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The figure of the influencer under scrutiny: highly exposed, poorly regulated

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The figure of the influencer has generated an increase in their presence on social networks. Their ability to create content, their credibility and their identification with the consumer represent an added value in commercial communication. However, their disclosures are controversial due to the lack of transparency and differentiation between their commercial and opinion content. The absence of a clear definition of an influencer, the need to regulate their actions and the difficulty of identifying the commercial content of their publications are evidence of the concern to regulate their activity. The aim of this paper is to analyze, in the European context, the specific regulations on commercial disclosures by influencers, as well as to ascertain the point of view of the agents involved. To this end, a content analysis of the guidelines, regulations and/or laws of 24 European Union countries is carried out, complemented by an *ad hoc* questionnaire that brings together different aspects that can be defined and delimited. The results show a lack of unanimity in the rules and regulations governing influencers, as well as a manifest concern on the part of professionals in the sector to determine their communications. Only two countries, France and Spain, have specific legislation on the subject, limiting commercial disclosure to the existence of consideration and/or number of followers. It is clear that the existing guidelines are, in most cases, more comprehensive in terms of transparency guidelines for identifying advertising than the regulatory texts. The findings question whether the path of legislation is the right one, or whether efforts should instead focus on media and advertising literacy for both influencers and consumers.

KEYWORDS

social media influencer, influencer, legislation, self-regulation, advertising communication

1 Introduction

Social media has played a crucial role in the development of advertising in recent decades. The use of these platforms for advertising purposes continues to grow at an unstoppable pace, continuously attracting the attention of advertisers. In this context, social media influencers (SMI) emerged as an effective advertising tool (Janssen et al., 2021), who act as intermediaries between the advertiser and the consumer and whose prominence has increased as the use and diversity of social networks has grown in recent years (Taramona, 2018). Some authors consider celebrities, along with opinion leaders and experts, to be what we now call influencers

(Kadekova and Holienčinová, 2018). However, as Schouten et al. (2019) state “(...) In contrast to traditional celebrities who have gained public recognition because of their professional talent, social media influencers have gained fame by successfully branding themselves as experts on social media (...)” (p. 259). Given their rapid growth, fame and acceptance, especially among young audiences, influencers are considered the “celebrities of the Internet” (Abidin, 2021).

Today, influencers develop a personal brand through their social media posts (De Veirman et al., 2017). They not only distribute sponsored content, but also create it, which offers great added value to marketers. In addition, influencers are perceived as more trustworthy (Janssen et al., 2021). The reason is that the same message will be considered more authentic and credible when delivered by a “fellow consumer” than by an advertiser (De Veirman et al., 2017).

There is no agreed definition of an influencer. Some qualities attributed to them are: charisma, ease of communication and ability to influence opinions and lifestyles. In short, the emotional work that allows them to connect with their followers, as well as the creation of creative and attractive content, are the real keys that empower them as a brand of their own (Baym, 2015; Duffy and Hund, 2015). There is also no consensus on the segmentation parameters that delimit this figure. Aspects such as number of followers, number of likes received, medium or network used (Instagramer, YouTuber...), subject matter (*beauty vlogger, social media travel, fashion influencers...*) or target audience (*kids influencer, teen YouTubers...*) are taken into account for their classification (De Veirman et al., 2017; Kusumasondjaja and Tjiptono, 2019).

The literature shows, as a basis for describing the state of the art, three review studies: (1) The study by Sundermann and Raabe (2019) on a total of 39 papers published between 2011 and 2018; (2) The study by Hudders et al. (2020) analyzing 154 studies published from 2018 to 2020; and (3) The bibliometric analysis by Ye et al. (2021). This is the most ambitious study to date, covering a total of 387 papers published from 1960 to 2020. According to the results of these papers, the earliest research on influence marketing dates back to 2003. The subject matter of the studies varies. There is an interest in trying to narrow down the concept of influencer (Kay et al., 2020). Professionalisation, i.e., highlighting the influencer as an exclusive job, is also of interest (van Driel and Dumitrica, 2021); but also specific populations such as *kid influencers* and the controversial debate about their protection (Verdoordt et al., 2020). Nevertheless, the most prolific literature focuses on the study of the influencer themselves, targeting what content they disseminate and how they do it (Ye et al., 2021).

The search for transparency in the messages disseminated by influencers, when these messages have a clear advertising nature, is also of concern to both the academic community and the competent bodies (Leszczynska and van Dijck, 2020). Thus, currently, the focus of attention is also on the work aimed at delimiting when the influencer's publication goes from being a mere dissemination to a message of a commercial nature and, by extension, the need to identify it as advertising should be demanded. In this sense, it should be taken into account that influencer marketing displays messages or locations that are not overtly persuasive, which conditions its recognition, especially among children and minors (Boerman and van Reijmersdal, 2020; Mol and Goanta, 2023). This is precisely the target audience that advertisers focus on in the influencer's advertising strategy to promote their brands (De Jans et al., 2018). Moreover, from an ethical and legislative point of view, the difficulty involved in its recognition for

consumers is a challenge due to the complicated delimitation with misleading and/or disguised advertising (Campbell and Grimm, 2019); especially when we are talking about a credulous and vulnerable audience such as minors (Núñez-Cansado et al., 2021). The US, through the Federal Trade Commission (FTC), was one of the first countries to address this issue through guidelines that seek to help both influencers and the brands involved to disclose their commercial communications in a clear and transparent manner. Thus, the following documents are noted as references in the US context: (1) *Guides concerning the use of endorsements and testimonials in advertising* (FTC, 2009); (2) *How to make effective disclosures in digital advertising* (FTC, 2013); (3) *The FTC's endorsement guides: What people are asking* (FTC, 2017); and (4) *Disclosures 101 for social media influencers* (FTC, 2019).

In Europe, regulation has also been introduced to ensure that professionals promote their brands and reach their target audience through SMI publications transparently, seeking to ensure consumer protection and indicating that it is an advertising communication (Balaban et al., 2022). In terms of self-regulation, the vast majority of countries use two reference bodies to develop their national codes or guidelines:

- The International Chamber of Commerce (ICC), which is an international organization representing more than 45 million companies from over 100 countries. In 2018, it developed the *Advertising and Marketing Communications Code* (2018) covering the practices of market influencers, bloggers and vloggers (ICC, 2018).
- The European Advertising Standards Alliance (EASA), of which most European self-regulatory bodies are members. In 2018, it produced the *EASA Best Practice Recommendation on Influencer Marketing*,¹ which was agreed by the entire advertising system and all European self-regulatory bodies. This document was updated in 2023 to take into account the different guidelines and codes developed by the European authorities (EASA, 2023).

In this context, in recent years, practically all European countries have taken action on the matter by formulating documents that address guidelines for identifying the content disclosed by the influencer, when it is of a commercial nature. However, it can be observed that the path taken has been predominantly that of guidelines or recommendations, followed by specific self-regulatory codes. Only recently have countries such as France (2023) and Spain (2024) addressed the regulation of influencer advertising communication in the form of a law (see Table 1).

