[FR] National Assembly adopts bill defining and regulating influencer marketing

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Tabled by MPs Arthur Delaporte (Socialist Party) and Stéphane Vojetta (Renaissance Party), the bill "to regulate influencer marketing and combat abuses by influencers on social networks" was adopted at first reading by the National Assembly on 30 March 2023. The text contains amendments proposed by the Ministry of the Economy based on the conclusions of a report on the regulation of the influencer marketing sector published on 24 March. A code of conduct for influencers and content creators, explaining influencers' rights and fiscal, social and regulatory obligations, has already been published following this consultation. It focuses on the protection of influencers under the age of 16 in particular.

Section I of the bill defines influencer marketing and the obligations that go with it. Influencers are defined as "natural or legal persons who use their fame to digitally communicate to the public content aimed at directly or indirectly promoting goods, services or any kind of cause in return for financial remuneration or a benefit in kind". Article 2C states that any promotion run by an influencer must explicitly carry a "clear, legible and identifiable label on the image or video, in all its formats, throughout the promotion". It also points out that legislative and regulatory provisions prohibiting the advertising and promotion of certain goods and services (alcohol, tobacco, vapes) or requiring information to be displayed (health warnings) apply to commercial influencers. A *Conseil d'Etat* (Council of State) decree will set out the detailed rules for implementing these provisions. The bill prohibits influencers from promoting gambling and games of chance on platforms that do not limit access to minors. The direct or indirect promotion of cosmetic surgery, various financial services and counterfeit products is prohibited, subject to a six-month prison sentence and a EUR 300,000 fine. Offenders can also be banned indefinitely or temporarily from carrying out any online influencer marketing activity.

Children aged under 16 will not be allowed to promote beverages and foods with excessive fat, salt or sugar content. This also applies to advertisers who use product placement in audiovisual programmes broadcast on video-sharing platforms whose main character is aged under 16. Children under 16 who work as influencers are subject to the Law of 19 October 2020, which governs the commercial exploitation of the image of children under 16 on social networks.

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The label “edited image” should be clearly displayed throughout the video if content edited, created and broadcast by influencers is designed to enhance or widen a person’s silhouette or alter their facial appearance. Failure to do this carries a EUR 4,500 fine and a year in prison.

The profession of “influencer agent”, i.e. someone who puts influencers in contact with brands, is also defined and regulated in the bill. The parties are required to sign a written contract if the financial sums involved exceed a certain threshold laid down by decree. The contract must state that it is subject to French law, the Consumer Code and the Intellectual Property Code.

Section II of the bill concerns the regulation of content published by influencers in accordance with the Digital Services Act (requirement for online platform operators to provide mechanisms for reporting illicit content; information about content moderation, etc.). It also makes provision for campaigns to raise public awareness of influencer-generated content. Social networks will also be obliged to cooperate with the state to regulate the influencer marketing sector.

The bill will be examined by the Senate from 9 May.

Proposition de loi visant à encadrer l’influence commerciale et à lutter contre la dérive des influenceurs sur les réseaux sociaux

https://www.senat.fr/dossier-legislatif/ppl22-489.html

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