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Influencer marketing as a potentially unfair commercial practice: the Commission's new guidance

The European Commission adopted a non-binding guidance notice on Unfair Commercial Practices Directive in December 2021, which is to guide national interpretation of its provisions. This contribution analyses how the Commission advises to apply the current provisions protecting consumers against unfair commercial practices to influencer marketing. Despite influencer marketing finding a rather prominent space in the guidance, the Commission steers clear from prescribing black-and-white interpretation rules, for example on: how to determine whether a particular person is an influencer; whether they could be perceived as a trader; when an influencer's activity is an editorial content; whether influencers with adult audience could engage in aggressive commercial practices.

1. Commission's new guidance

On December 17, 2021, the European Commission gave us an early Christmas gift by adopting three new important guidance notices[1] on the following consumer law directives: Unfair Commercial Practices Directive,[2] Consumer Rights Directive[3] and Price Indication Directive.[4] The Commission published these notices to inform us better about the changes introduced in these instruments by the New Deal for Consumers package,[5] as well as address the applicability of the existing rules to the challenges posed by the digital and green transitions. In this editorial, I will discuss a part of the guidance that the Commission provided regarding the potential unfair character of commercial practices,[6] specifically, the part applying to influencer marketing.

2. Rise of influencer marketing during the pandemic

Due to prolonged lockdowns and self-isolation requirements, more consumers than ever turned to e-commerce, subscribed to digital services and used social media in the past two years.[7] As a result, the prominent role digital influencers[8] could play in marketing consumer goods and services was highlighted.

Belgian research showed that the number of companies using digital influencers in their marketing strategies increased by 41% since 2020.[9] In the UK, Boohoo, an online fashion store, increased its revenue by almost 888 million pounds in 2020, partly thanks to adapting their marketing strategy in social media.[10] Boohoo used a tailor-made hashtag #boohoointhehouse on various social media platforms, directed consumers to loungewear products and prepared beauty tutorial videos and interviews with influencers to attract more consumers to their brand. In Poland, the coffee brand Lavazza abandoned

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1. Guidance notes may be found on this website: <https://ec.europa.eu/info/law/law-topic/consumer-protection-law/review-eu-consumer-law-new-deal-consumers_en> accessed 24 January 2022.
2. Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market [2005] OJ L-149/22.
3. Directive 2011/83/EU of the European Parliament and of the Council on consumer rights [2011] OJ L-304/64.
4. Directive 98/6/EC of the European Parliament and of the Council on consumer protection in the indication of the prices of products offered to consumers [1998] OJ L-80/27.
5. This includes the Modernization Directive (Directive (EU) 2019/2161 of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules [2019] OJ L-328/7) and the Directive on Representative Action (Directive (EU) 2020/1828 of the European Parliament and of the Council on representative actions for the protection of the collective interests of consumers [2020] OJ L-409/1).
6. European Commission, Guidance on the interpretation and application of Directive 2005/29/EC (C/2021/9320) [2021] OJ C-526/1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021XC1229%2805%29&qid=1640961745514> accessed 24 January 2022.
7. OFCOM, *Online Nation 2021 report* <https://www.ofcom.org.uk/research-and-data/internet-and-on-demand-research/online-nation> accessed 24 January 2022, 3; S Madimba, 'Is Influencer marketing het hoogtepunt van de pandemie? – [Onderzoek Sortlist x BeInfluence]' (Sortlist, 30 June 2021) <https://www.sortlist.nl/blog/influencer-marketing-hoogtepunt-pandemie/> accessed 24 January 2022.
8. The author uses the term 'digital influencer' to describe persons engaging in influencer marketing. In scholarship and policy documents, this term is often shortened to 'influencers' or, alternatively, a term 'content creator' is used. The latter emphasises the prosumer character of digital influencers' activities, as well as tries to de-stigmatise them, but it also seems wider in its scope, applying to more than just influencer marketing. For a fascinating analysis of the use of these two terms and connotations they invoke see eg S Bishop, 'Name of the Game' (Real Life, 14 June 2021) <https://reallifemag.com/name-of-the-game/> accessed 1 February 2022.
9. Madimba (fn 7).
10. OFCOM (fn 7), 137.

its previous advertising plans and in April 2020 commissioned digital influencers for a marketing campaign 'First Sip'. In this campaign, digital influencers showed what that first sip of Lavazza coffee meant to them, in their own homes, by posting on their social media.[11] The campaign was successful, but most importantly showed how quickly influencer marketing may act and adjust to a change of circumstances.

