



HYPE OR HARM?

THE GREAT SOCIAL MEDIA CRYPTO CON

ALERT TO THE EUROPEAN NETWORK OF CONSUMER PROTECTION
AUTHORITIES ABOUT THE MISLEADING PROMOTION
OF CRYPTO-ASSETS ON SOCIAL MEDIA

Important - Disclaimer:

This external alert is in relation to the cited social media companies' practices and not against individual influencers or users. In this regard, this report does not assess whether practices by the individual influencers have breached the Unfair Commercial Practices Directive (UCPD) or other EU laws. This is a matter that requires examination by the competent authorities since such practices might fall outside the scope of a union-wide infringement and therefore would need to be considered at national level. This external alert aims to address the role of the social media platforms vis-à-vis its users, including influencers, and advertisers.

Except as otherwise indicated, the screenshots featured in this report were taken by BEUC between February and May 2023. Likewise, the websites mentioned in the footnotes were consulted during the same period.

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About this alert

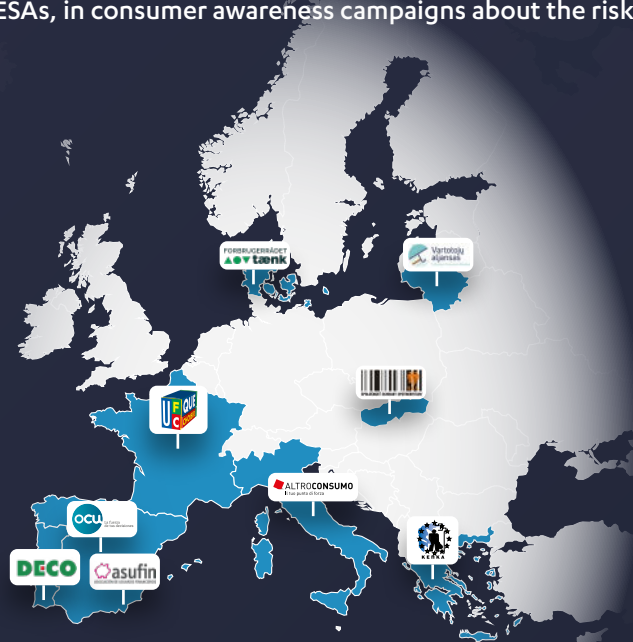
On 8 June 2023, BEUC and nine of its member organisations from eight European countries (Altroconsumo in Italy, DECO in Portugal, Forbrugerrådet Tænk in Denmark, KEPKA in Greece, UFC-Que Choisir in France, ASUFIN and OCU in Spain, SOS Poprad in Slovakia and Vartotojų aljansas in Lithuania) submitted an external alert to the European network of national consumer authorities (“CPC-Network”) and the European Commission based on Article 27 of EU Regulation 2017/2394 (“CPC Regulation”)¹ about Instagram, YouTube, TikTok and Twitter for letting misleading advertisements for crypto-assets (“crypto”) flourish on their platforms. In our view, these practices constitute a widespread infringement with an EU-wide dimension of the rules laid down in EU Directive 2005/29/CE on unfair business-to-consumer commercial practices² and expose consumers to serious harm.

WE CALL ON THE CPC-NETWORK:

- To request from the concerned social media platforms that their advertising policies implement stricter conditions about the advertising of activities relating to crypto products, including any promotional activities about crypto such as wallets, trainings, and crypto investor events, and to ensure that these policies are strictly enforced.
- To request from the concerned social media platforms that they include in their Terms of Use a prohibition for influencers to promote crypto products and to adopt appropriate mechanisms to prevent consumers from being exposed to unfair commercial practices related to these products promoted by influencers.
- To request from the concerned social media platforms that they submit reports to the European Commission and the CPC-Network about the effectiveness of the measures put in place to prevent consumers from being misled by the promotion of crypto.

In parallel, as the infringement is at the crossroads of consumer protection and financial services regulation, we call on the CPC-Network to collaborate with the European Supervisory Authorities for financial services (“ESAs”)³ to ensure that the concerned social media platforms adopt sufficient safeguards in their advertising policies to prevent the misleading promotion of crypto and to require that they put in place and enforce measures to prevent consumers from being misled by the promotion of crypto. We also call on the CPC-Network to engage, together with the ESAs, in consumer awareness campaigns about the risks associated with crypto.

BEUC members taking part in the action:



¹ Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws (“CPC Regulation”).

² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market (“Unfair Commercial Practices Directive – UCPD”).

³ European Supervisory Authorities (ESAs) include the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

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Cryptic crypto and their effects on consumers

1. Crypto on the rise in Europe

Crypto-assets – better known as “crypto” - can be defined as “a digital representation of value or rights which may be transferred and stored electronically, using distributed ledger technology or similar technology”.⁴ We count more than 17,000 different crypto today, the most prominent ones being bitcoin and ether, which together represent about 60% of the total market capitalisation of crypto-assets.⁵ In the last years, crypto have been on the rise in Europe, despite a recent drop in value. In February 2022, the Chair of the European Securities and Markets Authority (ESMA) highlighted that “the total market capitalisation of crypto-assets has increased eightfold over the last two years to around €1.5tn now”.⁶ According to studies, 6% of Slovaks and 8% of Dutch people own (or have owned) crypto-assets.⁷ The percentage of crypto owners has also steadily been growing in other European countries, as shown in the table below:

EU Member-State	Estimated part of the population who owns/has owned crypto
Slovenia	18%
Croatia	16%
Luxembourg	14
Bulgaria, Cyprus	13%
Estonia, the Netherlands, Slovakia, Czech Republic, Austria, Portugal, Estonia	12%
Ireland, Lithuania	11%

Source : www.weforum.org/agenda/2023/03/charted-crypto-popularity-across-the-eu/ (April 2023)

2. Risks not clearly disclosed to consumers

Due to their high volatility and speculative nature, crypto investment products are highly risky for consumers. Unlike traditional investment products, they are not backed by tangible assets and mainly based on investor speculation. This makes them highly vulnerable to contexts and their value may drop within short periods of time as this was the case recently.⁸ It is also well-documented that crypto may trigger scams⁹ and unfair commercial practices, eventually resulting in heavy financial losses for consumers.¹⁰

⁴ See among others: www.eiopa.europa.eu/browse/digitalisation-and-financial-innovation/blockchain-and-crypto-assets_en

⁵ ESAs' joint warning “EU financial regulators warn consumers on the risks of crypto-assets”, 2022 (www.esma.europa.eu/sites/default/files/library/esa_2022_15_joint_esas_warning_on_crypto-assets.pdf)

⁶ V. Ross, *Keeping on track in an evolving digital world*, ESMA50-164-5533, 9 February 2022

⁷ Bank of Slovakia, survey conducted among a representative sample of 1010 respondents in December 2021, 12 AFM, Q3 2021 research among 33,900 respondents shows that 1 in 12 Dutch people own crypto (figures cited by ESMA Chairman in February 2022 (V. Ross, *Keeping on track in an evolving digital world*, ESMA50-164-5533, 9 February 2022).

