is based on applying existing legislation **it is also limited by the boundaries of the legislation**.

4.2.3. Publishing guidelines and codes of conduct to establish good practices

A common practice across European and non-European countries is the **emergence of guidelines which provide guidance for influencers and brands on the correct ways of advertising in social media and complement the legislative and regulatory practices**. National consumer or market authorities publish guidelines with their interpretation of the law and advice on how to comply with it, while industry actors publish self-regulation in the form of ethical principles and codes of conduct (which can also become binding for members of the industry associations adopting these codes). Overall, these guideline documents provide instructions on labelling requirements, different types of collaboration with brands and the approach to be taken when disclosing a commercial relation. They also define influencer-specific terminology, such as endorsement, sponsor, barter, etc.

The Netherlands Authority for the Financial Markets published for example new guidelines for Finfluencers (influencers providing financial advice) and created a dedicated website²⁶⁸. Alongside the guidelines on advertisement for social media and influencers²⁶⁹ published by the industry self-regulation body, **these new guidelines provide clarification on the approach to be taken when providing advice on financial markets**. Moreover, the website launched provides the following basic rules/points of attention, illustrated by videos, images and real-world examples:

- Never give advice without a license that someone might see as personal.
- Only give objectively substantiated recommendations and be open about own interests.
- Be careful when recommending financial products that are extra risky.
- Never deal with financial companies that do not have a licence.
- Do not get paid for bringing in customers.

In the United Kingdom, **the Advertising Standard Authority (ASA) partnered with the Competition and Market Authority (CMA) and the Committee of Advertising Practice (CAP)** to provide a clear and comprehensive guidance document on influencer marketing labelling²⁷⁰.

Another example concerns industry self-regulation in Czechia. The Influencer code of conduct²⁷¹ was one of the main outputs of the industry led-initiative "Férový Influencer" launched by the Association for Internet Progress (SPIR) to increase transparency in advertising. The code of conduct provides

²⁶⁸ AFM, *Regels voor online posten over beleggen – vermijd de valkuilen van finfluencen*. Available at: <https://www.afm.nl/nl-professionals/onderwerpen/finfluencen>.

²⁶⁹ Stichting Reclame Code, 2019, *Reclamecode Social Media & Influencer Marketing (RSM)*. Available at: <https://www.reclamecode.nl/nrc/reclamecode-socialmedia-rsm/>.

²⁷⁰ CMA, ASA, CAP, 2020, *An Influencer's Guide to making clear that ads are ads*. Available at: <https://www.asa.org.uk/static/uploaded/3af39c72-76e1-4a59-b2b47e81a034cd1d.pdf>.

²⁷¹ Férový Influencer Initiative, 2020, *Kodex influencera*. Available at: <https://ferovyinfluencer.cz/kodex>.

guidance on labelling for influencers who engage in paid or barter cooperation with companies (brands).

Such guidelines clarify several issues around disclosure and transparency for influencer marketing. **One of the key benefits of guidelines is the standardisation of influencer practices and additional (and practical) guidance to newcomers on the influencer market** who may not be aware or have the tools to identify their obligations and the overall legislative framework around influencer marketing. On the other hand, the main downside of industry guidelines is that they are usually not binding, and **their effectiveness depends on the willingness of market actors**. With regard to guidelines from authorities, the interpretation of the law that they provide **must also be enforced by the authorities** if market actors do not comply.

4.2.4. Using digital monitoring and enforcement tools

Effective enforcement requires that authorities are able to monitor the market and identify infringements. The enforcement of online markets can be facilitated by using dedicated monitoring tools, and the popularity of digital monitoring and enforcement with national and European regulatory authorities has been on the rise²⁷². Digital enforcement is a term with a broader meaning, ranging from the enforcement of rules initially intended for the offline world in the online sphere²⁷³ to private enforcement mechanisms facilitated by technology²⁷⁴. Digital monitoring is a form of enforcing compliance with existing legal rules, through scaled approaches which can give authorities an overview of market activity. **Monitoring social media at scale cannot be done without the computational translation of legal compliance tasks.** This entails computational resources (e.g., data units, methodologies and digital monitoring tools) that many national and supranational authorities are starting to develop in-house²⁷⁵. Sweeps are undertaken by regulatory authorities to determine the scope of legal compliance violations, and the actors involved.

Digital monitoring can be done on social media in various ways, depending on the legal tasks and computational methods used. Multimedia content (audiovisual) and text (e.g., post captions, comments) is often collected using the platform Application Programming Interface (API), or if the platform does not have a data API (e.g., TikTok), data collection can take place through scraping. **Data collection often relies on the determination of which accounts must be monitored, raising the need to manually curate lists of influencers** on the basis of criteria determined by authorities (e.g., size, industry). Following data collection and cleaning, data analysis can range from less complicated (e.g., clustering hashtags) to more complicated methodologies (e.g., using deep learning on video data)²⁷⁶.

²⁷² European Commission, 2020, *Shaping Europe's Digital Future*. Available at: https://ec.europa.eu/info/sites/info/files/communication-shaping-europes-digital-future-feb2020_en_4.pdf. See also: European Commission, 2020, *On Artificial Intelligence – A European approach to excellence and trust*, COM(2020) 65, p 2 final. Available at: https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf.

²⁷³ Kaminski, M., 2011, *An Overview and the Evolution of the Anti-Counterfeiting Trade Agreement*, 21 Alb LJ Sci & Tech 385; Kaminski, M., 2012, *Positive Proposals for Treatment of Online Intermediaries*, 28 Am U Int'l L Rev 203; Lane, H., *The Realities of the Anti-Counterfeiting Trade Agreement*, 21 Tul J Int'l & Comp L 183.