Against this background, there is a paucity of academic work focusing on existing regulations on the subject. Asquith and Fraser (2020) review existing guidelines in Canada, the USA and the UK with a clear conclusion: the need for further work on truth in advertising and consumer protection. Steward (2021) reviews the regulation of influencers for the social network Instagram in the USA and the UK. The author highlights how, from a legal perspective, the regulation of influencers offers a certain “collision” with surreptitious advertising.

¹ https://www.easa-alliance.org/publications/best-practice-recommendation-on-influencer-marketing-guidance_v2023

TABLE 1 Regulatory synthesis and guidelines on influencers and advertising communication.

Country	Law	Code	Guide	Organization
Austria ^a		x		Österreichischer Werberat (ÖWR) [Austrian Advertising Council]
Belgium ^b			x	Jury d'Ethique Publicitaire (JEP) [Advertising Ethics Jury]; United Brands Association (UBA)
Bulgaria ^c			x	Национален Съвет за Саморегуляция [National Council for Self-Regulation (NCSR)]; Българска асоциация на рекламодателите (BAA)
Cyprus ^d			x	Φορέας Ελέγχου Διαφήμισης [Cyprus Advertising Regulation Organization]; Υπηρεσία Καταναλωτή [Consumer Protection Service (YPC)] and the Φορέας Ελέγχου Διαφήμισης [Advertising Control Agency (FED)]
Czech Republic				Rada pro reklamu Czech (RPR)[Advertising Standards Council]
Denmark				Danske Annoncører og Markedsførere [Danish Advertisers and Marketers (DAOM)]
Slovenia ^e			x	Slovenska oglaševalska zbornica (SOZ)[Slovenian Advertising Chamber] and IAB Slovenia
Spain ^f	x	x		Ministerio para la transformación digital y la función pública [Ministry for Digital Transformation and the civil service] and AUTOCONTROL
Estonia				Turundajate Liit (TULI) [Estonian Marketing Association]
Finland				Mainonnan eettinen neuvosto [The Council of Ethics in Advertising Finland]; Marketing Finland
France ^g	x		x	Union des marques [Brand Association]; Autorité de Régulation Professionnelle de la Publicité [Authority for Self-Regulation of Advertising]
Germany ^h			x	Zentrale zur Bekämpfung unlauteren Wettbewerbs [Centre for Combating Unfair Competition (WBZ)]; Deutscher Werberat [German Advertising Council (DWR)]
Greece ⁱ		x		Συμβούλιο Ελέγχου Επικοινωνίας (ΣΕΕ)[Advertising Self-Regulation Council]
Hungary				Önszabályozó Reklám Testület (ÖRT) [Self-Regulatory Advertising Board]; Magyar Márkaszövetség [Branded Goods Association Hungary]
Ireland ^j			x	The Advertising Standards Authority for Ireland; Association of Advertisers in Ireland (AAI)
Italy ^k			x	Istituto dell'Autodisciplina Pubblicitaria [Institute for Advertising Self-Regulation]; Utenti Pubblicità Associati (UPA) [Associated Advertisers]
Luxemburg				Commission Luxembourgaise pour l'Ethique en Publicité [Luxembourg Commission for Ethics in Advertising]
Netherlands ^l		x		Stichting Reclame Code
Poland				Związek Stowarzyszeń Rada Reklamy [Union of Associations Advertising Council]
Portugal ^m			x	Auto Regulação Publicitária (ARP) [Advertising Self-Regulation]
Romania ⁿ		x		Consiliul Român pentru Publicitate [Romanian Advertising Council]
Slovak Republic				Rada Pre Reklamu [Advertising Standards Council]; Slovenské združenie pre značkové výrobky [Slovak Association for Branded Products (SZZV)]
Sweden				Reklamombudsmannen [The Swedish Advertising Ombudsman]
United Kingdom ^o		x	x	The Incorporated Society of British Advertisers (ISBA)/Competition and Markets Authority/ Committee of Advertising Practice (CAP)/ Advertising Standards Authority (ASA)

Source: Own elaboration.

^aCODE: Advertising Industry Code of Ethics Version (2021).

^bGUIDE: Recommendations du Conseil de la Publicité en matière d'influenceurs en ligne (2018); Recommendations du Centre de la Communication en matière d'influenceurs (2022).

^cGUIDE: Influencer Marketing Recommendation (2019).

^dGUIDE: Influencer Marketing Guide (2024).

^eGUIDE: Influencer Marketing Recommendations (n.d.).

^fLAW: RD 444/2024, of 30 April, regulating the requirements for the purpose of being considered a user of special relevance of the video exchange services through the platform. CODE: Code of Conduct on the Use of Influencers in Advertising (2020).

^gLAW: LAW no. 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating the abuses of influencers on social networks (1). GUIDE: Digital Advertising Communication Recommendation V4 (2017).

^hGUIDE: Labelling of advertising in online media (2016) and Act against Unfair Competition (2010).

ⁱCODE: Marketing of influencers (2023).

^jGUIDE: Guidance on influencer Advertising and Marketing (2023).

^kGUIDE: Digital Chart Regulations on the Recognizability of Marketing Communication Distributed over the Internet (2019).

^lCODE: Advertising Code for Social Media & Influencer Marketing (2022).

^mGUIDE: Guia 3 I's influencer os influenciadores que sao influenciados (2024).

ⁿCODE: The Code of Advertising Practice (2016).

^oCODE: Influencer Marketing Code of Conduct (2021). GUIDE: Influencers' guide to making clear that ads are ads (2023); Social media endorsements: guide for influencers (2022).

Taking the descriptive-comparative study as a reference, Ferrero's (2021) work shows a broad analysis in which she takes into account the regulations of five countries: Spain, the UK, Germany and France. She then focuses her attention on determining how each country deals with the identification of content by the influencer in order to demonstrate its commercial nature. In fact, in the comparative study between Spain and the USA on the practices of 12 influencers who collaborated with the same brands in these two countries, despite the existing regulations on surreptitious advertising, the influencers did not comply with current legislation (Monerri, 2017).

With this starting point in mind, the aim of this study is to analyze the normative-legislative situation of the influencer in the European context. To this end, two specific objectives are set out:

SO1: To analyze the specific regulations, both legislative and self-regulatory, and the recommendations/guidelines existing on disclosures of a commercial nature made by the influencer.

SO2: To learn the point of view of the parties involved (organizations, agencies and professionals) on this issue.

According to Leszczynska and van Dijck (2020, p. 275), "empirical research can be used to inform legislators about people's behavior and to help identify whether there is a need for legal intervention," so this work is relevant and necessary.

2 Materials and methods

An exploratory qualitative-quantitative study was conducted using different data collection techniques: content analysis to achieve SO1 and online survey for SO2.