⁸ In November 2022, the price of bitcoin suddenly dropped (see e.g., www.thetimes.co.uk/money-mentor/article/is-bitcoin-crash-coming/).

⁹ 3rd Global Fintech Regulator Survey (2022); see also (e.g.) by the French financial ombudsman (*Médiateur de l'AMF*) www.amf-france.org/fr/espace-epargnants/proteger-son-epargne/crypto-actifs-bitcoin-etc/crypto-monnaies-bitcoin-etc-attention-aux-arnaques.

¹⁰ The Guardian, ‘They couldn’t even scream any more. They were just sobbing’: the amateur investors ruined by the crypto crash, 12 July 2022 www.theguardian.com/technology/2022/jul/12/they-couldnt-even-scream-any-more-they-were-just-sobbing-the-amateur-investors-ruined-by-the-crypto-crash

Yet many consumers are not fully aware of the risks associated with crypto. What is worse, as the ESMA Chair highlighted, “(...) crypto assets are gaining mainstream acceptability”.¹¹ In the UK, the Financial Conduct Authority (“FCA”) found evidence that consumer attitudes vis-à-vis crypto have shifted and that crypto tend to be more and more normalised. For instance, fewer crypto users regard them as a gamble (38%, down from 47%) and more see them as an alternative or complement to mainstream investments, with half of crypto users saying they intend to invest more in the future.¹² The FCA also found heightened public interest in, and media coverage of, crypto, with 78% of adults now having heard of cryptocurrencies.

The total value (also called market cap) of the largest 100 crypto-assets as of 14 November 2022 amounted to approximately US\$ 830bn (approx. €750bn). This represents a 70% drop from a market cap of USD\$2.7tn (approx. €2.45tn) only a year earlier.¹³ This means that consumers holding crypto investments have seen a fall in the value of these assets resulting in significant financial losses.

The toxic cocktail: social media platforms, influencers and crypto

1. Instagram, Twitter, YouTube and TikTok’s loose policies on crypto advertising

Online platforms, and more specifically social media platforms like Instagram, YouTube, TikTok and Twitter have become key players when it comes to advertising crypto. They enable advertisers and traders to publish and promote their ads and to reach out to wide audiences in an unprecedented way. They also provide advertisers and traders with the technical tools to target very specific audiences, including teenagers¹⁴.

The approach of social media platforms to crypto advertising is very dubious and several of them still insufficiently enforce their internal policies. Our research found ample evidence of misleading promotion for crypto on Instagram, YouTube, TikTok and Twitter despite the social media platforms’ advertising policies.

INSTAGRAM (META) & YOUTUBE (GOOGLE): back in 2018, Instagram (Meta) and YouTube (Google) adopted new advertising policies banning the promotion of cryptocurrency.¹⁵ As Scott Spencer, Google Vice President in charge of Ads Privacy & Safety, highlighted back then, this change was motivated by the wish to address “emerging threats”, in particular “ads in unregulated or speculative financial products like

¹¹ see *supra* note 3.

¹² Financial Conduct Authority, *Crypto-asset consumer research 2021*, www.fca.org.uk/publications/research/research-note-cryptoasset-consumer-research-2021

¹³ Nerdwallet <https://www.nerdwallet.com/article/investing/crypto-winter>

¹⁴ BEUC alert to the CPC-Network about TikTok in 2021 showed how the platform includes tools allowing traders and advertisers to target audience aged between 13 and 17.

¹⁵ See on www.facebook.com/business/news/new-ads-policy-improving-integrity-and-security-of-financial-product-and-services-ads?ref=fb_updates_policy#; and https://support.google.com/adspolicy/answer/7648803?hl=en&ref_topic=7330871&sjid=4223436552239285150-EU

binary options, cryptocurrency”.¹⁶ Yet after a short period of time, the social media platform rowed back,¹⁷ and re-authorised crypto advertising on their platform with a loose and insufficient pre-approval process. For example, Meta’s advertising policy stresses that advertisers must have written permission by Meta and bring evidence that they hold the necessary licenses or registrations possibly required at national level for (*inter alia*) running ads that promote cryptocurrencies or trading platforms. However, advertisers do not need written permission to run ads that promote (*inter alia*) “events, education or news related to cryptocurrency or blockchain technology, as long they don’t offer cryptocurrency products or services”.¹⁸ This approach is misleading and insufficiently protects consumers. In particular, it does not prevent consumers from being misled by claims stressing the benefits of crypto, even though they may not directly incentivise them to buy specific products. Furthermore, claims about events or education may still convey misleading messages about the benefits of crypto while downplaying their risks.