²⁷⁴ Verstraete, M., 2019, *The Stakes of Smart Contracts*, 50 Loy U Chi LJ 743; Ottolia, A., Wielsch, D., 2004, *Mapping the Information Environment: Legal Aspects of Modularization and Digitalization*, 6 Yale JL & Tech 174.

²⁷⁵ For instance, in 2019, the Canadian Competition Bureau appointed a "Chief Digital Enforcement Officer, who will help the Bureau monitor the digital landscape, identify and evaluate new investigative techniques, and boost its digital intelligence-gathering capabilities", see: Duplantis, R., 2019, 15 Competition L Int'l 149; Schrepel, T., 2021, *Computational Antitrust: An Introduction and Research Agenda*, Stanford Computational Antitrust (Vol. 1). Available at: <https://ssrn.com/abstract=3766960>.

²⁷⁶ Yang, J., Zhang, J., Zhang, Y., 2021, *First Law of Motion: Influencer Video Advertising on TikTok*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3815124.

As an example, in 2021 the UK Advertising Standards Authority (ASA) reported on a sweep done on the Instagram accounts of 122 UK-based influencers, assessing a total number of 24,000 Instagram stories including posts, IGTV (Instagram TV) and reels.²⁷⁷ **The sweep reflects increasing attention given by the ASA to influencer marketing**, particularly in the light of the rise in the number of complaints received against influencers, which increased in 2020 by 55% compared to 2019 (from 1,979 to 3,144 individual complaints), with 61% of the complaints in 2020 covering ad disclosure on Instagram. The report found a general inconsistency in the disclosure of advertising on Instagram across the various affordances offered by the platform (e.g., posts, IGTV, reels). More specifically, it also found that out of 5,732 ads, only 35% were clearly labelled. Measuring the disclosure of ads has also been the subject of academic research. A study from 2018 concluded that out of 500,000 YouTube videos and 2.1 million Pinterest pins that contained affiliate content, only 10% were disclosed as such²⁷⁸.

The scale of content generated on social media by content creators makes it unfeasible for legal compliance to be undertaken manually, so digital monitoring tools become more and more indispensable. It must be kept in mind, however, that especially for text data, digital monitoring tools are language-dependent if the need to develop language specific annotated datasets for various industries, types of advertising discourses etc. is considered. Apart from text data, social network interactions can be mapped using web measurement techniques which have proven to be successful in the monitoring of certain business models such as affiliate marketing. Similarly, network analysis can also be useful in determining the dynamics between influencers, brands and users, and computer vision approaches can focus on tasks such as product recognition²⁷⁹. Academic research on this topic is in its infancy, but it has stimulated a lot of interest in computer science and computational social sciences in the past years²⁸⁰. While technology presents great potential for market monitoring, its accuracy depends on multi- and interdisciplinary scientific advances at the intersection of law and computer science, and its legitimacy will be dependent on factors such as legal frameworks for investigation and enforcement.

4.2.5. Offering training and certification of influencers

In addition to regulatory practices, a recent trend is **the creation of focussed trainings and certification schemes** organised by advertising associations or national authorities in order to support and professionalise influencers by making them aware of the disclosure obligations and ethical conduct when advertising on social media.

The French professional self-regulatory authority for advertising (ARPP) implemented for example several initiatives to raise awareness of influencer marketing and to train and professionalise influencers. In 2021, **the ARPP also launched a Responsible Influence Certificate**²⁸¹ to enable influencers to master the legal and non-regulatory framework, protect audiences and to provide them with an asset to the brands they collaborate with. The Responsible Influence Certificate aims to ensure that an awareness course of the ARPP's ethical recommendations has been followed by the influencer

²⁷⁷ ASA, 2021, Influencer Ad Disclosure on Social Media. Available at: <https://www.asa.org.uk/static/dd740667-6fe0-4fa7-80de3e4598417912/Influencer-Monitoring-Report-March2021.pdf>.

²⁷⁸ Mathur, A., Narayanan, A., Chetty, M., 2018, Endorsements on Social Media: An Empirical Study of Affiliate Marketing Disclosures on YouTube and Pinterest. Available at: <https://arxiv.org/abs/1809.00620>.

²⁷⁹ Yang, J., Zhang, J., Zhang, Y., 2021, *First Law of Motion: Influencer Video Advertising on TikTok*. Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3815124.

²⁸⁰ Ershov, D., Mitchell, M., 2021, The Effects of Advertising Disclosure Regulations on Social Media: Evidence From Instagram. Available at: <https://wilde.wordpress.com/2021/09/29/the-effects-of-advertising-disclosure-regulations-on-social-media-evidence-from-instagram/>.

Han, J., et. al., 2021, *Fitnet: Identifying fashion influencers on twitter*, Proceedings of the ACM on Human-Computer Interaction, 5(CSCW1).

²⁸¹ ARPP, *Certificat de l'influence Responsable*. Available at: <https://www.arpp.org/certificat-influence-responsable-inscriptions/>.

and that the control of the knowledge acquired during this course has been successfully validated (final exam). The topics of the sessions are on transparency about partnerships with brands, rules to follow when talking about the environment, health, cosmetics, food products, gambling and the main ethical principles that govern influencer marketing, including protection of children and dignity. The certification has increasingly become relevant for influencers in France, since **many brands are now requiring influencers to have passed the certification scheme** if they would like to engage in collaborations with them²⁸².