3. Practices of digital influencers: regulatory issues

With more marketing campaigns taking place via digital influencers, it becomes important to consider whether and to what extent existing rules protecting consumers (and traders) against misleading, and otherwise unfair, commercial practices apply in that context. At the moment, a more in-depth inquiry exposes uncertainties as to the application of the current legal framework to influencer marketing. This legal uncertainty continues despite the efforts of the past few years of national competition and market authorities, as well as advertising bodies, to provide more guidance on the application of current rules to digital influencers' activities, which initiatives will be mentioned further in the editorial.

First, it is difficult to find a comprehensive and consistent definition of digital influencer.[12] Some of the characteristics that could be used to distinguish digital influencers are their reach,[13] which could be quantified by looking at the number of their followers, element of content creation,[14] and acting with a commercial intent.[15] However, which of these factors should be decisive and whether other requirements should be included in the test, seems to be decided *ad hoc* at the moment.

If we consider someone a digital influencer, then the question arises whether that should automatically classify them as a trader or as a person who acts on traders' behalf. Only if this requirement of Article 6:193a BW, reflecting Article 2(b) UCPD, is fulfilled, we will be able to apply consumer protection rules against unfair commercial practices to influencer marketing. The conditions which categorise digital influencers as 'traders' or people who act on their behalf are currently unclear.

The current protection framework demands also proof of a potential impact of a commercial practice on the transactional decision-making of a consumer, pursuant Articles 6:193b para 2 BW, 6:193c para 1 BW, 6:193d para 2 BW and Article 6:193h para 1 BW, implementing Articles 5-8 UCPD. This condition may, however, be fulfilled more easily than the above-mentioned requirement for the practice to be conducted by a trader. Namely, market research results emphasise the impact of influencer marketing on consumers.[16]

It is also important to remember that the majority of current consumer protection instruments, including the unfair commercial practices framework, rely on the information paradigm: With transparent information consumers should be able to better protect themselves and make more rational transactional decisions.[17] Hence, the prohibition of a misleading omission in Article 6:193d BW, implementing Article 7 UCPD. One of the commonly-placed demands on digital influencers is then to be transparent with their followers about the commercial intent of their posts.[18] Do consumers, however, even notice a hashtag #advertisement or #ad or #spon on social media platforms, especially, if its placement is not visually prominent? This query references the issues of the consumers' lack of attention to the text that accompanies visual messages and their inability to differentiate between posts marked as commercial and non-commercial, when they are browsing through their feed on social media.[19] Consequently, we could question the effectiveness of the enforcement authorities calling upon digital influencers to make the link between them and traders obvious for consumers.[20] The lack of effectiveness of information