2.1 Analysis of normative texts and guidelines/recommendations

The normative texts that make up our object of analysis were searched and accessed through the website of the competent bodies (see Table 1) to observe the documents in force in this regard (codes, guides and/or legislation). In this sense, contact was also made with them by e-mail to present the study and provide any relevant information in this regard. In the field of self-regulation, the document *Guidelines for social media influencers* published by the International Council for Ad Self-regulation (ICAS) was also consulted. Given the characteristics of the analysis, the study proceeded by means of methodological triangulation.

- 1 A content analysis of the selected texts was carried out (Neuendorf, 2002).
- 2 The systematization strategy was designed *ad hoc*, taking into account the nature of the object of study (normativity and/or guidelines). For this reason, the approach was to prioritize the qualitative domain and theoretical description (Neuendorf, 2002), due to the richness of the data collected (Moretti et al., 2011). An analysis template was designed in which the variables are formulated on the basis of questions to be answered. The objective is to observe whether the parameters under study exist in the text, avoiding any kind of interpretation or doubt in the coding phase (Elo et al., 2014) (see Table 2).

- 3 Instrumentalization of the coding. Following Krippendorff (1990), before proceeding with the analysis, a pre-test of the template was performed to detect possible errors, points for improvement and to put the template "to the test." Two coders performed the analysis. Using the parameters of Elo et al. (2014), both coded all texts separately and then compared the results. In case of discrepancy or doubt about each of the variables under analysis, a discussion was established until a consensus was reached. To measure the intercoder reliability (ICR), the formula of "raw agreement" was used: 0.00 (no agreement) to 1.00 (perfect agreement). The percentage agreement formula is the number of agreements between two coders divided by the total number of units (Neuendorf, 2002). For this study, the range of agreement was 0.93, which is considered a near-perfect agreement and therefore valid for the template.

A first analysis of the documents was conducted from September to December 2023. In addition, in the search for updates and changes, another analysis was carried out from April to June 2024 to check for updates and changes.

2.2 Data collection and participants

The study universe ($N=117$) was composed of experts of different levels of specialization related to the object of research: heads of control and regulatory bodies of EASA² member countries, associations/companies belonging to the communication industry,³ influencers (identified in professional publications of the sector) and influencers (extracted from the "Forbes List: Best Content Creators 2023"⁴), distributed as in Table 3.

The questionnaire was sent to all of them, with a response rate of 17%.

2.3 Instrumentalization

In order to achieve the objectives set out, a descriptive qualitative-quantitative research was carried out, following the procedure below:

- 1 First, a content analysis (Neuendorf, 2002) of the texts, both legislative and self-regulatory, as well as the relevant guidelines, on influencer communication in social networks in force in Europe was carried out.
- 2 Based on the previous analysis, and with the aim of studying the figure of the influencer, an *ad hoc* and structured online questionnaire was developed, consisting of nine questions distributed in four sections:

Section 1. Informed consent.

2 <https://www.easa-alliance.org/type-of-member/self-regulatory-organisations/>

3 <https://www.easa-alliance.org/type-of-member/industry-members/>

4 <https://forbes.es/lista-forbes-best-influencers-2023/>

TABLE 2 Analysis template.

Thematic blocks	Analysis variable
Definition	1. What are the characteristics that define the figure of the influencer?
Commercial nature of disclosures	1. How should the influencer identify the communication when the communication is commercial?
Identification and transparency	1. Is there a recommended format of tag/reference/#, etc.? If so, indicate which ones. 2. Is there a recommended location for the tag/reference/# etc.? If so, indicate which ones. 3. Is there a recommended time for the tag/reference/# etc.? If so, indicate which ones. 4. Is there a recommendation to maintain the reference if the product/message/service is posted again? If so, indicate which ones.
Consumer protection	1. Is there any specific indication that the vocabulary should be understood by consumers? If so, indicate which ones. 2. Is there any enhanced protection (type of vocabulary, clarity of message, etc.) mentioned for targeting specific audiences (e.g., children)? 3. Are there any specific/enhanced protections mentioned for specific sectors (e.g., food, health, etc.)?
Influencer training	1. Is it recommended that influencers receive training on the products they are talking about?

Source: Own Elaboration.

Section 2. Composed of 3 questions that were elaborated with the aim of reaching a consensus on a possible definition of the figure of the influencer.

Section 3. Focuses on the importance that each of the respondents attach to clearly and transparently specifying the commercial nature of the content published.

Section 4. Aims to collect information about the influencer's training on existing regulations and guidelines so that they are informed about how to disclose content of a commercial nature. In addition, due to the nature of vulnerable products/audiences, special reference is made to the field of health and the need to legally establish a list of these products and/or audiences.

The questionnaire was expressly authorized for use by the Ethics Committee of the University of Alicante (Spain).

3 Results

3.1 Analysis of legal texts, self-regulatory texts and/or guidelines

The analysis of the legal and self-regulatory texts of the 24 countries analyzed shows that practically all of them have guidelines on influencer communication. Only 6 have self-regulatory codes, either specific (Spain, the UK, Netherlands and Greece) or in the general codes on advertising self-regulation some rule has been introduced in reference to influencer advertising communication (Austria and Romania). This was the situation until 2023, when France became the first European country to pass a specific law on influencers. Spain followed a year later.⁵

⁵ Directive (EU) 2018/1808 of 14 November 2018 gives EU Member States the possibility to regulate the activity of influencers as it allows them to be assimilated to audiovisual media service providers. Since its entry into force, the European Regulators Group for Audiovisual Media Services (ERGA) has issued several reports on: (1) analysis and recommendations for regulation; (2) identification and location; and (3) regulatory experiences.

Looking at European codes and guidelines regarding the definition of influencer, without reaching a unanimous consensus, certain points in common can be observed. Austria, Belgium and Spain speak of an above-average capacity to influence opinions and behavior. The number of followers is an item used to define this figure: in Belgium they speak of a large community, while in Spain they mention numerous followers on social networks and/or digital media. The cases of Bulgaria and Portugal are noteworthy, since virtual people or people created with artificial intelligence are also considered influencers and the people/companies that manage these accounts are held accountable. As regards the Portuguese case, it is recommended that the biography of the account should indicate that it is a fictitious character using expressions such as *virtual human*, *robot* and *3D virtual character*. In this sense, it is also necessary to focus attention on the disparity of the name itself. Although the concept of influencer is the one we can find as standardized, we can also find them as brand ambassadors or online content creators (Romania, Holland and France). The Spanish case is of particular relevance, since, in accordance with its recent law, which covers video providers through platforms, including social networks, they are limited by the concept of *user of special relevance (USR)*.⁶

The documents consulted focus on the need for transparency and identification of disclosures of a commercial nature. First, it should be noted when the nature is of a commercial nature. French law defines them as natural or legal persons who, in exchange for remuneration and relying on their reputation among their audience for communicating by electronic means, engage in the dissemination

⁶ It should be noted that not all influencers are considered to be Relevant Users (RU), only those who meet all of the following requirements: (a) economic activity by which its holder obtains significant income derived from its activity in video sharing services through platform; (b) editorially responsible for the audiovisual content made available to the public in its service; (c) service aimed at a significant part of the general public and may have a clear impact on it; (d) function of the service: to inform, entertain or educate; and (e) service offered through electronic communications networks and is established in Spain (Art.94.2 Law 13/2022, of 7 July, Law 13/2022, of July 7, General Law of Audiovisual Communication).