Another example comes from the UK Advertising Standards Authority (ASA) which has set up events on influencer responsibility to clarify to influencers what are the requirements from consumer protection legislation they need to follow, and how to follow them. They also offer self-guided video training resources²⁸³. Competitions and Markets Authority put some influencers on notice based on their posting²⁸⁴, which is by itself not an explicit form of training, however, they offered guidance as part of the notice.

Trainings on disclosure and legal obligations for influencers have the benefit of increasing awareness among influencers and **preventing situations where influencers engage in harmful practices without being aware**. Moreover, if brands start asking for a certificate from influencers when collaborating with them, the responsible influencer certification scheme could be an effective way to ensure a minimum level of understanding of the unfair practices and the obligations on disclosure. It must however be ensured that any trainings or certification schemes are offered by reliable organisations.

4.2.6. Raising awareness and providing support to consumers

In addition to practices aiming to train influencers in doing the right thing, there are also **advice schemes and information campaigns about influencer marketing that aim to empower consumers** by raising awareness and providing support for consumers to file complaints. They can be offered by consumer organisations, authorities or industry associations. In practice though, such initiatives are not yet widespread. Generally, awareness-raising activities target influencers and brands, while only few countries have in place activities to support consumers in acknowledging marketing practices posing risks. The lack of consumer awareness activities could also partially explain the overall low number of complaints filed by consumers on influencer marketing.

In Germany, a regional consumer organisation (Verbraucherzentrale Rheinland-Pfalz) drives initiatives that fulfil positive educational missions. For example, it employs freelance speakers who organise **lectures and workshops on media and basic digital education at schools**. These lectures and workshops also cover how to deal with influencers as well as the informed use of social media in general. Another learning objective is to teach children/teenagers how to recognise advertising and manipulative content. This work requires constant updating of training materials, as types of

²⁸² Interview conducted with a French Stakeholder in December 2021.

²⁸³ ASA, 2020, *Influencer Marketing – Key Advice Resources*. Available at: <https://www.asa.org.uk/news/influencer-marketing-key-advice-resources.html>.

²⁸⁴ The Guardian, 2019, *Celebrity social media influencers pledge to change way they post*, Available at: https://www.theguardian.com/media/2019/jan/23/celebrity-social-media-influencers-pledge-to-change-way-they-post?CMP=Share_iOSApp_Other.

advertising and platforms are constantly changing and thus depends on sufficient and regular resources²⁸⁵.

In Poland, the Office of Competition and Consumer Protection (UOKiK), when announcing a large-scale investigation on influencer market practices, **set up a dedicated email and phone number on their website for consumers to report cases** of harmful or misleading activities presented by influencers on social media²⁸⁶. According to the interviewee from the UOKiK, consumers have been very active since then to report cases and support the investigation.

In the United Kingdom, the advertising association Adasso has set up an education programme called “Media Smart” to increase awareness among young people on online advertising to enable them to identify, interpret and critically evaluate all forms of advertising. **Part of the initiative are several pedagogical resources to support teachers** in explaining influencer marketing and the related practices posing risks for consumers to students²⁸⁷.

Such activities targeting consumers and focussing on raising awareness about online advertising are key to ensure that especially vulnerable segments of the population, such as minors and people with low digital literacy, **are able to identify and critically assess all forms of advertising**. Moreover, providing contact details of the relevant authority in charge of addressing their complaints and concerns is particularly relevant considering the rising importance of influencer marketing and other new business models around the content creator economy. As with all awareness-raising campaigns, **in order for them to be effective it must be made sure that the advice reaches the consumers**, for example by actively approaching the target group in places where they are present (e.g., schools).

4.2.7. Facilitating compliance on platforms via standardised disclosure tools

Lastly, as another non-regulatory practice coming from the industry, **platform affordances can facilitate compliance with legal standards such as the disclosure of advertising**. The standardisation of platform disclosures can be beneficial for consumers and creators alike, since it clarifies the advertising nature of the content in the social media feed. This type of measure can only be generated by social media platforms, who control user interface (UI) and user experience (UX) processes.

Some platforms have already changed their user interfaces in order to facilitate disclosures. **Instagram and YouTube have standardised their ad disclosure placement**. Instagram uses the label “Paid partnership with [BRAND]”, which appears right under the name of the social media account in a post²⁸⁸.

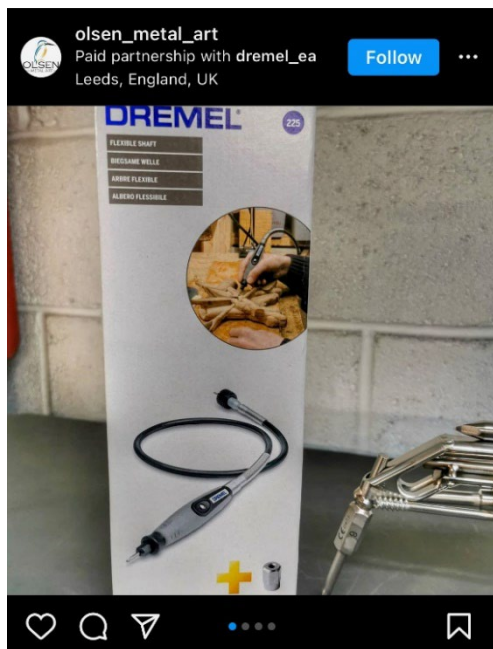
²⁸⁵ Verbraucherzentrale, *Unser Bildungsangebot Telekommunikation und digitale Medien*. Available at: <https://www.verbraucherzentrale-rp.de/digitale-welt/unser-bildungsangebot-telekommunikation-und-digitale-medien-23342>.