11. Wirtualne media, 'Lavazza prowadzi kampanię 'Pierwszy łyk' z influencerami' (14 May 2020) <https://www.wirtualnemedia.pl/artykul/lavazza-kampania-pierwszy-lyk-z-influencerami-kasia-gandor-wujaszek-lifestyle-krzysztof-gonciarz> accessed 24 January 2022.
12. Compare eg European Advertising Standards Alliance (EASA), 'Best Practice Recommendation on Influencer Marketing' <https://www.easa-alliance.org/news/easa/easa-launches-best-practice-recommendation-influencer-marketing-0> accessed 24 January 2022, 7; J Trzaskowski, 'Identifying the Commercial Nature of 'Influencer Marketing' on the Internet' (2018) 65 Scandinavian Studies in Law 83; C Goanta, 'Human Ads Beyond Targeted Advertising' (5 September 2021) <https://verfassungsblog.de/power-dsa-dma-11/> accessed 24 January 2022. See also, the newly released publication: F Michaelsen, L Collini et al, 'The Impact of Influencers on Advertising and Consumer Protection in the Single Market' (Study requested by the IMCO committee, European Parliament, February 2022) <https://www.europarl.europa.eu/RegData/etudes/STUD/2022/703350/IPOL_STU(2022)703350_EN.pdf> accessed 18 February 2022, 15-26.
13. See eg Commission, 'Behavioural study on advertising and marketing practices in online social media' (June 2018) <https://ec.europa.eu/info/files/advertising-and-marketing-practices-online-social-media-final-report-2018_en> accessed 24 January 2022, 32.
14. See eg Goanta (fn 12).
15. See eg Trzaskowski (fn 12).
16. See eg Madimba (fn 7).
17. See eg Recital 14 UCPD. Of course, this regulatory assumption could and has been questioned many times in the academic scholarship, see eg N Helberger, 'Forms matter: Informing consumers effectively' (report for BEUC: The European Consumer Organization, 2013) <http://www.beuc.eu/publications/x2013_089_upa_form_matters_ september_2013.pdf> accessed 20 February 2022; O Ben-Shahar and CE Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* (Princeton University Press, 2014).
18. See eg Stichting Reclame Code, 'Reclamecode Social Media & Influencer Marketing (RSM) 2019' <https://www.reclamecode.nl/nrc/reclamecode-social-media-rsm/> accessed 24 January 2022, point 3. See also eg Reclame Code Commissie (RCC), 9 October 2019, file number 2019/00570.
19. See eg S de Jans et al, '#Sponsored! How the Recognition of Sponsoring on Instagram Posts Affects Adolescents' Brand Evaluations Through Source Evaluations' (2020) 109 Computers in Human Behavior; SC Boerman and CM Müller, 'Understanding which Cues People Use to Identify Influencer Marketing on Instagram: An Eye Tracking Study and Experiment' (2021) International Journal of Advertising <https://doi.org/10.1080/02650487.2021.1986256> accessed 1 February 2022.
20. See eg Committee of Advertising Practice (CAP) & Competition and Markets Authority (CMA), 'Influencers' Guide to Making Clear That Ads Are Ads' (6 February 2020, 2nd edition) <https://www.asa.org.uk/static/9cc1fb3f-1288-405d-af3468ff18277299/INFLUENCERGuidanceupdatev6HR.pdf> accessed 24 January 2022, 8.

obligations in this case may follow from the architectural vulnerability of online consumers.[21]

Another uncertainty pertains to the division of responsibility for potentially unfair influencer marketing between digital influencers and traders. Traders may be concerned about their possible liability if an influencer engages in unfair commercial practices. One of the characteristics of influencer marketing is the degree of freedom that it leaves to content creators, as opposed to more standard advertising campaigns.[22] As a result of that freedom, traders may, however, have no overview of and say as to the specific content that is shared with consumers regarding their products. Alternatively, the responsibility for the content of influencer marketing could rest on digital influencers, but this takes us back to the question of their professional character.

4. Commission's guidance notice: What can we learn?

The first mention of influencer marketing in the new guidance notice is in relation to the notion of a 'trader', pursuant to Article 2(b) UCPD.[23] The Commission specifies that a digital influencer could qualify as a trader. The size of their audience, or the influencer's reach, is irrelevant in this classification. What matters is their engagement in commercial endorsement activities online 'on a frequent basis'. The Commission does not clarify further what they would consider as a 'frequent' engagement in such activities. Consequently, this guidance leaves some uncertainty as to the exact application of the notion of a 'trader'.

Alternatively, a digital influencer could be seen as working 'on behalf of' a trader. Again, no further criteria are provided to apply this classification in the guidance notice. We may recall that the Court of Justice of the EU (CJEU) previously explained that both a trader and a person working on their behalf could be held liable for a breach of the UCPD.[24] Further, the Public Prosecutor's Office of the Dutch Supreme Court recently confirmed that a person participating in a pyramid scheme could act 'on behalf of' a trader.[25] Some of the mentioned in this advice criteria that have been considered in determining whether a person participating in a pyramid scheme acted 'on behalf of' a trader, could easily be applied to influencer marketing. For example, whether this person played a central and decisive role in the participation of others in the trader's services, provided information and explanation about the working of the trader's services, or received a bonus due to participation of others in the trader's services. It remains to be seen whether these and/or other criteria will be applied to determine whether digital influencers act 'on behalf of' traders pursuant to Dutch law. In the absence of further European criteria, national courts are left to interpret the scope of the applicability of UCPD provisions.

The aim of this part of the guidance notice seems clear though: ensuring the influencers' compliance with obligations to clarify the commercial intent of their communication, pursuant to Article 7(2) UCPD.[26] If that commercial intent is not properly or timely identified, this will amount to a misleading omission.[27] With that objective in mind, we could expect a broad application of a notion of a 'trader' and of a person who acts 'on behalf of a trader' to digital influencers.