TABLE 3 Distribution of study universe.

EASA members	25
Industry members	13
Digital pure-play companies (Google)	1
Influencers	50
Agencies	11
Sector professionals	17

Source: Own Elaboration.

of content intended to promote, directly or indirectly, goods, services or any commercially influential activity (Art.1).

Spain, together with Austria, Belgium and Bulgaria, through its code, follows this line by adding, aside from the consideration (whether financial or otherwise), that there must be editorial control by the advertiser. In this country, a further step is taken to limit the figure and, by extension, to submit its activity to the competent legislation. Accordingly, *Royal Decree 444/2024, which regulates the requirements for the purpose of being considered a user of special relevance of video sharing services through a platform*, determines that the influencer must comply with the law in force as long as they have a significant income⁷ and audience.⁸

Germany goes further, since when the influencer publishes, on their own initiative and without receiving anything in return, they do not need to label it as advertising. The German case deserves to be taken into account, as it is the only one that raises the possibility of labelling depending on whether the product is in the foreground or background of the advertising piece. The link between work and the brand is also addressed in the UK. Thus, the CMA (The Competition and Markets Authority) considers that if the influencer has had a relationship in the past (in the last year) with a brand, they must communicate this to their audience.

7 Significant revenues are considered to be the gross revenues accrued in the previous calendar year, equal to or greater than 300,000 euros, derived exclusively from the activity of the users in all of the video exchange services through the platform they use. In this regard, the income that may be taken into account to determine significant income shall be the following: (a) income obtained, both from monetary remuneration and in kind; (b) received by users from the providers of the video-sharing services through the platform; (c) received from the activity of users from fees and payments paid by their audience in the video-sharing services through the platform; (d) from economic benefits granted by public administrations and entities, whatever their denomination and nature, related to the activity of users in the video-sharing services through the platform; (e) Other income obtained from the activity of users in the video-sharing services through the platform not provided for in the previous letters of this section (Article 3).

8 Significant audience are considered: (a) the service reaches, at some point in the previous calendar year, a number of followers equal to or greater than 1,000,000 on a single video-sharing platform service; or a number of followers equal to or greater than 2,000,000, in aggregate; (b) across all the video-sharing platform services on which the user is active, a number of videos equal to or greater than 24 have been posted or shared in the previous calendar year (Article 4).

Aspects such as clarity of the message and appropriateness to the context, specifying the brand and being comprehensible and transparent, are the basic and common characteristics that the communication must have. It is also stressed that these communications should be honest and truthful: based on one's own experience; and that if the product/service has not been liked, it should not be disclosed in the opposite direction. Another recommendation to be highlighted is the language of the disclosure. Some countries recommend that the disclosure should be made in the language of the country or in English (Bulgaria, Italy and Spain); Germany, on the other hand, recommends using labels in the language of the country. Virtually all codes make some recommendation regarding the use of tags: "Content in partnership with..."; "#SponsoredContent"; "paid advertisement by..."; "advertising"; "ad"; "sponsored"; "ambassador" or "Company X gave me this product to try..." "paid partnership with"; as well as hashtags: #advertising; @brand; #ad; #sponsored; #BrandName_Ambassador; #BrandName_Partner. In the case of French law, the use of the words "advertising" or "commercial partnership" in a clear, legible and identifiable manner is required and failure to do so constitutes misleading advertising. In addition, when any kind of retouching is carried out, for example to shape the silhouette, it should be indicated by the label "retouched images" or "virtual images," if they have been made with Artificial Intelligence processes. Both the guidelines and the European codes refer to formatting. It is emphasized that certain content may require both audio and visual disclosures. When it is an audiovisual piece, the message should appear (either throughout the piece or in intervals) both visually and aurally; when it is a live broadcast, the message should be repeated periodically; in the case of reposting, it is also recommended to maintain the mention.

Most European codes and guidelines agree that influencers' publications should be clear and simple so that the average consumer can easily identify the advertisement; however, only Spain defines this in its code. Austria, Belgium, Bulgaria and Netherlands also make specific mention of greater protection for minors, urging stricter parameters, supervision and prior authorization by the responsible adult. Notably, Austria is the only country that refers to influencers not using images that propagate unhealthy behavior or body shapes, especially in relation to body weight. It is also the only country, along with the UK, that indicates that influencers must not use psychological or verbal violence (insults, threats or even jokes); nor engage in behavior (professionally or personally) that could be construed as racism, anti-Semitism, homophobia, misogyny, religious intolerance, violence or extremism, intimidation or aggression towards others, pornography or any criminal activity. Be that as it may, irrespective of whether these parameters are explicitly mentioned in the relevant code or guide, the general tone with regard to specific audiences (especially minors), with specific sectors and misleading/covert advertising must be in line with the relevant legislation. This line to be followed is very clearly observed in the two existing specific legislations. In both Spain and France, reference is made to the protection of minors in accordance with the legislation in force. Moreover, France also directly identifies the protection of minors when they act as influencers, and holds their legal representatives responsible. In France, its legislation is also expressly linked to existing legislation in specific sectors such as food and the use of nutrition and health claims.

Furthermore, commercial communication by influencers to promote activities linked to aesthetics, therapeutic procedures, products containing nicotine, establishments linked to animal conservation, gambling or cryptocurrencies is prohibited.

Finally, as far as influencer training is concerned, only France, through its self-regulatory body ARPP (Autorité de Régulation Professionnelle de Publicité) is a pioneer in the field of responsible influencing, having created several years ago *Le Certificat de l'Influence Responsable*, for content creators who collaborate with commercial brands in order to promote ethical and responsible influencer marketing.

3.2 Responses from industry professionals

From the responses obtained (Figure 1), it is clear that the influencer can be defined as the person who, through their publications, is capable of shaping attitudes and influencing the opinions of individuals (16 responses out of 20 professionals consulted). It is also highlighted that it is the number of followers that can define this figure (14 out of 20). However, their charisma or whether they are great communicators are not traits that are considered to be a priority when it comes to defining them.

On the other hand, it is mentioned that what defines an influencer is the reach they achieve with their content, i.e., that they achieve a “great impact” on the public.

It is worth highlighting some answers given by respondents, depending on their country of origin. In the case of France, it is noted that the law defines “commercial influencer activity” instead of influencer, referring to the “Activity exercised by any person who, in exchange for remuneration, uses their notoriety among their audience to communicate content to the public by electronic means in order to promote goods, services or any cause (Art. 1).”

In Dutch self-regulation, an advertising influencer is described as a “distributor,” which is defined as a person who has a relevant or relevant relationship with the advertiser and who distributes advertising via social media in exchange for financial or other consideration, and may be a natural or legal person.