²⁸⁶ UOKiK, 2021, *Kryptoreklamy w social mediach influencerów? Postępowanie wyjaśniające Prezesa UOKiK*. Available at: https://www.uokik.gov.pl/aktualnosci.php?news_id=17856.

²⁸⁷ Advertising Association, 2019, *Media Smart*. Available at: <https://adassoc.org.uk/resource/media-smart/>.

²⁸⁸ Instagram, 2020, *Deconstructing Disclosures: Do Creators Need To Say When They're Getting Paid?*. Available at: <https://business.instagram.com/blog/deconstructing-disclosures-do-creators-need-to-say-when-theyre-getting-paid>.

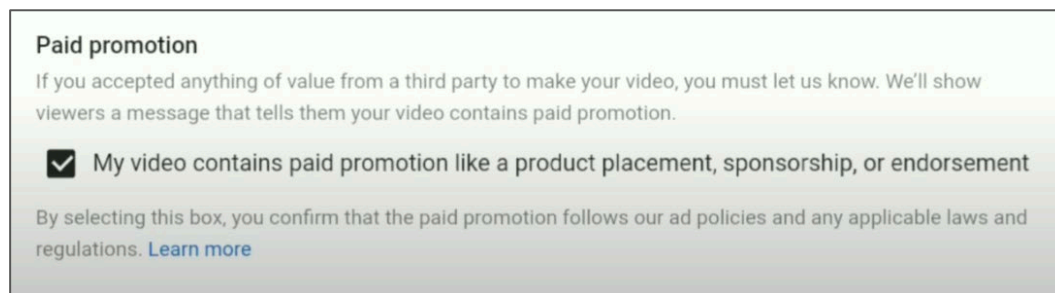
Figure 12: Example of a disclosure tool on Instagram



Source: Instagram.

YouTube uses textboxes overlapping on the display of the video to indicate product placement, sponsorships and endorsements²⁸⁹:

Figure 13: Example of a disclosure tool on YouTube



Source: YouTube.

²⁸⁹ Google Support, 2021, *Add paid product placements, sponsorships & endorsements*. Available at: <https://support.google.com/youtube/answer/154235?hl=en>.

The standardisation of disclosures aligns with legacy media solutions that ensure consumers are not exposed to inconspicuous advertising. However, some authorities, such as the US Federal Trade Commission (FTC), do not advise influencers to fully rely on platform disclosure tools, as they may not be sufficient in fulfilling the standards of how visible disclosures ought to be for consumers²⁹⁰. For instance, taking the YouTube and Instagram examples above, both interfaces put emphasis on the word “paid”. As there has been some legal confusion relating to whether only paid advertising constitutes a practice that needs disclosure, or indirect revenues must also be disclosed (which is generally the case), a lot more can be done to ensure the compliance of platform design standards with legal standards. Still, **designed in consultation with national authorities who have the power to negotiate commitments to be undertaken by platforms, interface features can offer a standardised cross-border solution** which may be more desirable than the curation of lists of recommended disclosures by each national authority leading to divergent approaches.

²⁹⁰ FTC, 2019, *Disclosures 101 for Social Media Influencers*, 5. Available at: https://www.ftc.gov/system/files/documents/plain-language/1001a-influencer-guide-508_1.pdf.

5. CONCLUSIONS AND RECOMMENDATIONS

KEY FINDINGS

In view of the increasing importance of influencer marketing practices on the market and the impacts they can have on consumers, as well as of the legal framework in place at EU and Member State level, this study puts forward the following recommendations:

- **Striking the balance** between, on the one hand, enabling the Single Market for commercial activities but also for (online) social interaction and the creation of non-commercial content, and on the other hand protecting the interests of consumers.
- **Relying on and expanding existing consumer protection legislation**, which is generally the right path to tackle influencer marketing.
- **Supporting national authorities in developing and using digital tools** that facilitate the monitoring of influencer marketing activities and the enforcement of consumer rights.
- **Providing information and guidance** to help influencers comply with applicable rules and to help consumers be aware of their rights and identify influencer marketing practices.
- **Ensuring that market actors**, which are not limited to influencers but also include brands and platforms, **know their duties and obligations** and act in a professional and responsible way.

In the last decade, **the importance of influencers has massively increased** with regard to all aspects of the market: be it the number of influencers, the number of consumers following influencers and being exposed to influencer marketing, the market value of influencer marketing, the platforms and communication channels available, or the involvement and professionalisation of other actors like brands, platforms and intermediaries. **This rise has led to increased concern over the impact that influencers have on their followers** (after all, the term influencer already suggests that someone is being influenced) and the responsibilities and obligations that influencers do and should have.

5.1. Regulating influencers requires striking the right balance

To date, little actual legislation has been adopted (at EU level, by EU Member States or in non-EU countries) to specifically regulate influencers. **Regulating influencer marketing does indeed require striking a fine balance** between, on the one hand, enabling the Single Market for commercial activities but also for (online) social interaction and the creation of non-commercial content, and on the other hand protecting the interests of consumers (in particular vulnerable consumers). The digital environment in which influencer marketing takes place creates additional challenges for legislators. Business models and technologies change at fast pace, leading to the **risk that any regulation will always lag behind the development of the market**. It is therefore debatable whether adopting a legal definition of influencers would actually contribute to improving protection of consumers, or whether such definition would soon be outdated.