The main elaboration in the Commission's guidance notice on the influencer marketing occurs when the new point 23c of Annex I to the UCPD, which was introduced by the Modernisation Directive, is discussed. This new addition recognises as a blacklisted commercial practice: Submitting or commissioning another legal or natural person to submit false consumer reviews or endorsements, or misrepresenting consumer reviews or social endorsements, in order to promote products.

The focus is, therefore, on the digital influencers' role to promote specific brands or products.[28] The Commission is aware, however, that influencer marketing practices take on various forms, ie they are not limited to sharing classical product reviews and endorsements. The guidance notice mentions here, eg paid posts, affiliate content, retweets, tagging traders/brands.[29] Again, flexibility in application to various practices employed by digital influencers could be expected.

A digital influencer is described as 'a natural person or virtual entity who has a greater than average reach in a relevant platform'.[30] For clarification's sake, the virtual entity is a digital character, which is controlled by a trader or a person acting in the name of or on behalf of a trader. An example of this in the Netherlands is the character of Esther Olofsson.[31] Regarding the definition of an influencer adopted by the Commission, it is interesting to note that whilst the reach is irrelevant to determine the professional character of the influencers' activity, it will be decisive for identifying influencers to begin with. As we would need to prove the influence of a given marketing practice on consumers' transactional decision-making to apply the protection framework against unfair commercial practices, the 'reach' criterion does not surprise.

21. N Helberger et al, 'EU Consumer Protection 2.0. Structural Asymmetries in Digital Consumer Markets' (BEUC report, March 2021) <https://www.beuc.eu/publications/beuc-x-2021-018_eu_consumer_protection.0_0.pdf> accessed 1 February 2022.
22. See eg Trzaskowski (fn 12), 90-91. For an example of the type of directions that may be given to digital influencers by traders or advertising agencies see on the case of *Lukka Sabbat*: C Goanta and I Wildhaber, 'In the Business of Influence: Contractual Practices and Social Media Content Monetisation' (2019) 4 Swiss Review of Business and Financial Market Law 351. Naturally, the type of relationship between traders and digital influencers, and the degree of freedom left to influencers will vary.
23. Commission (fn 6), 27.
24. CJEU case C-391/12 *RLvS* ECLI:EU:C:2013:669, point 38.
25. Parket bij de HR (Public Prosectur Office of the Dutch Supreme Court), 15 October 2021, ECLI:NL:PHR:2021:974, para 3.22.
26. Commission (fn 6), 27. It is irrelevant whether digital influencers are supplying products to consumers.
27. ibid, 51.
28. ibid, 97.
29. ibid, 98.
30. ibid, 97.
31. <https://www.virtualhumans.org/human/esther-olofsson> accessed 24 January 2022.

It is, however, again left unsaid how to determine the 'average reach'. The Commission does not provide any examples from the currently employed for influencer marketing platforms, eg Instagram, TikTok, YouTube.

The Commission acknowledges that when faced with influencer marketing, consumers will particularly struggle to identify the commercial intent and content's nature of their communication. They express doubts about the effectiveness of information obligations in protecting consumers against the hidden character of influencer marketing. They indicate that even average consumers are likely to attribute at least some personal character to the influencer's endorsement, even in light of a clear marking of the communication as a commercial one.[32] Still, the obligations placed on digital influencers by the UCPD are mainly limited to disclosure duties. Aside following the above-mentioned Article 7(2) UCPD, influencers need to ensure compliance with points 11 and 22 of Annex I of the UCPD, which have been implemented in Article 6:193g paras k and v, as well. The latter prohibits traders from falsely representing themselves as consumers and will require digital influencers to disclose their professional character if they classify as traders or act on their behalf, as discussed above. Here, it is irrelevant whether influencers are promoting their own or other traders' brand, except for the commercial character of their activity being clearer in the first case.[33] Influencers should also not assume that if they are endorsing a product or a brand by adding their face or name to it, this would be perceived as a sufficient disclosure of the commercial intent of the communication. The Commission gives an example of a Swedish case, where an influencer – the CEO, main shareholder and sole board member – promoted on Instagram products of her company.[34] Her posts were deemed misleading, as she did not highlight the commercial intent of her posts. Interestingly, the UK's enforcement practice on this issue deviates from the European standards, as it would be sufficient to transparently indicate that the presented or discussed products are of the digital influencer's own brand, without disclosing a commercial intent behind the communication.[35]

Point 11 of Annex I demands a clear indication of a paid character of a product's promotion in editorial content. In its recent *Peek & Cloppenburg* judgment the Court of Justice of the EU broadly interpreted the concept of 'editorial content', following the trends of journalistic and advertising practice.[36] The Commission considers that in some cases content generated by influencers or posted by them on social media platforms could be included in this notion.[37] We miss, however, any examples of influencer marketing that would qualify as editorial content.

