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OUTCOME OF PROCEEDINGS

From: General Secretariat of the Council
To: Delegations
Subject: Council conclusions on support for influencers as online content creators

Delegations will find attached the abovementioned Council conclusions, approved by the Council (Education, Youth, Culture and Sport) at its meeting of 13-14 May 2024.

Council conclusions on support for influencers as online content creators

THE COUNCIL OF THE EUROPEAN UNION

CONSIDERING THAT

1. Influencers are a part of the global media ecosystem. Since social media and video-sharing platforms used by influencers are a part of everyday life for many Europeans, influencers have an increasing impact on the online content and information Europeans consume on a regular basis;
2. Social media and video-sharing platforms are becoming an integral element in the development of personal views, behaviour, social engagement and identity, including psychosocial development, in particular during adolescence. Owing to the diversity of influencers, almost everyone can find an online community and strengthen their sense of belonging. Influencers can therefore have a positive impact on their audience;
3. Besides the positive effects, the content created by influencers and their online behaviour may also be harmful to individuals, as well as to society as a whole. The mental and physical health of their audience, in particular that of minors, can be negatively impacted by risks inherent to the online environment such as cyberbullying, mis- or disinformation and unhealthy comparison to influencers. Furthermore, the mis- and disinformation shared by some influencers can also have a negative impact at societal level in areas such as public health and democracy;

4. The impact of influencers extends beyond their commercial activities. Influencers have an impact on their audience that can affect democratic attitudes, values and political opinions, as well as health, personal attitudes and career decisions. They need to be aware of the impact they have and should have the necessary skills to manage it and foster a positive and constructive online presence;
5. Influencers use their technical and creative skills to produce and edit content. They should have media literacy skills such as analytical and critical thinking and they should behave responsibly. They should have a sense of responsibility towards their audience and understand the potential impact of their activities including their commercial practices. They should be particularly aware of the potential impact that sharing mis- and disinformation, online hate speech, cyberbullying and other illegal or harmful content may have on their audience and its well-being. Furthermore, they should know how to react appropriately when confronted with these issues;
6. Influencers have a significant impact on individuals, communities, society as a whole and the media ecosystem. Supporting them in their understanding of relevant legal obligations and their rights as well as strengthening their media literacy skills and responsible behaviour can have a positive effect on both influencers and their audience, thereby contributing to a safer online media landscape;

7. Since kidfluencers are minors, their parents, guardians and other adult caregivers bear a responsibility for the wellbeing and awareness of responsible online behaviour of kidfluencers depending on their age. This responsibility decreases as the kidfluencer ages. Parents, guardians and caregivers should inform themselves and their kidfluencers about relevant legal obligations and rights and strengthen their media literacy skills and responsible behaviour;
8. In many cases national regulatory authorities or other competent bodies already inform influencers about relevant legislation and check their compliance with applicable legislation, for example audiovisual regulators check compliance with the regulatory provisions implementing the Audiovisual Media Service Directive (AVMSD)¹, and consumer protection authorities and other competent bodies check compliance with EU consumer law such as the Unfair Commercial Practices Directive (UCPD)² and the Consumer Rights Directive (CRD)³;
9. The policies, interfaces, functionalities and algorithms of online platforms used by influencers as well as obligations stemming from EU law on these platforms have an impact on the activities of influencers and the content they create;

¹ OJ L 95, 15.4.2010, p. 1 and OJ L 303, 28.11.2018, p. 69

² OJ L 149, 11.6.2005, p. 22

³ OJ L 304, 22.11.2011, p. 64

10. Influencers are a very diverse group with few representative organisations that could take on a supporting role. There are local and international influencer agencies but they mainly focus on representing the business interests of the influencers they work with;
11. The existing EU media and digital literacy policies focus on the digital skills and competences of the influencers' audience, including minors, to help them critically engage with the online content developed and disseminated by influencers. This includes developing a critical understanding of the commercial and societal interests that may underpin the content created and building resilience against unhealthy online habits and harmful practices, including sharing mis- and disinformation;
12. Aside from the existing initiatives that target the media literacy of the influencers' audience, there is a need to further strengthen the development of the media literacy skills and responsible behaviour of influencers themselves;