In addition, 19 of the 20 professionals consulted emphasize that the commercial nature of the content of the publications posted by the influencer occurs at the moment when they receive

financial or any other type of compensation. We underline the fact that the inclusion of affiliate links or discount codes is also considered a practice that marks the commercial nature of the content of the publications, as well as collaborations and/or commercial mentions between brand and influencer. However, the editorial control of the advertiser is not considered as a priority circumstance that establishes the commercial nature of the relationship (Figure 2).

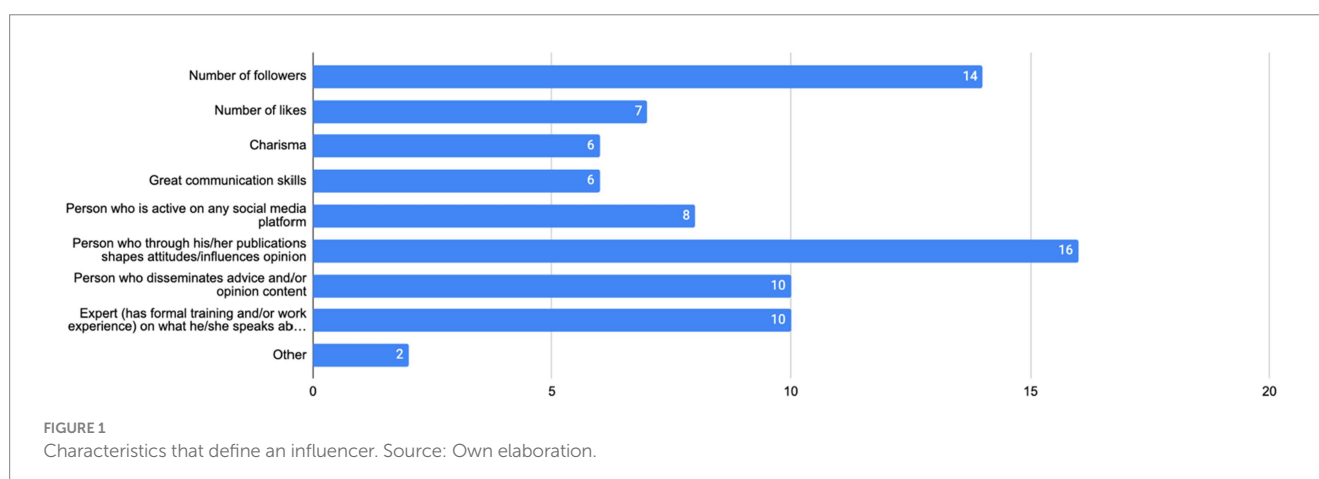
Other circumstances stressed by respondents that can determine the commercial nature of the content are:

- That the influencer shows a package/gift they have received from a certain brand.
- That there is a reciprocal agreement/commitment. On the part of the creator: commitment to produce content; on the part of the brand: commitment to give compensation (gift, payment, trip, invitation to an event and so on).

Nevertheless, it should also be noted that some respondents do not speak of a “commercial nature,” but rather of a “relevant relationship” understood as one in which a contract is concluded, a sponsorship is carried out or free products are offered to influencers in order for them to publish something about the free product. In addition, the existence of a relevant relationship also requires that the influencer receives some kind of benefit that the advertiser links to the distribution of the content, such as a material benefit (money or goods), but also any other benefit, such as brand awareness and/or additional followers.

The need to reach a consensus on a definition of the figure of the influencer is reflected in the figures shown in Figure 3. A total of 85% of the responses focus on the importance or priority of establishing a clear definition. However, it is striking that 55% consider it important but not a priority.

According to 18 of the 20 professionals surveyed, clear labeling is recognized as the most appropriate way for influencers’ publications to show their commercial character. Location, language and vocabulary are, in this order, relevant elements to achieve such identification. In addition, it is necessary to expressly indicate that it is advertising by including the caption “ad” or through an express mention by the influencer (Figure 4). It is also worth noting that in some cases there is a lack of transparency in influencers’



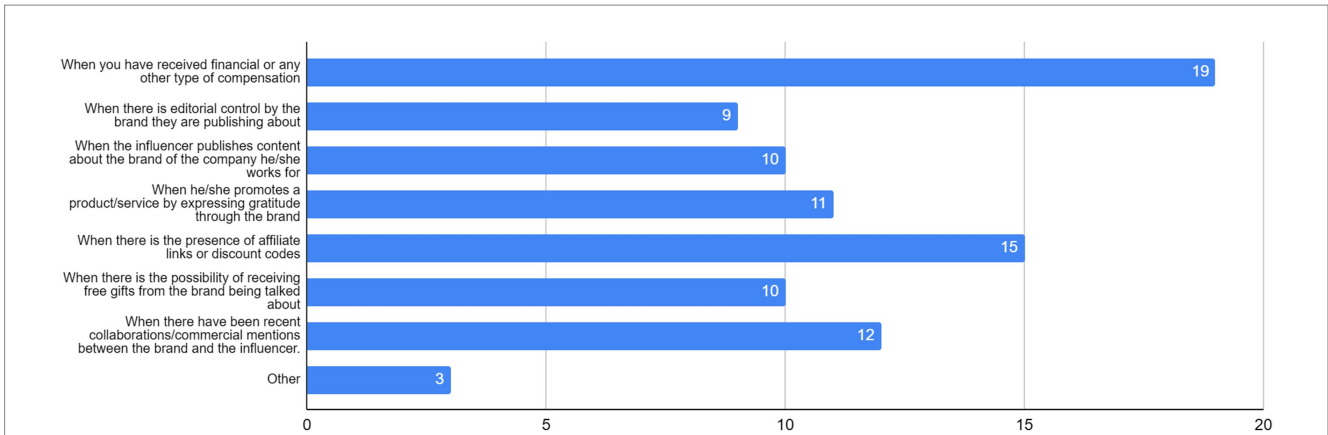


FIGURE 2 Consideration of the commercial nature of the content. Source: Own elaboration.