To increase the chances of the influencers' disclosures being effective, the Commission elaborates on the transparency requirement. The assessment of the clarity and appropriateness of a disclosure about the commercial intent of the influencer's communication accounts, amongst others, for the marketing medium used, the communication's 'context, placement, timing, duration, language, target audience'.[38] Such a disclosure is not transparent if it is not prominent, eg if an Instagram post is accompanied by a long text with a hashtag #advertisment added at its very end or if a trader is merely tagged in a TikTok post.[39] It is also noncompliant to hide such a disclosure when layering the information provided to consumers, eg consumers would only see the mention of a commercial character of the post, if they clicked on 'read more'.[40] Further, digital influencers should take care to label as commercial communication all their individual posts, without using a broader, umbrella disclaimer that they are, eg a brand ambassador.[41] In this area, the Commission's guidance is then more detailed.[42]

Following the *Peek & Cloppenburg* judgment confirming that the payment for promotional editorial content did not have to be monetary,[43] the Commission emphasises that any form of consideration for the digital influencer's

32. Commission (fn 6), 97. So far, the RCC did not acknowledge the issues with the effectiveness of disclosures. It stated that a transparent provision of information on the sponsored character of influencers' activities should inform the general public about the '(one-sided) image that is presented' (*'(eenzijdige) beeld dat geschetst wordt*'), see RCC, 16 October 2019, file number 2019/00571. See also eg RCC, 24 February 2020, file number 2019/00778.
33. Commission (fn 6), 99.
34. Stockholms Tingsrätt Patent- och marknadsdomstolen, Mål nr PMT 5929-20, 10 December 2020.
35. See CAP and CMA (fn 20), 6.
36. Case C-371/20 *Peek & Cloppenburg* ECLI:EU:C:2021:674, paras 41-43.
37. Commission (fn 6), 98.
38. ibid.
39. See eg RCC, 16 June 2021, file number 2021/00189.
40. This reflects the previously given advice to digital influencers by various national regulators, eg CAP and CMA (fn 20). The RCC decided that such a communication needs to be visible also on a smartphone's display, without the need to click on an additional button, see RCC, 8 December 2020, file number 2020/99453.
41. CAP and CMA (fn 20).
42. The RCC elaborated also on the timing of the communication. Namely, the commercial character of the influencer's activity must be mentioned immediately, from the moment their online post/blog/video etc. is published. It is insufficient to mention that commercial character in the comments section, in response to one of the commentators. See RCC, 24 February 2020, file number 2019/00778.
43. *Peek & Cloppenburg* (fn 36), paras 41, 46-47.

endorsement gives it a commercial character.[44] This could take a form of, but is not limited to discounts, partnership agreements, free products,[45] including unsolicited gifts, percentage from affiliate links, trips or event invitations.[46] Digital influencers do not need to be in a contractual relationship with traders to fall within the scope of these rules.

However, if there is no contractual relationship between traders and influencers, traders may not be held liable for breach of the provisions of the UCPD. For example, digital influencers aspiring to increase their audience share and to gain endorsement contracts may misleadingly present themselves as brand ambassadors for certain traders, without this having been solicited by these traders.[47] If such activities of digital influencers are frequent enough to qualify them as a trader, the influencers would then bear sole responsibility for breaching the UCPD's provisions.[48] Otherwise, traders should expect to share the negative consequences of a breach by influencers they engage with, especially if traders had editorial control over the influencer's activity, although the latter is not a decisive criterion. The traders' adherence to the requirements of professional diligence, pursuant Article 5 UCPD, implemented in Article 6:193b para 2a BW, seems to demand them paying attention to and taking responsibility for the influencers' marketing practices.[49]