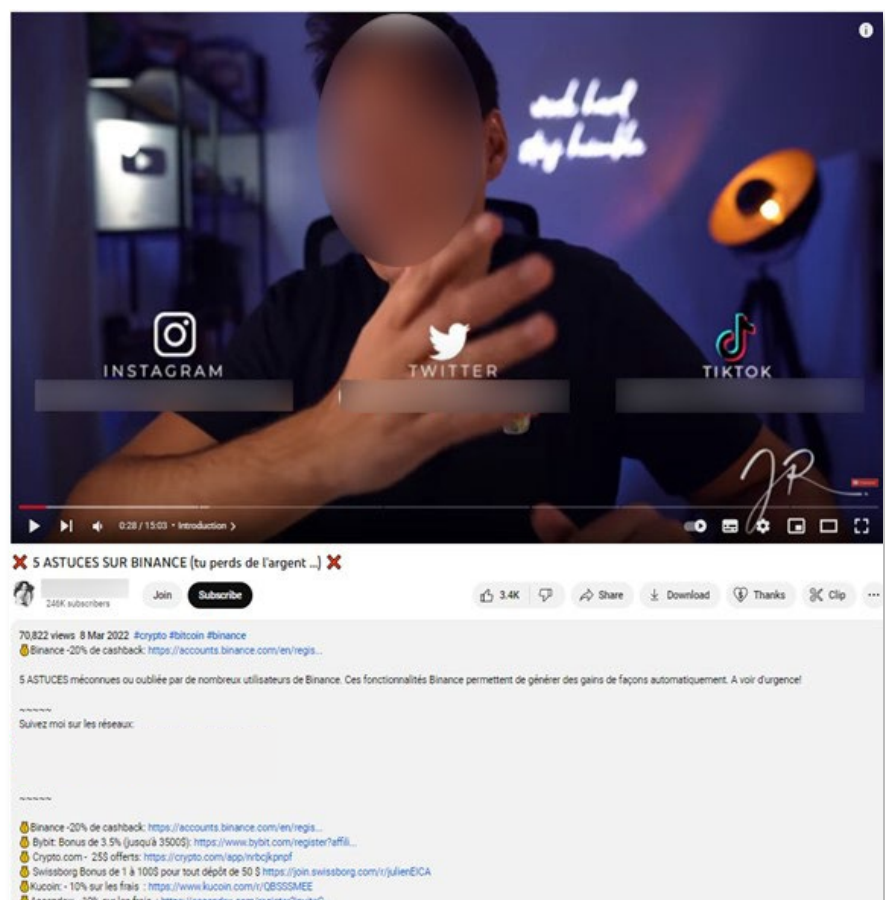
Bitcoin investors need to be prepared to “lose all their money”

G. Makhoulouf
(Member, European Central Bank governing council)

SEEN ON INSTAGRAM:



SEEN ON YOUTUBE:



TWITTER: Twitter’s advertising policy either prohibits or restricts the promotion of crypto globally. However, this comes with many exceptions. For instance, Twitter’s policy varies across European countries: in some EU Member States, advertisements for financial services and related content are permitted with prior authorisation from Twitter based on unknown criteria and justifications.¹⁹

¹⁶ <https://blog.google/technology/ads/advertising-ecosystem-works-everyone/>.

¹⁷ www.facebook.com/business/news/updates-to-our-prohibited-financial-products-and-services-policy

¹⁸ <https://transparency.fb.com/policies/ad-standards/content-specific-restrictions/cryptocurrency-products-and-services>

¹⁹ <https://business.twitter.com/en/help/ads-policies/ads-content-policies/financial-services.html>

In April 2023, Twitter CEO Elon Musk advertised the logo of the crypto-asset Dogecoin on Twitter, which triggered a 30% increase in its value within a few hours. This again contributes to create a positive perception of crypto among consumers and prevents them from clearly understanding the risks associated with them. This also clearly shows that social media platforms fail to comply with their duty of professional diligence stemming from the Unfair Commercial Practices Directive (see below our legal assessment).

Twitter CEO's use of Dogecoin on Twitter in April 2023...



...Triggered a significant increase in the value of the concerned crypto.



Évolution du Dogecoin dans la soirée du 3 avril 2023. Source : CoinMarketCap

source: Le soir.be²⁰

SEEN ON TWITTER:

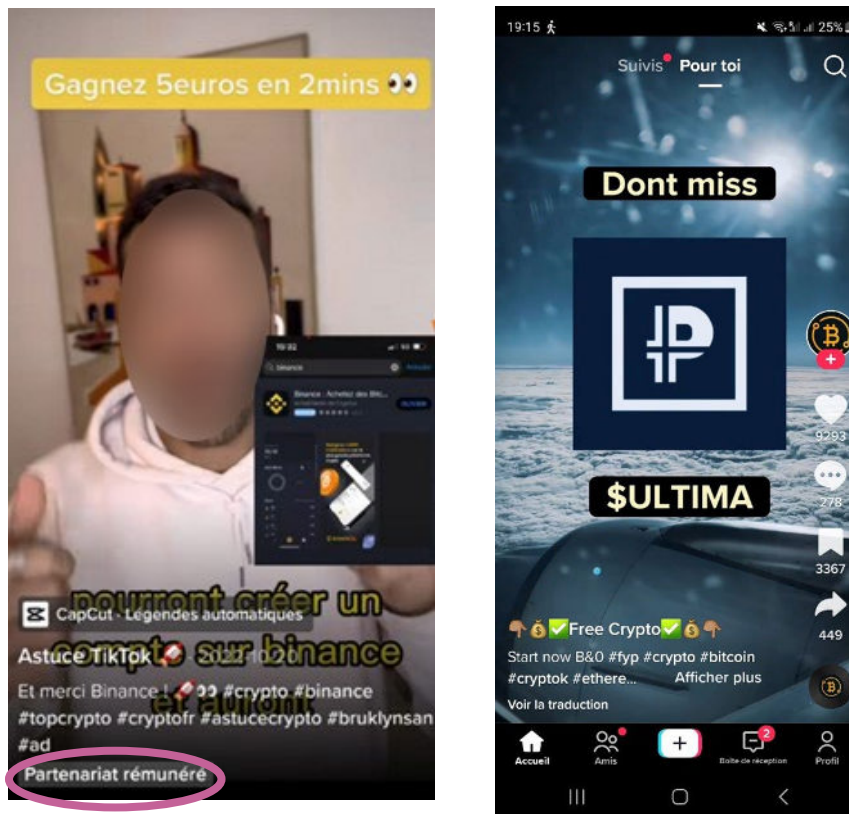


²⁰ Le Soir, <https://be-crypto.lesoir.be/2023/04/04/elon-musk-a-brievement-remplace-le-logo-de-twitter-et-fait-exploser-une-cryptomonnaie/>

TIKTOK: In Europe, TikTok has banned all content related to crypto. The relevant advertising policy reads as follows: “prohibited products/services (...) ads promoting virtual currencies/cryptocurrencies (e.g., Bitcoin and Ethereum), as well as cryptocurrency trading platforms, wallets, advisory services, and NFT trading/investments are prohibited”.²¹ Furthermore, as part of the commitments agreed with the CPC-Network after the coordinated action in 2021-2022, TikTok has made clear that there should be no branded content which promotes (...) “financial products or services or opportunities - including foreign exchange, loans, credit cards, buy now pay later services, debt consolidation services, investment services, lending and management of money assets, trading platforms, pyramid schemes, multi-level marketing opportunities, credit repair, bail bonds, penny auctions, virtual currencies and “get rich quick” schemes”.²² Yet, despite this policy, as shown below, our research found examples of advertisements for crypto on the platform.