RECALLING THAT

13. The right to freedom of expression and information for everyone, including influencers and their audiences, is enshrined in Article 11 of the EU Charter of Fundamental Rights;
14. The AVMSD can apply to the activities of influencers insofar as their activities qualify as audiovisual media services, with a variety of approaches taken by Member States in this area⁴. It imposes requirements related to issues such as the transparency and fairness of audiovisual commercial communications and the protection of minors and other vulnerable groups against potential harmful content. The AVMSD also sets specific rules for audiovisual content on video-sharing platforms, having an impact on how influencers operate on these platforms and the quality of the content they provide. Finally, the AVMSD also promotes media literacy skills for all users of video-sharing platforms, those who use video-sharing platforms to consume content and those who use video-sharing platforms to distribute content that they created. It does this by requiring video-sharing platforms to provide media literacy tools and by requiring Member States to promote and take measures to develop those skills;

⁴ See European Regulators Group for Audiovisual Media Services (ERGA) (2021), “Analysis and recommendations concerning the regulation of vloggers”, ERGA (2022), “How to identify and localise vloggers and regulate their commercial communication?”, ERGA (2023), “Learning from the practical experiences of NRA’s in the regulation of vloggers”, and European Audiovisual Observatory (2022), “Mapping report on the rules applicable to video-sharing platforms - Focus on commercial communications”.

15. The Digital Services Act (DSA)⁵ has set up harmonised rules and obligations for providers of online platforms, often used by influencers as their chosen means of disseminating content, with regard to illegal and harmful content intermediated through their services, including disinformation, content that is harmful for minors and other vulnerable groups, and promoting sales of counterfeited goods as well as rules on transparency of commercial content. Thus the DSA impacts the way that influencers are able to make use of online platforms to disseminate their content;
16. The Artificial Intelligence (AI) Act⁶ lays down harmonised rules that aim to protect health, safety and fundamental rights, as well as democracy, the rule of law and environmental protection from the harmful impacts of AI, while promoting trustworthy and human-centric AI and supporting innovation. This obliges influencers who may use AI in the production process to abstain from certain prohibited AI practices, to inform their audience when they are interacting with an AI system and to clearly label deepfakes;
17. The Regulation on the transparency and targeting of political advertising⁷ applies to influencers when they provide political advertising under the Regulation. It establishes obligations for influencers to include labelling and other information about their advertisements which online platform providers must facilitate, and it impacts how influencers are able to disseminate this kind of content;

⁵ OJ L 277, 27.10.2022, p. 1

⁶ OJ L...

⁷ OJ L...

18. The European Media Freedom Act (EMFA)⁸ lays down common rules for the proper functioning of the internal market for media services, while safeguarding an independent and pluralistic media environment, which can have an impact on the activities of influencers, for instance when influencers are qualified as media service providers;
19. The General Data Protection Regulation (GDPR)⁹ lays down rules relating to the protection of natural persons with regard to the processing and protection of personal data and rules relating to the free movement of personal data. These rules can impact the activities of influencers.
20. European consumer laws such as the UCPD and the CRD apply to the commercial activities of influencers, for example when they promote or endorse businesses or trademarks, advertise products or sell services online to consumers. The UCPD requires all commercial communications to be clearly disclosed to consumers, regardless of which technology or channel is used for making this business-to-consumer communication. It also prohibits influencers from falsely presenting themselves as consumers and from making any direct exhortations to children to buy products.
21. European intellectual property laws provide influencers with tools to protect and promote their work while supporting their creativity. On the other hand intellectual property laws prohibit influencers from reproducing or making available to the public content protected by copyright and/or related rights created by others without authorisation;

⁸ OJ L...

⁹ OJ L 119, 4.5.2016, p. 1

22. The European Strategy for a Better Internet for Kids (BIK+)¹⁰ aims to ensure that minors are protected, respected and empowered online in the new Digital Decade in line with the European Digital Principles¹¹. This includes measures to support safe and age-appropriate experiences for minors on social media and video-sharing platforms, digital empowerment, and active child and youth participation;
23. The UN Convention on the Rights of the Child (UNCRC) recognises the rights of children, including kidfluencers, such as the right to privacy and the right to be protected against economic exploitation;
24. The European Union fosters the media literacy of Europeans, including minors, through policies and instruments such as the Creative Europe Programme¹², Erasmus+¹³, the European Solidarity Corps¹⁴, the Digital Education Action Plan¹⁵ and the AVMSD, for example through media literacy measures adopted at national level, and by supporting the European Digital Media Observatory and its regional hubs across the Union;
25. The Influencer Legal Hub (ILH) developed by the European Commission contains a collection of material including video training courses, written legal briefs and overviews of important laws and cases, as well as links to relevant national consumer authorities and further resources. Through these resources, influencers and the general public can familiarise themselves with the European consumer protection standards that need to be applied when advertising, selling goods and providing services;

¹⁰ <https://digital-strategy.ec.europa.eu/en/policies/strategy-better-internet-kids>

¹¹ European Declaration on Digital Rights and Principles for the Digital Decade OJ C 23, 23.1.2023, p. 1.