Further, the Commission indicates that influencer marketing could sometimes qualify as aggressive commercial practices. As influencers tend to expand their reach by building trust and personal connection with their audience, they could easily exert undue influence on consumers.[50] Articles 8-9 UCPD, implemented in Article 6:193h BW, prohibit such practices. This raises particular concerns when the influencers' audience is particularly vulnerable, for example, young children. Point 28 of Annex I of the UCPD – and correspondingly Article 6:193i para e BW – prohibits direct exhortations towards children in all circumstances. For example, in Hungary children were directly invited to interact with an animal character, by purchasing an online game, which required sending of a premium-rate SMS message.[51] The game was advertised via different online channels by its operator and several online influencer agencies. By not clearly marking their communication they were found to have infringed the prohibition of Point 28 of Annex I of the UCPD, as well as of conducting misleading advertising practices. The question is whether also in case of an adult audience, it could be possible to claim that a relationship of trust was built, eg with influencers becoming life coaches for their followers (or vice versa), which relationship might facilitate exerting of undue influence.

Finally, the Commission points out that it is the obligation of online platforms that facilitate influencer marketing to provide 'specific and appropriate disclosure tools in the platform's interface'.[52] Instagram and Facebook have recently committed to provide more transparency and tools to identify commercial posts on their platforms.[53] This follows from the increased interest of regulators and enforcement authorities in influencer marketing on various online platforms. The guidance notice reflects this trend.

5. Conclusion

The guidance notice is an interpretation tool, it does not have a binding character. As it states itself it aims to 'facilitate the proper application of the Directive', as well as to increase awareness thereof 'amongst all interested parties'.[54] In this short commentary, the author indicated that the Commission's new guidance notice may, however, still not be as informative as the market players, and the enforcement agencies, might have hoped for. Despite influencer marketing finding a rather prominent space in the guidance, the Commission steers clear from prescribing black-and-white interpretation rules, for example on how to determine whether a particular person is an influencer, whether they could be perceived as a trader, when an influencer's activity is an editorial content, and whether influencers with adult audience could engage in aggressive commercial practices. To clarify some of these outstanding issues, the Commission may decide to propose new rules, but some of them seem to have required more elaboration on the application of existing rules in practice, eg examples of influencers' activities as editorial content. In the coming years we are bound to see either

44. Commission (fn 6), 98. See to that effect RCC, 26 October 2017, file number 2017/00650; RCC, 9 October 2019, file number 2019/00570; recognising payment in kind as consideration (respectively, a free trip and a free repair of a phone).
45. See eg RCC, 24 February 2020, file number 2019/00778 (free steering wheel); RCC, 21 July 2020, file number 2020/00252 (free beauty products); RCC, 21 April 2021, file number 2020/00533 (free beauty products). With respect to the receipt of free products, the RCC decided that if these are unpacked in front of the camera and an influencer makes it clear that they were gifted to them, eg by showing their happiness from the unexpected gift, an average consumer should recognise the commercial nature of their activity, see eg RCC, 21 April 2021, file number 2020/00533.
46. The RCC also stated that it is irrelevant what the monetary remuneration is intended for, eg an influencer could claim that the payment was meant only as a compensation for the use of the influencer's IP rights and to provide them with an expense allowance, rather than to remunerate them for advertising services. This did not take away the advertising character of the influencer's activities. See RCC, 20 December 2019, file number 2019/00696.
47. See for an example of a case where the relationship between the vlogger and the trader was unsubstantiated: RCC, 22 December 2017, file number 2017/00767.
48. Commission (fn 6), 98.
49. ibid. See also on the trader's duties of care, eg RCC, 20 December 2019, file number 2019/00696; RCC, 24 February 2020, file number 2019/00778; RCC, 16 June 2021, file number 2021/00189. The most recent decision clearly states that a trader will not fulfil their duty of care simply by contractually obliging an influencer to add a transparent communication of a commercial nature of their activity (#ad or #sponsor, eg), but not checking the influencer's compliance with this obligation.
50. Commission (fn 6), 99.
51. Hungarian Competition Authority, 26 May 2021, VJ/3/2020, Global AWA Pty Ltd et al.
52. ibid.
53. See eg Competition and Market Authority, 'Instagram to tackle hidden advertising after CMA action' (16 October 2020) <https://www.gov.uk/government/news/instagram-to-tackle-hidden-advertising-after-cma-action> accessed 24 January 2022.
54. Commission (fn 6), 5.

further references to the Court of Justice of the EU from national courts asking for binding interpretation, or further legislative works addressing directly rights and obligations of digital influencers.