SEEN ON TIKTOK:

This influencer (237.6K followers) posted a video featuring “ad” and “paid partnership” with Binance (in French “partenariat rémunéré”)

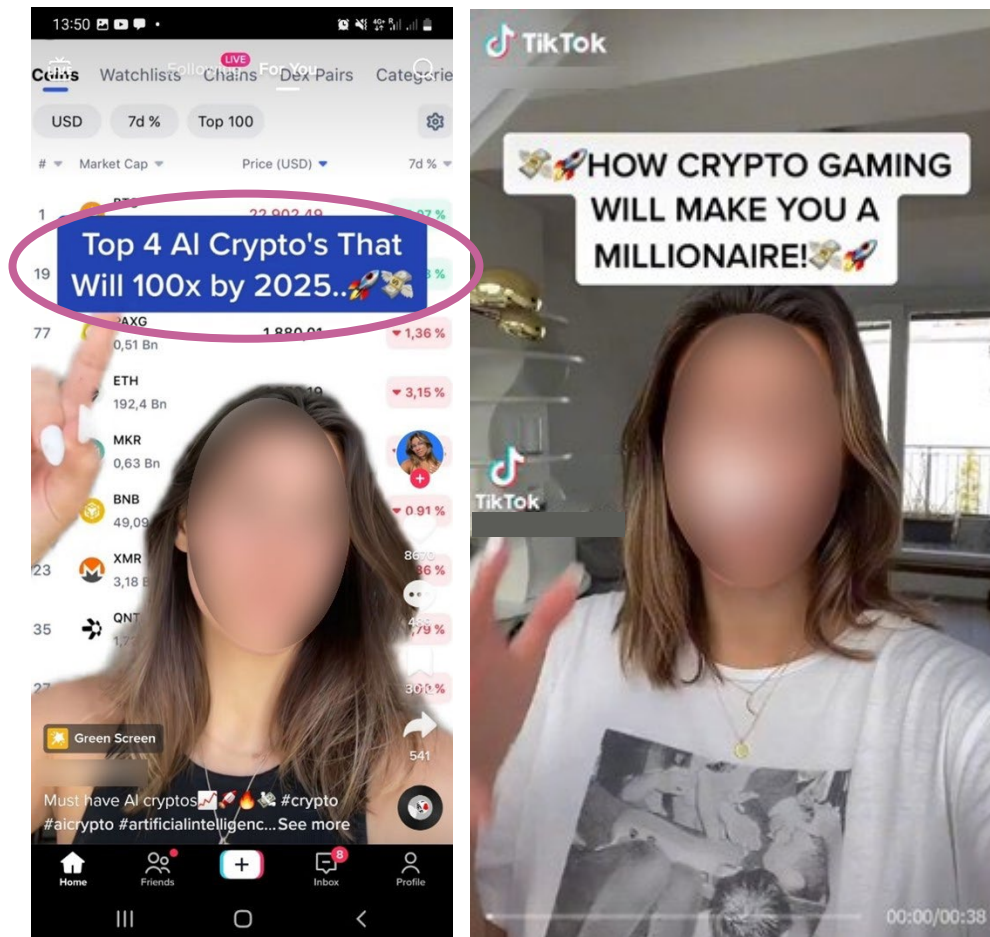


²¹ <https://ads.tiktok.com/help/article/tiktok-advertising-policies-industry-entry-europe-uk-israel?lang=en#>

²² European Commission, ‘EU Consumer protection: TikTok commits to align with EU rules to better protect consumers’, 21 June 2022, https://ec.europa.eu/commission/presscorner/detail/pt/ip_22_3823; TikTok www.tiktok.com/legal/page/global/bc-policy/en

2. Finfluencers & social media platforms

Influencers promoting financial investments or financial products are increasingly active on social media (the so-called “Finfluencers”). They often promise consumers high returns and quick gains²³ for engaging with certain products. See for instance this crypto influencer on TikTok (1.1k followers) announcing how “crypto gaming will make you a millionaire”:



Influencers are increasingly viewed as an important source of information by young people when looking at new investment solutions²⁴. According to EU Barometer 2666/FL509 of October 2022, 5% of Europeans use information from social media and influencers to make financial decisions.²⁵ An upcoming BEUC study surveying over 4,800 participants across a representative sample of eight Member States²⁶ reveals that consumers are significantly exposed to the promotion of crypto by influencers on social media:



source: BEUC survey, upcoming 2023

²³ Autorité des Marchés Financiers (French financial markets Authority), Etude «arnaques à l'investissement», December 2021, www.amf-france.org/sites/default/files/private/2021-12/rapport-arnaques-a-l-investissement-bva-pour-amf-decembre-2021_0.pdf.

²⁴ In 2021, the French Authority of financial markets (AMF) observed a significant increase in the number of new individual investors active on financial markets (approx. 800 000), often with a younger profile (www.amf-france.org/fr/actualites-publications/communiques/communiques-de-lamf/recommandations-dinvestisement-sur-les-reseaux-sociaux-lamf-appuie-le-rappel-de-lesma).

²⁵ Eurobarometer on Retail financial services and products, October 2022 <https://europa.eu/eurobarometer/surveys/detail/2666>

²⁶ BEUC (2023) Digital fairness in the eyes of European consumers (forthcoming).

Influencers' endorsement is a source of many concerns as it can contain misleading advice which can have detrimental effects on consumers. At the European level, EU financial regulators are well-aware of the risks triggered by crypto and the roles that influencers play in that context.

“A flurry of celebrities and so-called crypto influencers are promoting these assets, including on YouTube channels. Some have tens of thousands of followers. At the same time, even more complex products are being developed, including some leveraging on DeFi protocols. Some are marketed with promises that seem too good to be true, and probably are, such as returns above 10% per annum”. (...) Some are buying these assets with unrealistic expectations of price growth, and without realising the high risks involved”.

ESMA Chair, 2022

The European financial authorities have set up several communication and awareness campaigns to inform consumers²⁷:



Several BEUC members have highlighted the risks of investing in crypto assets:

- ASUFIN (Spain) has produced a factsheet to inform consumers about crypto assets and the risks of investing in them²⁸.
- OCU (Spain) has a webpage dedicated information and advice to investors, with detailed recommendations on crypto. They have also done a survey showing that young people tend to invest in crypto without looking into the possible consequences and risks²⁹.
- Similarly, Consumentenbond (the Netherlands) also provides ample explanations to consumers online³⁰.
- Testachats/Testaankoop (Belgium) provides an in-depth explanation of crypto assets in particular “Bitcoin” and the risks of investing in them³¹.
- UFC – Que Choisir (France) has provided information to consumers on their specialised section of their website³².