For any regulation, it must be ensured that it will have the desired effect of improving the situation for consumers. Recent research into the effects of influencer regulation²⁹¹ provides an example of how **regulation that aims to strengthen the position of consumers can lead to adverse effects**. The

²⁹¹ Ershov, D., Mitchell, M., 2021, *The Effects of Advertising Disclosure Regulations on Social Media: Evidence From Instagram*. Available at: <https://wilte.wordpress.com/2021/09/29/the-effects-of-advertising-disclosure-regulations-on-social-media-evidence-from-instagram/>.

study is an empirical comparison of the impact of advertising disclosure regulation in Germany and Spain. It shows that German disclosure regulation led to a substantial adoption of disclosure practices by influencers (as desired), but also to an overall increase of sponsored content published by influencers. This can be explained by the effect that, due to more obligations to disclose information, influencers lose engagement from followers which leads to a loss in revenue. In order to make up for this loss, influencers publish even more sponsored content, and the quality of the content thus potentially decreases.

Influencer work is in many cases precarious, as developments in regulation, platform economies and in algorithmic visibility can put their businesses at risk. **Many influencers participate in so-called “algorithmic gossip” in which they develop and share theories about how to maintain sustainable careers** on social media platforms through private conversational groups and forums. These theories may not be correct, but they can have significant effects on how influencer content is produced. One such theory is that videos labelled on social media as an “Ad” will not be algorithmically promoted by platforms, as some influencers believe platforms are trying to nudge them towards paying for the platforms’ own ad products (e.g., boosted posts) instead²⁹². These theories originate out of platform opacity, which has meaningful impacts on the potential for monitoring and regulation. There is a huge body of research conducted by influencers as they operate on platforms every day, and **paying attention to these theories can signpost towards key issues and responsibilities** that are negotiated by influencers.

In this vein, another point to consider is the fact that **influencers are not the only actors involved in influencer marketing**. Other major actors in the value chain are the brands and organisations that use influencer marketing, the platforms on which influencer marketing takes place, and intermediaries like agents. When addressing consumer issues, the entire eco-system and the roles and responsibilities of the different actors must be taken into account.

5.2. Consumer protection legislation is the right path to tackle influencer marketing

That being said, striking a balance does not mean that influencers should not be responsible and accountable for their marketing practices vis-à-vis consumers. However, many influencer marketing practices are in essence not fundamentally different from marketing practices employed in “traditional” marketing, for which a large body of legislation already exists. As shown in this study, **courts and national authorities do already apply existing legislation to influencer marketing on a regular basis**. At EU level, it is, in particular, the Unfair Commercial Practices Directive (UCPD) that includes relevant and applicable provisions. The Directive has been amended recently, with the latest changes coming into force on 28 May 2022. The European Commission has also published, on 29 December 2021, new guidance on the interpretation and application of the Directive which clarifies the important question of whether influencers fall under the scope of the Directive. **Case law and decisions from authorities show that the UCPD rules can already be applied to many cases of influencer marketing**, and the updated version of the Directive, once in force, is expected to provide further clarity on its application. **In situations where influencers act as sellers**, they act in the same capacity as other entities selling goods or services online so **consumers enjoy the same protection and rights**

²⁹² UK House of Commons, 2021, *Digital, Culture, Media and Sport Committee, Oral evidence: Influencer culture, HC 258*. Available at: <https://committees.parliament.uk/oralevidence/2711/pdf/>.

as with any other commercial transaction (e.g., rights from the Consumer Rights Directive or the e-Commerce Directive).

As the future of platform regulation in the EU, **the upcoming DSA has to fulfil the task of bridging the procedural and institutional set-up from the DSA and the substantive legal standards enshrined in it (e.g., the prohibition of a general monitoring duty) with existing European and national law.** The amendments to the DSA proposal adopted by the plenary of the European Parliament in January 2022 do not make explicit references to advertising by influencers or other specific forms of content monetisation. Nevertheless, the voted amendments integrate the **most essential points** made in the IMCO draft report of May 2021 with respect to advertising business models undertaken by influencers. For example, the plenary amendments include reference to standardised approaches for advertising, with a new obligation for platforms to display information “through prominent and harmonised marking”. More general aspects of online interface design are also covered to ensure that the structure, function or manner of operation of their online interface do not distort or impair recipients of services’ ability to make a free, autonomous and informed decision or choice.

One of the most important points about the DSA and its links to other instruments relevant for content monetisation by influencers is the definition of illegal content. The amended version of the DSA proposal, as adopted by the plenary, now defines illegal content as “any information or activity, including the sale of products or provision of services which is not in compliance with Union law or the law of a Member State, irrespective of the precise subject matter or nature of that law”. This definition establishes a bridge between the DSA and other national or European regulation governing online content. For influencer marketing in particular this could be interpreted to mean that, where European (and national) law mandates advertising disclosures and other information duties, failure to comply with these requirements may render such content illegal within the scope of the DSA. This interpretation shows how the DSA contributes to a new narrative around digital legal compliance within the context of platform governance.

The coming years will thus see a shift towards mapping platform regulation and linking the concept of illegal content with relevant applicable European or national legislation. The consumer *acquis* is one of the regulatory areas which will need to be interpreted and applied in the light of the DSA as a source of law applicable to online content. This is all the more important in the light of current market trends such as social commerce. Social commerce will see the rise of social media platforms as the new marketplaces in the coming years. In this context, it is vital that platforms acknowledge and comply with their relevant legal obligations towards consumers. To achieve this compliance, guidelines should be drafted to elaborate on how the transparency, interface standardisation and know-your-customer obligations enshrined in the DSA interact with the consumer law *acquis*.

