

## WFA comments on TRIS notification 2023/0237/F (France)

Draft Law aimed at regulating commercial influence and combating abuses of influencers on social networks

The [World Federation of Advertisers](#) (WFA) is the voice of marketers worldwide, representing 90% of global marketing communications spend, over €800 billion per year. We represent over 150 brand owners and 60 national advertiser associations worldwide. This includes national advertiser associations in 19 EU Member States and about 50% of the companies we represent are European.

WFA welcomes the opportunity to comment on the proposed French [draft law](#) aimed at regulating commercial influence and combating abuses of influencers on social networks, as part of the EU's TRIS notification procedure ([notification number 2023/0237/F](#)).

WFA notes with concern that only the provisions related to online platforms, transposing several obligations of the [Digital Services Act](#) (DSA), have been notified, when in fact **additional provisions should be assessed by the European Commission in order to ascertain their compatibility with EU law and the principles of the free movement of goods and services**. We therefore believe that further analysis of the French proposal is needed by the European Commission and ask the European Commission to issue a detailed opinion in order to remove any barriers to the EU single market. We would also like to bring to the European Commission's attention that the proposal was already [promulgated](#) 9 June 2023, despite the ongoing standstill period under the TRIS notification procedure.

### Proposed measures compromise EU's Country of Origin principle

The Country of Origin (COO) principle under the [Audiovisual Media Services Directive](#) (AVMSD) ensures that providers of media services only need to abide by the rules of the Member State in which their central administration is located and where management decisions are taken on programming or selection of content, rather than in multiple countries. This facilitates the process for service providers, especially in cases in which they conduct cross-border business. **National rules that are stricter than the AVMSD can thus only be applied to providers in that jurisdiction.**

WFA strongly supports the objective of the COO to remove the burden of audiovisual media service providers, broadcasting across multiple Member States and having to comply with many different national legislations. However, in practice, **the text would require a French-speaking Belgian influencer to comply with the French law and follow national requirements**, such as displaying several information required by French legislation ("images retouchées"; sectorial information on the product promoted such as environmental scoring or messages, according to French rules, e.g. on mobility regarding the automotive sector). We thus note with concern that this provision is compromised under the proposed French law.

### Advertisers at increased risk of being held liable

The definition of an "influencer" in Article 1 is drafted in a way that would **deem any product placement as de facto advertising**. It does not take into account existing definitions of commercial communications, nor does it consider aspects of editorial independence and remuneration. Similarly, Article 2C **does not allow any granularity in terms of describing the**

**commercial partnership** and instead requires any commercial communication to be labelled as “advertising” or “commercial collaboration” despite of the Unfair Commercial Practices Directive (UCPD), the Digital Services Act (DSA) or the AVMSD and without permitting the use of the tools provided by platforms to comply with. These provisions would engender important consequences in terms of liability for advertisers.

### **Major consequences on cross-border operations**

The draft proposal further **fails to take into account the cross-border nature of media services providers and social networks** and the European dimension of the proposed law. As per the draft Article 2ter, the requirements in the draft law would apply to **all influencers where a French audience is, “even incidentally”, targeted**. In line with the AVMSD, such rules would have to be set at European level, and not by French lawmakers.

With the European Commission reviewing the need for further EU legislation under the [Digital Fairness fitness check](#), it would be premature for France to set rules that will affect advertising beyond its borders. We strongly support a European approach to ensure the utmost protection of consumers when it comes to influencer marketing practices. Existing EU legislation, including the UCPD, the AVMSD, the DSA, Digital Markets Act (DMA), and the General Data Protection Regulation, (GDPR) already prohibit many forms of misleading, harmful or intrusive advertising practices. These efforts are further complemented by national self-regulatory standards across the EU. It is therefore essential to **uphold a European approach and avoid setting an important precedent**.

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