²⁷ The advice of the three European Financial Services Regulators www.esma.europa.eu/sites/default/files/library/esa_2022_15_joint_esas_warning_on_crypto-assets.pdf.

²⁸ ASUFIN, www.asufin.com/wp-content/uploads/2022/12/221229_INFOGRAFIA_CRIPTOMONEDAS_ENG_compressed.pdf

²⁹ OCU, www.ocu.org/dinero/deposito-inversion/informe/inversion-criptomonedas

³⁰ Consumentenbond www.consumentenbond.nl/beleggen/zelf-beleggen/investeren-in-cryptovaluta

³¹ Testachats/Testaankoop, www.test-achats.be/argent/comptes-epargne/news/bitcoin-investir

³² UFC – Que Choisir www.quechoisir.org/actualite-criptomonnaies-faut-il-privilegier-les-plateformes-regulees-pour-investir-n92714/

There are many examples across Europe of consumers suffering important financial losses after following influencers' advice³³, and this has triggered the intervention of authorities at national levels:

- In the Netherlands, in 2021, the Dutch Financial Supervisory Authority (AFM), indicated that it received dozens of complaints from consumers who have lost a lot of money as a result of "finfluencer" tips³⁴. The AFM also conducted a study of 150 "finfluencers"³⁵ and their postings and found that only a few influencers post "neutrally". The authority also highlighted a lack of transparency toward consumers. As a result of these investigations, the authority reminded influencers of the rules for online postings about investing.
- In France, in 2021, the French consumer Authority (DGCCRF) fined a French influencer €29,000 for deceptive commercial practices related to the promotion on Snapchat of an online trading training site specialised in the sale and purchase of Bitcoins. In a short video the influencer failed to mention her paid partnership with the trading website. She also alleged the free service offered by the trading site, the systematic recovery of the amounts invested and returns of up to 80% thanks to their advice. The DGCCRF took the view that these statements misled consumers as to the real characteristics of the services. According to the French financial Authority, the overall damage suffered by victims of financial scams amounts to approximately €500 million euros per year. Forex trading scams have caused nearly €38,000 in average damage to consumers. In 2021, the crypto market has been a favourite bait for scammers with losses estimated of up to €20,000 per consumer³⁶.
- In France, in January 2023, a group gathering victims of financial scams³⁷ filed a complaint against about 100 influencers, accusing them of having incited them to make investments in risky NFT markets with promises of gains. However, it is uncertain whether consumers will receive any money back³⁸.
- In Ireland, a report from the Consumer Protection Authorities (CCPC)³⁹ highlights that consumers are concerned around influencers promoting cryptocurrencies and other financial products. This is particularly the case when influencers have no experience in the area. The Irish Central Bank also issued a clear warning on the risks of investing in crypto assets. In its statement⁴⁰, the Irish Central Bank again insisted that that "crypto assets are highly risky and speculative and may not be suitable for retail customers. In particular, people need to be alerted to the risks of misleading advertisements, particularly on social media, where influencers are being paid to advertise crypto assets. The authority further stated that in Ireland and across the EU they "are seeing increasing levels of advertising and aggressive promotion of crypto asset investments".

However, the problem continues to be addressed at national level mainly while it would require a common approach by the CPC Network acting collectively on the basis of the UCPD and targeting the platforms used for the promotion of crypto assets and related services.

³³ Journal du Net, « Investisseurs imprudents et influenceurs inconséquents : le crypto-cocktail qui a ruiné des Français » (24 May 2022) www.journaldunet.com/economie/finance/1511913-investisseurs-ignorants-et-influenceurs-inconsequents-le-crypto-cocktail-qui-a-ruine-des-francais/?gbmlus=f8e9e301cf5e3455754808ac47d34b55b8ebfd186f4559a5651d7fd85a05bab8&utm_campaign=Quotidienne_2022-05-25&utm_medium=email&seen=2&utm_source=MagNews&een=b8f1141ff45caf2ef66e7adafc0aa155

³⁴ The Dutch Authority for Financial Markets, AFM reminds 'finfluencers' of rules for online posts on investing, 21 December 2021, www.afm.nl/en/nieuws/2021/december/verkenning-finfluencers (last consulted on 12.01.2023).

³⁵ *idem*

³⁶ Articles in French specialized press www.capital.fr/votre-argent/les-plus-grosses-arnaques-aux-placements-financiers-et-comment-les-eviter-1422906; www.20minutes.fr/high-tech/3308679-20220620-arnaques-produits-financiers-instagram-candidats-telerealite-jouent-argent-jeunes-abonnes

³⁷ See the press release of the "Collectif d'Aide aux Victimes d'Influenceurs - Collectif AVI". Available [here](#).

³⁸ Capital, Un collectif porte plainte contre des influenceurs qui ont recommandé des placements très risqués, 23 January 2023, www.capital.fr/economie-politique/un-collectif-porte-plainte-contre-des-influenceurs-qui-ont-recommande-des-placements-tres-risques-1458173 (last consulted on 09.02.2023).

³⁹ Competition and Consumer Protection Commission, Online behaviour – Influencer Marketing, 2022 (www.ccpc.ie/business/wp-content/uploads/sites/3/2022/12/2022.12.12-172837-CCPC-Influencer-marketing-report.pdf).

⁴⁰ The Irish Central Bank, Central Bank warning on investing in crypto-assets, 22 March 2022 www.centralbank.ie/news-media/press-releases/central-bank-warning-on-investing-in-crypto-assets-22-march-2022

Legal analysis: why the misleading promotion of crypto on social media platforms is illegal under EU consumer law

1. The need for CPC authorities to act against the misleading promotion of crypto under general consumer law

In the EU, crypto assets are expected to be soon regulated under the new Market in Crypto Assets (MiCA) Regulation⁴¹. This will be a promising and an important step. However, at this stage, this new law is not in place, and several years will still be needed before it actually comes into force. This means that consumers are today not protected by specific sectoral legislation. This also means that there are no sector-specific restrictions about how and where these products can be promoted and advertised.