¹² OJ L 189, 28.5.2021, p. 34

¹³ OJ L 189, 28.5.2021, p. 1

¹⁴ OJ L 202, 8.6.2021, p. 32

¹⁵ COM/2020/624 final

INVITES THE MEMBER STATES, AT THE APPROPRIATE LEVELS, TO:

26. Consider the growing relevance of influencers in the global media ecosystem and the application of existing instruments as appropriate, as well as the tailoring of media literacy initiatives for influencers and their audiences;
27. Facilitate policy dialogue with influencers, including through emerging representative organisations;
28. Make an effort to ensure that influencers understand and comply with relevant national and European legislation, including the above-mentioned legal acts, by making the applicable rules available in an easily accessible and comprehensible way;
29. Support emerging representative organisations to systematically raise awareness among influencers about their role in the media ecosystem and the impact they have on their audience;
30. Support the consistent development of a coherent approach to enhancing the media literacy skills and responsible behaviour of influencers through actionable measures such as training programmes, awareness campaigns and initiatives that strengthen their analytical and critical thinking;
31. Explore possibilities for exchanging good practices between organisations that take on a supporting role for influencers, such as emerging representative organisations and influencer agencies through initiatives such as discussion forums or knowledge hubs;

INVITES THE EUROPEAN COMMISSION TO:

32. Reflect on a coherent approach to influencers across all relevant policy areas, with a focus on responsible behaviour, including by fostering pan-European self-regulatory mechanisms, taking into account their legal obligations and their rights as well as strengthening their media literacy skills and responsible behaviour with a view to promoting digital well-being and healthy online practices;
33. Explore the potential of existing support in EU funds and EU programmes related to media education and media literacy to support organisations that work on improving the media literacy skills and responsible behaviour of influencers as well as exploring synergies between these instruments;
34. Endeavor to keep the ILH up to date with EU media policy developments relevant to influencers and present the information about the legislation in an easily accessible and comprehensible way such as communicating with influencers in their own language. Explore ways of including information on initiatives that enhance influencers' media literacy skills and responsible behaviour, such as training programmes, tools and materials;
35. Reflect in the context of the BIK+ Strategy on the impact of influencers on minors, and on the position of kidfluencers and the impact on their wellbeing;

INVITES THE EUROPEAN COMMISSION AND MEMBER STATES, WITHIN THEIR RESPECTIVE AREAS OF COMPETENCE AND IN DUE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY, TO:

36. Develop policies and instruments to foster responsible behaviour by influencers towards their audience while continuing the initiatives to strengthen the media and digital literacy of the influencers' audience;
37. Encourage and support, in relevant ways, emerging representative organisations, influencer agencies, brands and other relevant actors in the development of self-regulatory bodies or mechanisms, including a possible ethical code or similar initiatives for influencers;
38. Involve influencers in the development of those aspects of media policy that may impact them;
39. Foster knowledge-building and research on the position and well-being of kidfluencers and the role of influencers in the media ecosystem, including the impact they have on society and in particular on minors, building among other things on the results of Horizon 2020 and Horizon Europe projects¹⁶;
40. Evaluate the results of measures taken to support influencers and facilitate the exchange of good practices regarding support for influencers across the Member States;
41. Ensure that measures targeting minors under the BIK+ strategy continue to empower parents and tutors with the right tools and keep pace with the continuously evolving digital environment and also include the impact on and of influencers;
42. Consider reflecting on the effects of the increased use of AI by influencers and the implementation of labelling requirements according to the AI Act.

¹⁶ For instance DIACOMET - <https://cordis.europa.eu/project/id/101094816>

Definitions

For the purposes of these Council conclusions,

‘Influencers’ are online content creators who post content on social media or video-sharing platforms through which they impact society, public opinion and the personal views of their audience, often showcased through their authenticity-based relationship with their audience. Influencers often have a commercial intent and engage with commercial actors through different business models for monetisation purposes. Influencers can also engage in off-line activities, such as patronage, meet-and-greets and product lines. These off-line activities do not fall within the scope of these Council conclusions.

A ‘kidfluencer’ or ‘kid influencer’ is an influencer under the age of 18.