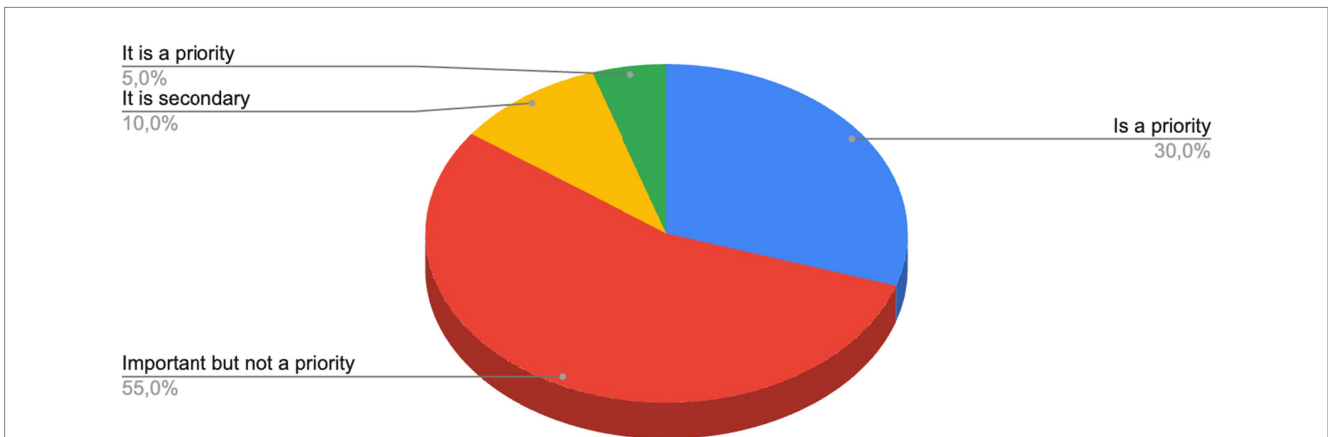


FIGURE 3 Priority to establish a consensual definition of influencer. Source: Own elaboration.

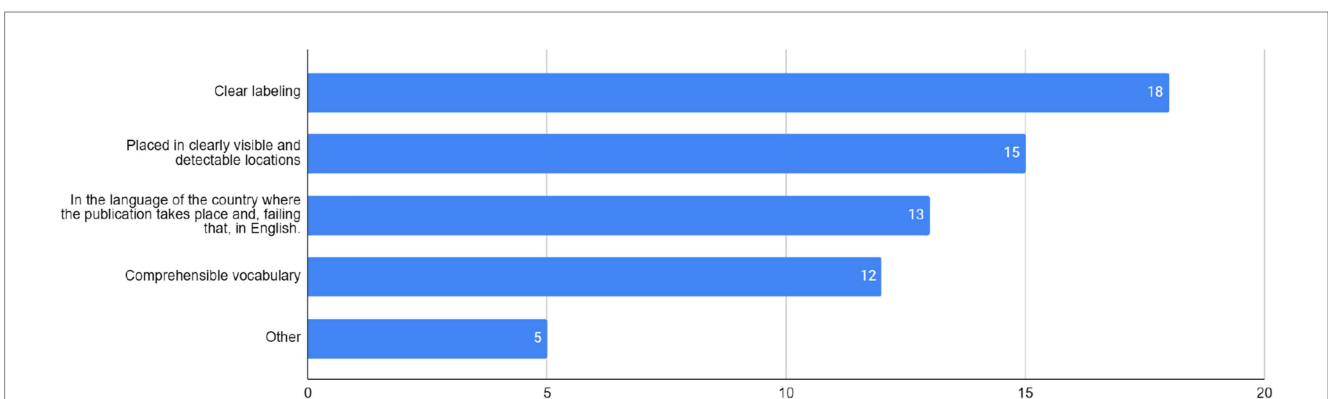


FIGURE 4 Ways to identify the commercial nature of the content. Source: Own elaboration.

communication, as they are in fact selling a specific product or service. Nonetheless, unlike other types of actions, strategies and/or media, these are contents accepted voluntarily at the same time as the influencer is followed, a situation that can be reversed with a simple action: stop following the account.

There is a clear duality in the respondents' stance on whether it should be mandatory for influencers to be trained in the regulations, both imposed and self-imposed, on the publication of content of a clearly commercial nature. Of these, 52.2% believe it should be voluntary, while 47.8% feel it should be mandatory (Figure 5).

However, when asked about the need for influencers to receive training, formal or informal, on the product or service they advertise, responses varied substantially. Half of the respondents answered that it should be a requirement when the content is directly related to health (food, diets, recipes and so on), sensitive products (gambling) or similar (see Figure 6).

Sometimes, the content that influencers disseminate can have a major impact on the health of individuals. Equally, a negative impact can be generated when this content is targeted at vulnerable audiences. In view of these possible situations, respondents were asked about the need to legally create a list of products/services and/or specific audiences whose dissemination through influencers is prohibited. More than half of the responses were in the affirmative, although 30% of the responses were in the opposite direction (Figure 7).

Among the audiences to be taken into account in this list are children, young people and the elderly, while the products mentioned are alcohol, medicines and other medical devices, gambling and electronic cigarettes. In addition, there is a clear need to harmonize the bans with those of other digital media to ensure equal treatment between channels.

Finally, as possible solutions or actions to control the content disseminated by influencers, the following are alluded to:

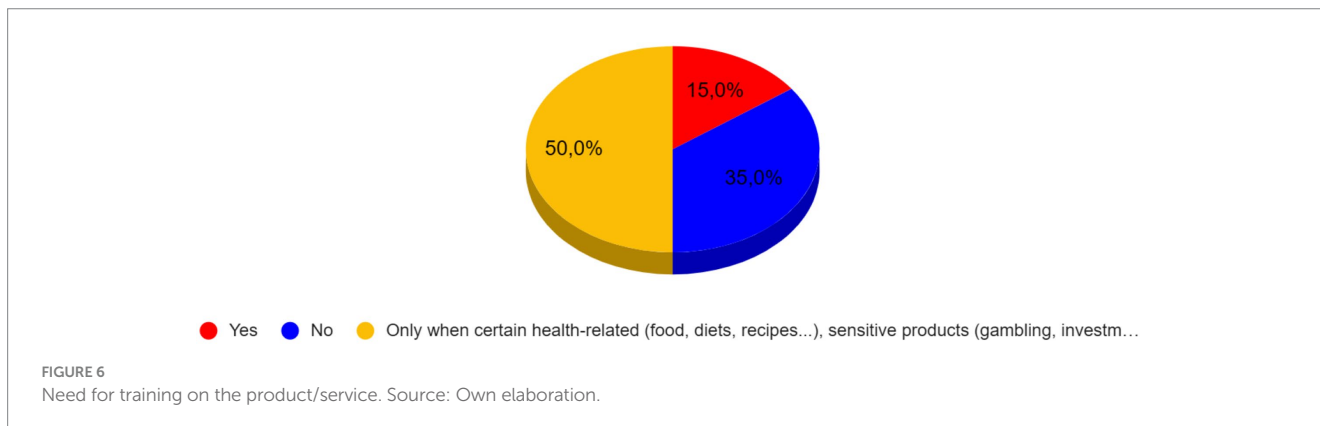
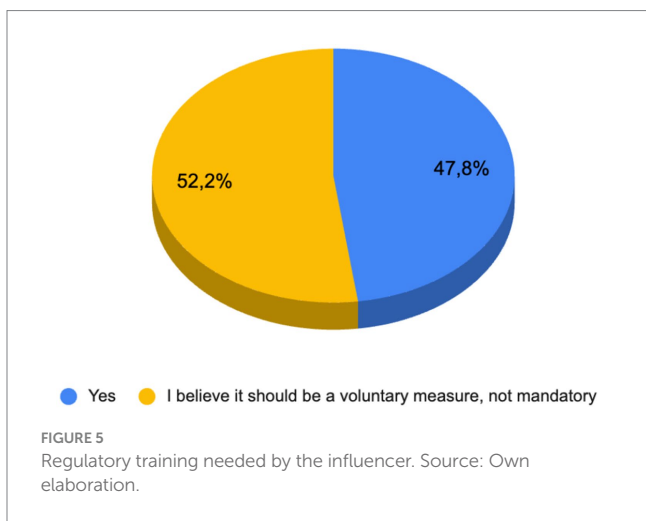
- Conducting a monitoring of the content by the platforms.
- Penalizing those brands that “use” influencers as a vehicle to profit from their brands.
- Making public a list of influencers.
- Blocking accounts by the platforms.