In parallel, EU Regulation 2022/2065 ('Digital Services Act – DSA') is expected to be an important piece of legislation to tackle illegal content circulated on social media platforms. This illegal content should include false information and misleading omissions against the EU Unfair Commercial Practices Directive⁴² (UCPD). The DSA imposes several due diligence obligations on these platforms on advertising transparency, traceability of traders, notice and action, among others. Due to their high number of users, Instagram, YouTube, and Twitter have been designated as very large online platforms in line with Article 33 DSA on 25 April 2023. This means the DSA applies to them within four months of designation. Thus, at the time of this alert the DSA obligations are not yet applicable to them. In addition, the regulatory framework will not be fully operational at least until 17 February 2024. This is particularly important in terms of the supervision and enforcement. For example, the European Board for Digital Services will not be in place this year, making it difficult to have effective and cohesive cross-border supervision and enforcement across the EU until it is established. Therefore, we submit this alert to the CPC on the basis of the UCPD and do not focus on the potential lack of compliance with DSA obligations by these platforms. **In any case, the UCPD and the DSA should coexist as the objectives of both laws are different.** The DSA does not determine what is illegal or not in terms of promotional activities. It establishes some procedural rules when dealing with illegal content and establishes important due diligence obligations in this regard. **This is why the CPC authorities have an important role to play under general consumer law to reduce consumer exposure to the misleading promotions of crypto assets.**

⁴¹ MiCA legislation is not yet adopted, see the legislative train here: www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-crypto-assets-1.

⁴² Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

2. Application of the EU Legislation on unfair commercial practices

THE UCPD FULLY APPLIES TO SOCIAL MEDIA PLATFORM (AND FINFLUENCERS)

The Unfair Commercial Practices Directive remains the main instrument protecting consumers against the misleading representation of goods and products, including crypto assets. This Directive applies to different actors involved in the distribution and commercialisation of crypto assets, namely the crypto providers themselves, the social media platforms promoting and enabling the promotion of crypto and the influencers endorsing and advertising crypto products.

As pointed out by the European Commission in its Notice on the interpretation and application of the UCPD, “some social media platforms have become environments for advertising, product placement and consumer reviews. Therefore, they can present increased risks for hidden advertising, given that commercial elements are mixed with social and cultural user-generated content.” Crypto assets have not been the exception. This means that under the UCPD, social media platforms also need to exercise a certain level of care to ensure that their users are not harmed by other users such as influencers or their own advertising policies.

The UCPD notice on this point indicates that “social media platforms feature different types of advertising, such as native advertising, which involves blending commercial content with non-commercial content and is often displayed with the same format and in the same position as user-generated content (e.g., in a user’s personal feed).” This is exactly what happens when consumers scroll through their feeds, they might see content promoting crypto by influencers but also in the form of advertising.

In parallel, finfluencers active on social media platforms can themselves be considered as traders in the context of the UCPD. As clarified by the Unfair Commercial Practices updated guidelines⁴³, persons engaging in commercial endorsement activities online, such as influencer marketing, “could qualify as traders if they engage in such practices on a frequent basis, regardless of the size of their audience”. The guidance document also complemented that, alternatively, “in case the persons do not qualify as traders, they could nevertheless be considered to act ‘on behalf of’ the trader whose products are promoted by the practice and therefore fall within the scope of the Directive” and consequently be subject to the UCPD requirements. In particular, and as for other forms of marketing, the failure to clearly display the commercial element in a finfluencer’s content or practice would amount to a misleading practice under Articles 6 and 7 UCPD.

As clarified by the UCPD guidelines, the notion of “endorsement” by the influencer cover a wide range of practices, such as paid posts, affiliate content (e.g., influencer shares a discount code or link to their audience for a commission fee), retweets or tagging the trader/brand etc. A commercial element is therefore considered to be present when a finfluencer receives “any form of consideration”, monetary or not. This is confirmed by the decision Peek & Cloppenburg (case C-371/20) of the Court of Justice of the European Union issued on 2 September 2021⁴⁴.

Specifically, regarding transparency, according to Article 7(2) UCPD stating that all commercial communications must be clearly indicated as such is of particular relevance in the “finfluencer” context. Idem, Point No 11 of Annex I UCPD is also applicable to influencers as it prohibits practices which do not make clear to consumers that a trader has paid for the promotion of a product in editorial content.

APPLICATION OF ARTICLES 5 AND 6 UCPD TO THE MISLEADING PROMOTION OF CRYPTO ON SOCIAL MEDIA

What the law says

Art. 5 of the UCPD prohibits unfair commercial practices. Practices shall be unfair if: (1) they are contrary to the requirements of professional diligence and (2) they materially distort or are likely to materially distort the economic behaviour with regards to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular

⁴³ See sections 2.2 “The concept of trader” and 4.2.6 “Influencer Marketing” of the UCPD guidelines.

⁴⁴ ECLI:EU:C: 2021:674

group of consumers. Art. 2(h) UCPD defines “professional diligence” as the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader’s field of activity.

In addition, Art. 6(1) of the UCPD prohibits misleading actions. Practices shall be misleading if they contain false information and are therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to (inter alia) the main characteristics of the product, such as its availability, benefits or its risks.

Application to the case at stake

Under the UCPD, social media platforms need to exercise a certain level of care to ensure that their users are not harmed by other users, including influencers.

When it comes to the content promoted by the social media platform, for example in the form of sponsored content, the general duty of professional diligence of the UCPD would require that these companies take measures to prevent the proliferation of misleading information regarding the nature of crypto products. In this sense, contents associated with crypto should be considered by social media as content which should not be promoted proactively due to the high volatility of these assets and the high risk of having their characteristics misrepresented by influencers, let alone monetised via advertising.