The linkages between the DSA and existing consumer legislation will need to be taken into account during the further negotiations of the DSA proposal. Moreover, the IMCO draft report of May 2021 makes valuable recommendations on how the DSA could better cover influencer marketing, and while the explicitness of these recommendations (in the sense that they specifically refer to influencers) was not taken over in the amendments adopted by the plenary it would nevertheless be worth to keep them in sight.

5.3. Effective regulation requires strong monitoring and enforcement

Any legislation can only have an impact if it can be effectively enforced. **Enforcement of consumer rights faces several general challenges**, not only limited to the context of influencer marketing. Consumers might not always be aware of their rights or might not be able to identify unlawful practices, in particular in the case of misleading omissions (that is if not all information is disclosed). Even if consumers identify an unlawful practice, they might not claim remedies either because they do not know where and how or they do not think it is worth the effort. In other cases, specific conditions in the legislation might not render individual consumers eligible to claim redress²⁹³ Moreover, not only consumers but also authorities might find it challenging to discern misleading omissions, due to the lack of separation between editorial content and advertising.

The **Consumer Protection Cooperation (CPC) offers possibilities for EU-wide enforcement**, through mutual assistance between national authorities or coordinated investigation or enforcement at EU level. It thus supports national enforcement efforts and puts enforcement authorities in a stronger position in cases of cross-border infringements or systematic infringements happening across the Internal Market. However, while this can strengthen enforcement against multinational platform providers or certain mega-influencers with international reach, **it does not affect enforcement against the majority of influencers who are active domestically**.

More specifically regarding enforcement against infringements in the area of influencer marketing, **technology creates additional challenges for authorities**. Enforcement authorities are faced with a large number of influencers publishing a large amount of content across various online platforms and channels. While technological tools, for example to facilitate monitoring of disclosure practices, exist and are being used by some authorities, deployment of such tools requires resources (staff capacities and the necessary skills) that not all authorities necessarily have at their disposal.

Here, **the EU can provide support to national authorities by conducting research into available technological solutions and creating a repository of possible tools to monitor influencer activity**. This is already foreseen in the form of the **EU eLab as a central access point to innovative digital tools and resources**, which was announced under Action 13 of the New Consumer Agenda²⁹⁴ and will be implemented under the Digital Europe Programme²⁹⁵. It should be ensured that the eLab will also cover influencer practices. Ideally, the eLab can also provide a secure forum for sharing knowledge and best practices between national authorities to avoid having to publish such information which could potentially reveal sensitive data about monitoring practices to businesses. The support that the eLab will provide should however also be flanked by measures to build capacity within the national authorities to ensure that they will be able to use the tools, for example through the Technical Support Instrument (TSI).

Another way to support authorities in their monitoring efforts is to **promote the development, training and recognition of trusted flagger organisations** under the upcoming DSA, which could for example be consumer organisations. Such trusted flaggers can become important resources to help

²⁹³ For further details see: Riefa, C., Clausen, C., 2019, *Towards fairness in digital influencers' marketing practices*, 8 (2019) EuCML Journal of European Consumer and Market Law. Available at: <https://kluwerlawonline.com/journalarticle/Journal+of+European+Consumer+and+Market+Law/8.2/EuCML2019012>.

²⁹⁴ European Commission, 2020, *New Consumer Agenda. Strengthening consumer resilience for sustainable recovery*, COM(2020) 696 final. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0696&from=EN>.

²⁹⁵ European Commission, 2021, *Annex to the Commission Implementing Decision on the financing of the Digital Europe Programme and the adoption of the multiannual work programme for 2021 – 2022*, C(2021) 7914 final. Available at: https://ec.europa.eu/newsroom/repository/document/2021-46/C_2021_7914_1_EN_annexe_acte_autonome_cp_part1_v3_x3qnsqH6g4B4Jab5GBy9UatCRc8_81099.pdf.

understand what is happening on the market and develop and employ technologies. Similar to authorities, technical skills and sufficient resources are necessary for consumer organisations to play an effective role.

Lastly, the DSA proposal also foresees that platforms must provide authorities with data that is necessary to monitor and assess compliance. However, the proposal does not specify the type of data to be provided nor any practical details about how it should be shared. This could be clarified by **setting up a legal compliance Application Programming Interface (API) for the enforcement of platform obligations under the DSA**, as well as under complementing obligations which may arise from other sources of national and European law, such as the consumer law *acquis* and its national implementations. An API is a type of software interface that allows two applications to talk to each other. A **legal compliance API could serve as a solution for digital enforcement**, as it can be a self-standing API which should be requested from digital platforms to facilitate legal compliance²⁹⁶. National and supranational authorities can focus on the translation of legal rules into data standards which could be specifically requested by platforms. An example is the DSA obligation enshrined in Article 22 regarding the traceability of traders. The registration of an influencer as a trader with a social media platform, to the extent that the influencer engages in selling goods or offering products directly to consumers, can be a parameter that can be queried in a legal compliance API.

5.4. Providing information and guidance can help influencers and consumers

In addition to legal measures and their enforcement, soft regulation measures can help improve the situation of consumers confronted with influencer marketing. The identified practices from authorities and the industry show that much is already being done at national level. **Many national authorities have issued guidance for influencers** on how to disclose information, but there is **no common harmonised approach**. The EU could in principle publish EU-wide guidelines, building on the work done at national level, but the added value of such guidelines could be limited because it might not be possible to harmonise all national practices, which are rooted in national legislation and the interpretation of that legislation by national courts and authorities.