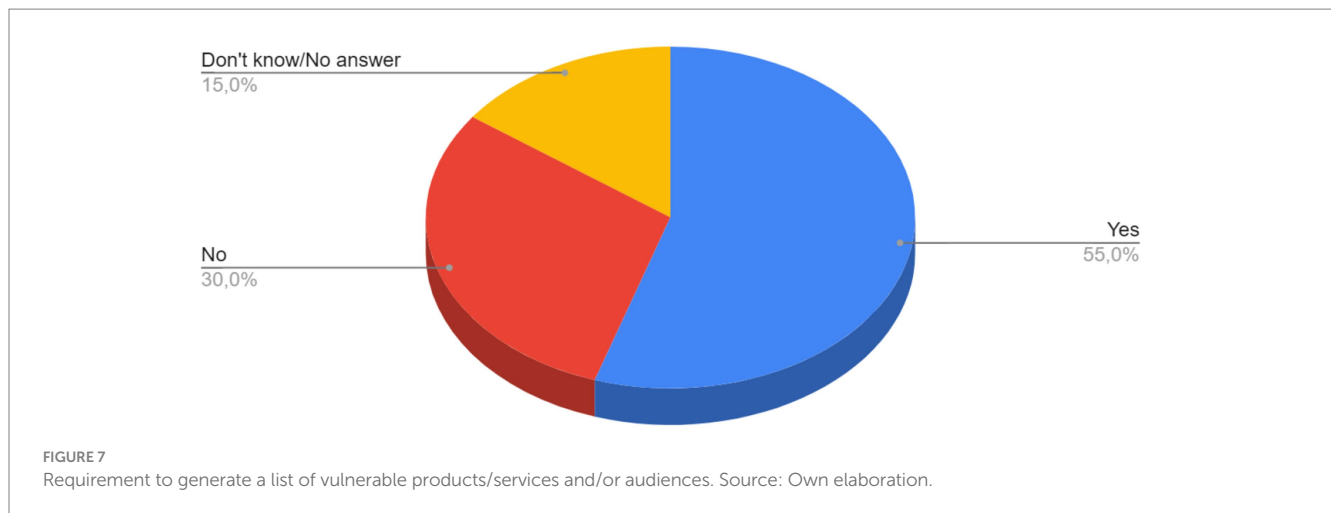
4 Discussion

Of the 24 countries analyzed, only two countries (Spain and France) have specific legislation on the subject; four (Spain, the UK, Netherlands and Greece) have specific self-regulatory codes; and the rest address the commercial disclosure of influencers through self-regulatory codes on advertising by inserting a specific rule or do not have any self-regulation in this regard. It can also be observed that the guides, either as the only text on the subject or as a complement to the legislation and/or self-regulation in force, are relevant documents.

Respondents attach importance to a consensual definition, but do not consider it a priority issue. The lack of consensus on the term is evident. The texts analyzed address it by defining an influencer as a person with the capacity to influence attitudes and behaviors as well as someone with numerous followers. This parameter coincides with the opinion of the respondents. It is worth noting that the vast majority of professionals surveyed do not speak of a commercial relationship between influencer and brand, but rather of a “relevant relationship.” As for the specific legislation on the subject, given the difficulty of specifying a definition, they do establish the basic parameters not only of what an influencer is, but also when their activity should be legislated when it is of a commercial nature. French legislation clearly speaks of the existence of remuneration, an aspect also addressed by many of the texts analyzed. Spanish legislation also adds the parameter of significant audience, i.e., number of followers. In short, the existence of consideration and significant audience would be the paths established by the legislation to address this figure. However, the parameter of “editorial control of the brand,” which is mentioned in many of the codes/guidelines analyzed, is left out, not being considered important by the respondents.

Self-regulatory texts as well as guidelines are much more comprehensive than current legislation and contain key parameters on which labels to use, where to place them and the language to make commercial disclosure transparent. Thus, while only France, with labels such as “advertising” or “commercial collaboration,” requires the identification of advertising content in a clear and legible manner,





Spanish legislation does not address this issue. However, both the codes and the guides analyzed do detail parameters on which labels to use, examples of such labels, when and where to insert them according to the format of the communication and recommendations on the language to be used. On the other hand, the obligation to identify images when they are retouched is noteworthy in the French legislation. In addition, there is strong protection for minors and, in certain sectors, commercial communication through the use of influencers is prohibited. This is undoubtedly a remarkable aspect, since the rest of the texts, both legal and self-regulatory or guides, barely make any specific mention of the protection of particular audiences and/or sectors, leaving this task to the competent legislation on the subject.

This work shows that regulation can be a tool, but its format does not adjust to the circumstances of the media ecosystem in which the influencer coexists. First, Spanish legislation legislates according to the number of followers and income, equating the figure of the influencer to that of any online operator/platform. However, we consider this to be insufficient because many “users of special relevance” may be left out of this legislation. Moreover, on an economic level, one can equate clothing advertising or food advertising, commercial disclosure about cryptocurrencies or talk about health-related products; but on an ethical and public health level, they cannot. French legislation has taken a step forward with certain sectors (aesthetic medicine, therapeutic procedures, products containing nicotine, gambling or cryptocurrencies) by prohibiting their commercial communication through influencers. This legislation not only sets out the type of labels that must be used to inform that we are dealing with advertising, but also makes it compulsory to communicate that these are retouched images. In the same vein, it is not possible to legislate in a generalized way because the consumption of all advertised products does not have the same consequences. The opinion of the respondents was also along these lines, as they questioned the special protection that had to be taken into account when advertising products such as tobacco, alcohol or gambling, as well as when the audience was minors or elderly people. On the other hand, the texts analyzed also fail to address the issue of the influencer’s training/experience with the products they are advertising. Nowadays, many influencers offer guidelines, for example, on how to maintain diets, including specific diets such as vegan ones. Many of them venture into publishing books

on the subject that they also advertise on their networks, but few have formal training in the field (Romero-Cantero et al., 2022). In fact, there are already studies that show the spread of hoaxes and fake news promulgating misinformation on social networks (Mahy et al., 2022; Freiling et al., 2023), especially on diets and food lifestyles (Arguiñano and Goikoetxea, 2021). We highlight the US guide entitled “Guides Concerning the Use of Endorsement and Testimonials in Advertising,” which refers to expert endorsement, where expert is understood as having experience, knowledge or studies on specific topics (Harris, 2019). For this reason, many of the respondents are in favor of regulation and specific training by the influencer, but only when it concerns health or certain audiences.