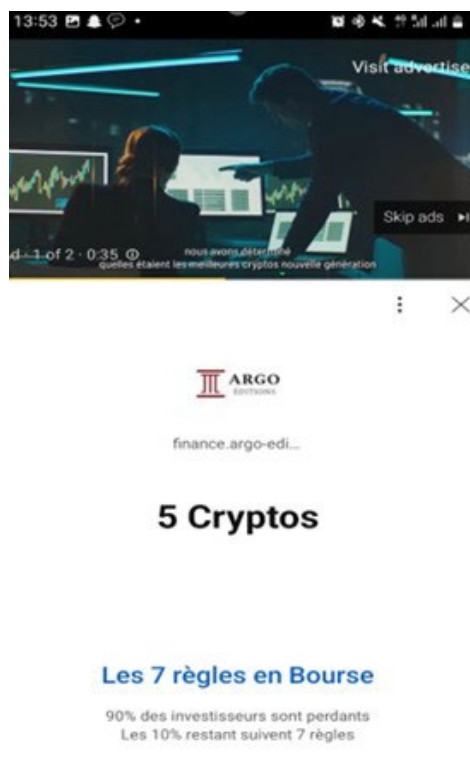
In practice, users of various platforms mentioned in this alert - Instagram, Twitter, TikTok and YouTube - are rapidly exposed to content promoting crypto-assets or crypto-investments, when registering on the platforms, sometimes without having done any preliminary research on the subject or without setting any “topic” preference.

ON YOUTUBE, consumers are regularly exposed to promoted advertisements promoting crypto products, before being able to watch their selected videos (see examples below):

Figure 1: “What are the crypto more likely to see their stock price explode”.

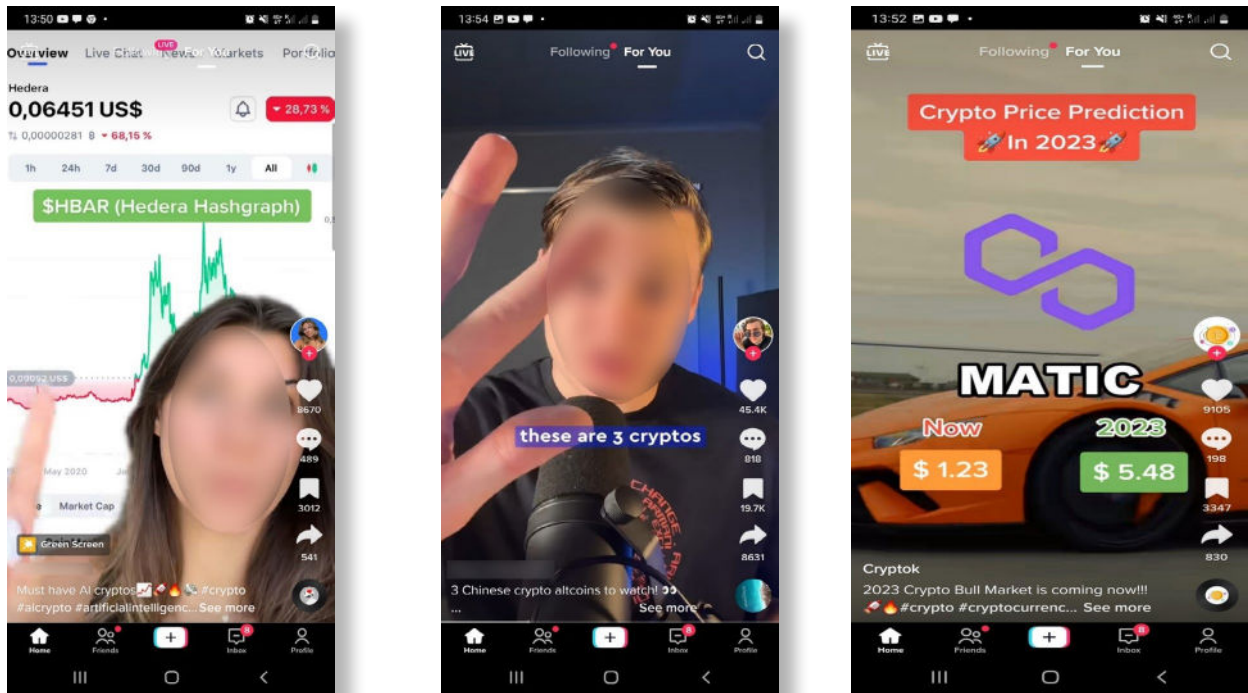


Figure 2: “We have determined what are the best new generations of crypto”.



ON TIKTOK, users of the platform find themselves scrolling down their “For You”⁴⁵ feeds and receive crypto-related contents proposed by the platform’s algorithm.

Figure 3: Examples of “Crypto” content proposed to a new TikTok user on the app “For You” feature⁴⁶



ON TWITTER, in the Twitter “#Explore” feature, which Twitter presents as “where you can find what’s trending, Moments, live events, your Topics, and more”,⁴⁷ consumers quickly received contents related to crypto.

Figure 4: Example of promotion for Crypto mining in consumers’ “feed”⁴⁸



⁴⁵ According to TikTok webpage “How TikTok recommends videos #ForYou”, the “For You” page is “one of the defining features of the TikTok platform”. The page indicated that “When you open TikTok and land in your For You feed, you’re presented with a stream of videos curated to your interests, making it easy to find content and creators you love. This feed is powered by a recommendation system that delivers content to each user that is likely to be of interest to that particular user [...]”.

⁴⁶ TikTok screenshots taken on 14 April 2023.

⁴⁷ Twitter Help Center webpage (last access: 5 May 2023)

⁴⁸ Screenshot taken on 14 April 2023.

ON INSTAGRAM, people using the platform’s “Reels” feature, which according to Instagram “offers the best of what’s popular on Instagram,”⁴⁹ also regularly come across videos promoting crypto.

Figure 5: “Reels” suggestions to a new Instagram user.⁵⁰

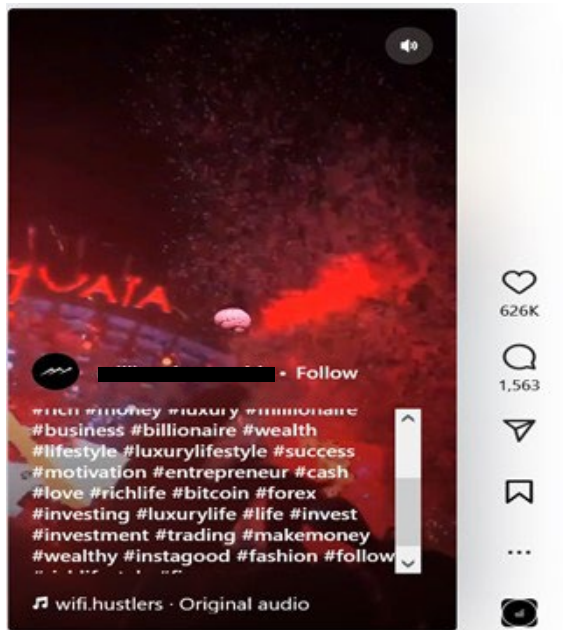


Figure 6: Consumers are redirect to the “millionairez wealth” account proposing access to a “Wifi University”.