Instead of harmonising national practices, **the EU could therefore rather map, in a comprehensive manner, information from all the Member State jurisdictions** (such as legislation in place, relevant case law, guidelines issued by authorities) **and make it available to the public in a structured way through a central resource centre**, like it is done on the e-Justice Portal. Influencers could directly contribute to this, e.g., through consultation events, by pointing out the compliance barriers they experience which might not be immediately obvious (e.g., concerns about algorithmic visibility on platforms) and the kinds of support they would need. Such a resource centre could be a valuable information source for influencers and consumers but for example also for researchers. It could also go **beyond marketing aspects of influencers** and cover other topics, for example questions related to influencers and tax law or labour law.

Moreover, **raising awareness of and training consumers are measures that support the empowerment of consumers** by developing skills to identify and understand influencer marketing practices. In order to be most effective, such measures should be implemented as closely as possible to the consumers, as shown by examples of regional consumer organisations providing media trainings

²⁹⁶ Goanta, C., Bertaglia, T., Iamnitchi, A., 2022, *The Case for a Legal Compliance API for the Enforcement of the EU's Digital Services Act on Social Media Platforms*. Available at: http://computationsocialmedia.tech/wp-content/uploads/2022/02/DSA_API.pdf.

in schools. This approach appears particularly promising, as young consumers are a vulnerable consumer group that is particularly affected by influencer marketing. The **EU could support such local and regional advice services** by developing and translating training materials and making them available to teachers, consumer organisations and other multiplier actors (like it was done through the EU Consumer Classroom project).

5.5. A responsible and professional industry will provide better services to consumers

Lastly, influencers and other actors in the value chain must all act responsibly and take seriously the obligations they have towards consumers. In the past few years, the **sector has already become significantly professionalised** with the development of good practices, technological tools, codes of conduct or industry guidelines. Nevertheless, the sector is still growing and more and more people start being active as influencers, including **many young people who do not necessarily have much experience with marketing practices and may thus find it difficult to understand and apply the related regulations**. The industry actors must therefore continue to work towards the professionalisation of the sector by developing the necessary resources such as guidelines, high quality trainings or certifications tailored to the age of those actors. This covers consumer protection issues but also goes beyond, touching upon wider issues like the taxation of influencer activities or the labour status of influencers.

While these developments should ideally be driven by the industry actors themselves, the **EU should keep monitoring to what extent industry practices effectively guarantee the protection of consumer interests**. In particular, the adoption and **effectiveness of voluntary measures should be verified** and confirmed through consumer testing and behavioural research. If industry efforts are deemed insufficient, the EU could use that evidence to step in as a regulator and for example harmonise practices such as the disclosure of information on social media platforms.

Just as legislators and regulators, **industry actors must also adapt to changing consumer trends, business models and technologies**. One example is the growing importance of social commerce, which refers to the selling of goods and services on social media platforms. Unlike marketplace platforms which are designed for the sale of goods and services, not all social media platforms where social commerce takes place provide (yet) the necessary technical functionalities for the influencers selling on these platforms to comply with obligations they have (such as pre-contractual information duties). This example also underlines that **influencers are not the only actors in the eco-system who need to respect consumer rights but that platforms, brands and intermediaries must also contribute to a safe digital environment for consumers**.

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ANNEX: NOTES ON THE METHODOLOGY OF THE STUDY

Country selection

For this study, desk research and interviews were conducted in a sample of 14 EU Member States: Belgium, Croatia, Czechia, Finland, France, Germany, Ireland, Italy, Lithuania, the Netherlands, Poland, Romania, Spain, and Sweden.

The table below summarises the selection criteria. To ensure that the selection of countries was as representative as possible, data was collected on indicators covering several relevant characteristics, namely geographical coverage, country size, socioeconomic factors, cultural differences and attitudes towards influencer marketing.

Table 7: Overview of the criteria used for the selection of EU Member States

MS Characteristics			Legislative perspective	Social media uptake			Selected
MS	Size	EU Region	Enforcement level (online advertising and rules for influencers) ²⁹⁷	Number of influencers per population ²⁹⁸	Social Media Participation rate ²⁹⁹	% companies using social media ³⁰⁰	
BG	Small	East	Limited	0,31%	55%	34%	
CZ	Small	Central	Limited	0,67%	59%	47%	X
SK	Small	Central	Limited	0,45%	64%	42%	
AT	Small	Central	Robust	0,65%	60%	60%	
BE	Small	West	Robust	0,32%	79%	71%	X
DE	Large	Central	Robust	0,81%	54%	48%	X
EE	Small	North	Moderate	0,54%	65%	49%	
LT	Small	North	Limited	0,6%	61%	55%	X
HR	Small	South	Limited	0,34%	57%	52%	X
LV	Small	North	Limited	0,35%	67%	41%	
ES	Large	South	Moderate	1,94%	65%	43%	X
DK	Small	North	Robust	0,91%	79%	75%	
FI	Small	North	Robust	0,96%	75%	71%	X
FR	Large	West	Robust	0,81%	41%	50%	X
CY	Small	South	Limited	0,7%	78%	73%	
MT	Small	South	Limited	0,22%	72%	84%	
SI	Small	South	Moderate	0,42%	67%	50%	
EL	Small	South	Limited	0,67%	59%	55%	
HU	Small	Central	Limited	0,50%	74%	38%	
IE	Small	West	Moderate	1.13%	61%	73%	X

²⁹⁷ Based on a preliminary screening of legislation.

