[BE] VRM issues first warnings to influencers for violating rules on commercial communication

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On 22 November 2022, the Vlaamse Regulator voor de Media (Flemish Media Regulator — VRM) issued, for the first time, warnings to influencers for violating the rules on commercial communication under the Flemish Media Decree (Article 53).

With the transposition, in 2021, of the revised Audiovisual Media Services Directive into the Flemish Media Decree, channels and profiles on platform services such as YouTube, Instagram and Tiktok can be considered audiovisual media services or broadcasting services (as per Article 2, 26° of the Flemish Media Decree). This means that content creators, vloggers and/or influencers offering an audiovisual media service and who are based in Flanders must comply with the rules for audiovisual media service providers in the Decree. The Content Creator Protocol (CCP) subsequently published by the VRM clarifies how to post compliant videos on platforms such as YouTube, Instagram, TikTok and others. Specifically, the protocol requires content creators, influencers and vloggers based in Flanders to: (1) label commercial communications with 'advertisement' or 'publicity' at the beginning of the description; (2) tag partner(s): @partner; and (3) indicate within the platform that a video contains commercial communication.

Following these changes, the VRM employed Social Media Watchers for its research cell to monitor the activities of content creators, influencers and vloggers based in Flanders on video-sharing and social media platforms, in order to assess their compliance with the rules. The VRM always assesses on a case-by-case basis whether commercial communications are easily recognisable as such. Based on indications that commercial communications were not easily recognisable as such in videos posted by three popular Flemish influencers (Sarah Puttemans, Maximiliaan Verheyen and Steffie Mercie), the VRM's research cell launched an investigation. Over a period of one month, the research cell monitored the videos that were published by these influencers, on their YouTube, Instagram and TikTok accounts and found several potential violations of the rules on commercial communication.

After reviewing the investigation report and hearing the influencers' arguments, the General Chamber of the VRM concluded that all three influencers had published videos that did not mention the use of commercial communication. In

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addition, the influencers had uploaded videos that did make some mention of the presence of commercial communication, but that this was insufficient to be considered easily recognisable as such. In these videos, the disclosure was either not clear and/or placed in such a way that viewers on the social media platforms could not perceive it. The VRM also stated that the mere use of the feature provided by video-sharing platforms to indicate the commercial nature of a video was insufficient to make the commercial communication easily recognisable as such. Additionally, the VRM concluded that the viewer could not sufficiently recognise the presence of commercial communication on the basis of the words "contains paid promotion", "paid partnership" or "paid partner", nor from the abbreviation “ad”. For videos published as a series of stories (e.g. on Instagram), mentioning the word ‘advertisement’ only at the beginning of the series was also insufficient according to the VRM, as for the stories that followed, the commercial communication contained therein was no longer clearly recognisable. The VRM clarified that the obligation to make commercial communication clearly recognisable applied at all times and the mention ‘advertisement’ had therefore to be present in all videos, including in a series of stories which contain commercial communication. Based on these findings, the VRM issued separate warnings for the three influencers.

From these first three decisions by the General Chamber of the VRM, it is clear that the sanction (i.e. a warning) takes into account the fact that these rules are new for content creators, influencers and vloggers (even though they have been extensively informed about them) and that this was the first time that the VRM had sanctioned non-compliance.

VRM, Content Creator Protocol, 2022

https://www.vlaamseregulatormedia.be/nl/content-creator-protocol

VRM, Content Creator Protocol, 2022

VRM t. SARAH PUTTEMANS Beslissing nr. 2022/554C, 14 november 2022

https://www.vlaamseregulatormedia.be/nl/beslissingen/2022/waarschuwing-voor-sarah-puttemans

VRM, SARAH PUTTEMANS Decision No. 2022/554C, November 14, 2022

VRM t. MAXIMILIAAN VERHEYEN, Beslissing nr. 2022/037, 14 november 2022

https://www.vlaamseregulatormedia.be/nl/beslissingen/2022/waarschuwing-voor-maximiliaan-verheyen

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VRM, MAXIMILIAN VERHEYEN, Decision no. 2022/037, November 14, 2022

VRM t. STEFFI MERCIE, Beslissing nr. 2022/036, 14 november 2022

https://www.vlaamseregulatormedia.be/nl/beslissingen/2022/waarschuwing-voor-steffi-mercie

VRM, STEFFI MERCIE, Decision No. 2022/036, November 14, 2022

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