The professionals surveyed also note the need to differentiate between “content creator” and “influencer”. In this way, the issue of the influencer and the fine line between content creator/disseminator and commercial content creator (Balaban et al., 2022) is further explored. The texts under study only address its regulation in the latter case, but we cannot forget its capacity to influence and the scarce regulation on the consequences they may have on addictive behaviors, Eating Disorders (ED) and so on, because what happens when they are mere opinions with no commercial purpose but can create harmful behaviors? This aspect has also been highlighted by respondents and in recent literature (Marauri-Castillo et al., 2024). Only codes such as the English and Austrian ones devote special attention, in addition to the promotion of products or services, to the influencer’s own behavior and disclosure when it is harmful to health or involves psychological violence or discrimination of any kind. It is worth stressing this issue because the recent report entitled *Council Conclusions on supporting influencers as creators of online content* claims precisely the negative effects that not only the content of influencers, but also their behavior, can have on society, damaging its mental and physical health through cyber-bullying, misinformation or disinformation and/or unhealthy comparison with influencers. In this sense, it becomes clear that “the impact of influencers extends beyond their commercial activities” (European Commission, 2024, p. 3).

From our point of view, we question the necessity and, more importantly, the effectiveness of specific legislation on commercial disclosure of influencers. In terms of self-regulation, there are already studies that highlight the minimal monitoring of those in force to date (Aguilleiro Prats et al., 2020; Ramos Gutiérrez and Fernández Blanco,

2021). Following the approach of the [European Parliament \(2022\)](#) in the document “The impact of influencers on advertising and consumer protection in the Single Market,” the definitions of advertising determine how national rules apply to influencers and their application and jurisprudence may vary from one country to another. Thus, the question arises as to whether the focus should be solely on the advertising nature of the influencer and subject to the relevant legislation. Many of the professionals surveyed advocate the absence of regulation, since the commercial practices of influencers, in the case of Spain, for example, would be covered by legislation on unfair competition or misleading advertising, among others. In fact, rather than regulation, they advocate the following consensus guidelines: (1) Monitoring the influencer’s advertising practices; (2) Penalizing brands for non-compliance; (3) Drawing up a public list of influencers; and (4) Blocking accounts if they do not comply with current regulations. However, there are also voices that advocate for stronger and more consensual legislation at the European level. This is the case of the [European Consumer Organization \(2023\)](#) which, through the document *From influence to responsibility: time to regulate influencer marketing*, offers a series of recommendations to promote and reform legislation in this area.

With this study as a starting point, we consider that there are two actors that receive little or no attention when it comes to legislation: the influencer and the consumer. On the one hand, there is the training of the influencer in this matter. They should be aware of the consequences of their publications and know that, when these are of a commercial nature, the responsibility lies with them, not with the brand. Only France has a training certificate in this respect, which the European authority (EASA) is already trying to implement. On this point, we highlight the *Influencer Trust Label (ITL)* actions carried out by iCmedia, which establishes indicators of responsibility and transparency for those influencers who act responsibly. On the other hand, the White Paper on Responsible Influence also urges platforms to have a *Chief Ethics Officer*, i.e., a person responsible not only for the platform’s ethical behavior, but also of the brands and agencies, with the aim of detecting bad practices and promoting training among stakeholders ([San-Miguel-Arregui et al., 2021](#)). The path of (in) education is followed by the [European Commission \(2023\)](#) with initiatives such as the *Influencer Legal Hub* platform, through which influencers can find information on EU legislation in the field of business practices that will help them to comply with the rules. There is a paradox when it comes to requiring training, the opinion of respondents is divided between those who consider that training should be voluntary, while the other half consider that it should be mandatory.

On the other hand, the consumer and his or her media education are not being considered, but only the protection of the consumer. Taking into account that communication in the online environment is advancing at a rapid pace, it is practically impossible institutionally to continue adapting documents in a timely manner. Therefore, educating the consumer on the new formulas of commercial communication in the online context, which are more creative, more subtle and, by extension, more difficult to detect, is one of the challenges to be faced by implementing actions focused on both media and advertising literacy ([De Veirman et al., 2017](#); [Hudders et al., 2020](#)).

The path towards the literacy of both actors is highlighted in the report on *Council Conclusions on supporting influencers as creators of online content*, which calls for the promotion of policies focused on

boosting the digital skills and competences of the target audience of influencers to enhance their critical sense. It also advocates working to ensure that influencers understand and comply with current legislation, being aware of their power of influence not only in terms of communication but also in terms of behavior ([European Commission, 2024](#)).

Finally, although this is an exploratory study limited to the European context, it should be noted that there is no record in the literature of research of this magnitude in which, on the one hand, texts (of any kind) on influencer advertising communication are combined and compared and, on the other hand, the perspective of the parties involved is considered. However, we are also aware that, in the future, it would be necessary to deepen the parameters of analysis, from a longitudinal point of view, observing changes in documents and recent regulations, extrapolating to more countries and trying to gather more information by increasing the number of respondents. We are also aware of the limited number of responses obtained from the professionals and organizations surveyed. Although the information provided by those who have responded to the questionnaire is extremely valuable, in the future we should work on increasing the number of responses complemented with other working methodologies such as focus groups or Delphi method. Despite these limitations, the work we present provides solid conclusions that seek to address updated regulatory information on influencer disclosures, going beyond legal or self-regulatory texts by implementing the analysis of guidelines. This analysis, complemented with the perception of professionals, provides relevant information for both the competent bodies and the profession on where influencer regulation stands, what the guidelines are between countries on their definition and delimitation and what is understood by commercial communication. In addition, it offers a summary of the parameters followed in terms of transparency and consumer protection. This information is intended to serve both as an aid for the creation of (in) formation documents and as a basis for future policies and legislation in this area.

Data availability statement

The datasets presented in this article are not readily available as this is an ongoing research project. Requests to access the datasets should be directed to n.quintas.froufe@udc.es.

Author contributions

CG-D: Conceptualization, Data curation, Formal analysis, Funding acquisition, Investigation, Methodology, Project administration, Resources, Software, Supervision, Validation, Visualization, Writing – original draft, Writing – review & editing. CQ-S: Conceptualization, Data curation, Formal analysis, Funding acquisition, Investigation, Methodology, Project administration, Resources, Software, Supervision, Validation, Visualization, Writing – original draft, Writing – review & editing. NQ-F: Conceptualization, Data curation, Formal analysis, Funding acquisition, Investigation, Methodology, Project administration, Resources, Software, Supervision, Validation, Visualization, Writing – original draft, Writing – review & editing.

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The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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