²⁹⁸ Influencity, 2021, *Europe Digital Study*, Available at: <https://influencity.com/resources/studies/the-largest-influencer-study-of-europe>.

²⁹⁹ Eurostat, 2020, *Participation in social network in the EU*. Available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20210630-1>.

³⁰⁰ Statista, 2021, *Share of enterprises in the European Union using social media from 2019 to 2021, by country*, Available at: <https://www.statista.com/statistics/1246010/eu-business-using-social-media/>.

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IT	Large	South	Robust	2,22%	85%	47%	X
PL	Large	Central	Robust	0,59%	55%	37%	X
PT	Small	South	Moderate	1,18%	63%	50%	
RO	Small	East	Moderate	0,46%	65%	33%	X
SE	Small	North	Robust	1,14%	70%	71%	X
LU	Small	West	Moderate	0,15%	60%	62%	
NL	Large	West	Moderate	1,05%	71%	73%	X

Source: Authors own elaboration.

Additional desk research was conducted for five non-EU countries which were selected based on qualitative criteria: Australia, the US, the UK, India, and China.

Social media monitoring

A monitoring of influencer activity on social media was conducted to collect examples of potentially harmful influencer marketing practices. The monitoring was conducted in the following eight Member States (a subset of the country selection above): Czechia, Germany, France, Italy, Netherlands, Poland, Romania, and Spain. In each country, five influencers were monitored, so in total 40 influencers.

The influencers were selected to be as representative as possible according to the following criteria:

- Platform used (e.g., Facebook, Instagram, TikTok, Twitch, YouTube);
- Size (number of followers);
- Gender;
- Sector (e.g., beauty & fashion, video gaming, family & home, travel & lifestyle, health & fitness); and
- Main target group (e.g., women, men, teenagers, children).

An example of the rationale of the selection for influencers from Germany is provided below. The longlist was generated based on a broad search on the different social media platforms with a new (unbiased) account. Platform-suggestions (“explore” / “you might also like”) were used to cover different sectors. Furthermore, certain influencers that were covered in the media (e.g., flagged for their content or marketing practices), were pre-selected. For example, one of the selected influencers was a child-influencer that was already critically mentioned by an NGO.

Thereafter the data for the pre-selected influencers was filled in a template, i.e., data on gender, platform and number of followers. Given the selection criteria to cover a broad range of influencer types (representing gender-balance, different sectors and sizes), the final five influencers to monitor per country in our subset were selected. Concerning the size (number of followers), the study team categorised influencers into five groups: **mega-influencers** (more than 1,000,000 followers); **macro-influencers** (between 500,000 and 1,000,000 followers); **medium influencers** (between 40,000 and 500,000 followers); **micro-influencers** (between 10,000 and 40,000 followers); and **nano-influencers** (less than 10,000 followers).

Table 8: Example of longlist for the selection of influencers to be monitored

Influencer	Gender	Language	Platform	Followers	Size category	Selected
xxx	F	DE	Instagram	1,500,000	Mega (more than 1,000,000 followers)	x
xxx	F	DE	TikTok	1,200,000	Mega (more than 1,000,000 followers)	
xxx	F	DE	YouTube	933,000	Macro (between 500,000 and 1,000,000 followers)	x
xxx	M	DE	Instagram	327,000	Medium (between 40,000 and 500,000 followers)	x
xxx	F	DE	Instagram	198,000	Medium (between 40,000 and 500,000 followers)	
xxx	F	DE	YouTube	141,000	Medium (between 40,000 and 500,000 followers)	
xxx	F	DE	Instagram	90,000	Medium (between 40,000 and 500,000 followers)	
xxx	F	DE	Instagram	56,300	Medium (between 40,000 and 500,000 followers)	
xxx	M	DE	Instagram	48,800	Medium (between 40,000 and 500,000 followers)	
xxx	Gender nonconforming	DE	Instagram	45,100	Medium (between 40,000 and 500,000 followers)	
xxx	F	DE	TikTok	36,300	Micro (between 10,000 and 40,000 followers)	x
xxx	F	DE	Instagram	31,900	Micro (between 10,000 and 40,000 followers)	
xxx	F	DE	Instagram	6033	Nano (less than 10,000 followers)	
xxx	F	DE	Instagram	2380	Nano (less than 10,000 followers)	
xxx	M	DE	YouTube	3,100	Nano (less than 10,000 followers)	x
xxx	M	DE	TikTok	2,137	Nano (less than 10,000 followers)	
xxx	F	DE	TikTok	764	Nano (less than 10,000 followers)	

Source: Authors own elaboration.

The researchers then followed the influencers on their main platform as well as on other platforms (if applicable). The content published by the selected influencers (not older than three months) on several platforms was then screened with the objective to identify those publications where a product or service was promoted by using potentially harmful marketing practices. The selected influencers were monitored on a daily basis, including checking their stories. For example, it was checked whether the labelling was clear and visible, whether the underlying commercial relationship with the brand was disclosed, and whether the post did not present the product or service in an overly positive manner. For each influencer, at least five questionable market practices were recorded in a research protocol and documented with screenshots. Data from the monitoring exercise was used to support the analysis of market practices (Section 1.1.11).

Influencer marketing as part of the advertising industry has grown significantly in recent years, becoming one of the most popular and effective forms of online advertising. The fast-growing market of influencers comes with potential risks for consumers and creates several challenges for regulators. This study provides information and analysis on the impact of influencers on advertising and consumer protection in the Internal Market, identifies best practices and makes recommendations for future action.

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