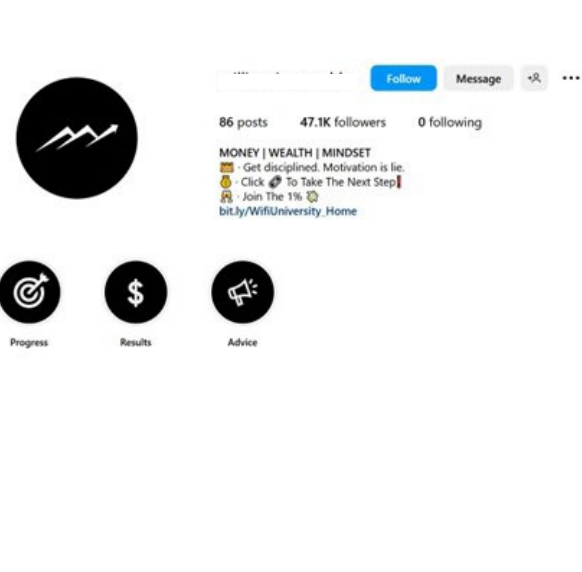
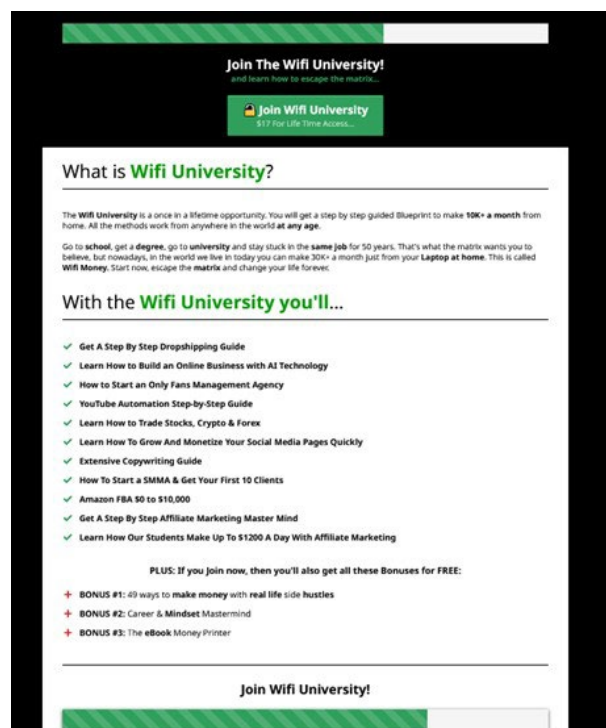


Figure 7: Access and content of the “Wifi University” including “Lean how to Trader Stocks, Crypto & Forex”.



⁴⁹ According to Instagram webpage “Presentation des reels sur Instagram”; Explorer’s Reels section offers the best of what’s popular on Instagram. Discover an entertaining selection of reels created by all of Instagram, in a custom vertical feed. If you like a reel, you can easily like, comment, or share it with your friends. Some reels will be displayed with a “Featured” tag. If your reel is featured in Explorer, you will receive a notification. Featured Reels are a selection of public reels curated by Instagram experts to help you discover original content that we hope will entertain or inspire you. The “reels” give people new ways to express themselves and discover more of the content they love on Instagram and help anyone who wants to be a creator get in the spotlight, last consulted on 05 May 2023.

⁵⁰ Screenshots taken in April 2023.

As highlighted above, Twitter, Instagram, TikTok and YouTube have loose advertising policies applying to crypto. For example, advertisers do not need written authorisation when they run ads about “events, education or news related to cryptocurrency or blockchain technology, as long they don’t offer cryptocurrency products or services”. **This is very broad and gives considerable leeway to the promotion of products that would create a positive image of crypto by consumers therefore downplaying the risks associated to crypto investments.** In practice, many companies and influencers, which are often well-known celebrities, make the promotion of crypto on Instagram, Twitter, TikTok and YouTube.

Furthermore, consumers are also being misled by the so-called finfluencers who post content in their own channels and feeds. These influencers can themselves be considered as traders in the context of the UCPD and therefore they must fully comply with the UCPD.

The promotion of crypto as promising investment opportunities can be considered as **“false information”**, which because of their overall presentation, deceives or is likely to deceive the average consumer. Furthermore, although the information might be correct, it can still mislead consumers by misrepresenting “the main characteristics of the product, such as its availability, benefits, risks, execution (...)”. Influencers are also likely to engage in misleading omissions as they “[omit] material information that the average consumer needs, according to the context, to take an informed transactional decision”. This is the case for example of the risks about investing in crypto.

3. EU-wide dimension of the infringement

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Under Article 3(4) of Regulation (EU)2017/2394 (“CPC Regulation”), a widespread infringement with a Union dimension is defined as “an infringement which does or is likely to do harm to the collective interests of consumers in at least two-thirds of the Member States, accounting, together, for at least two-thirds of the population of the Union”. Consequently, to be considered as a “widespread infringement with an EU dimension”, the unfair practices should affect or potentially affect 18 Member States representing at least 298 million Europeans. The infringements highlighted in this alert meet this condition as Twitter, Instagram, TikTok and YouTube are widely used social media platforms operating across Europe.⁵¹

⁵¹ Twitter, TikTok, Instagram and YouTube were designated as Very Large Online Platforms under the DSA, which means that they reach more than 10% of the EU’s population or 45 million users.

Our call to the CPC Network

BEUC and nine of its member organisations from eight European countries (Altroconsumo in Italy, DECO in Portugal, Forbrugerrådet Tænk in Denmark, KEPKA in Greece, UFC-Que Choisir in France, ASUFIN and OCU in Spain, SOS Poprad in Slovakia and Vartotojų aljansas in Lithuania) call on the European Commission and the CPC-Network to take measures against the misleading promotion of crypto on Instagram, Twitter, TikTok and YouTube as this constitutes a widespread infringement with an EU dimension of EU consumer legislation. In particular:

- The CPC-Network should request the concerned social media platforms to implement stricter conditions in their advertising policies about the advertising of activities linked to crypto products, including any promotional activity about crypto-related products such as wallets, training and crypto investor events.
- The CPC-Network should require the concerned social media platforms to include in their Terms of Use a prohibition for influencers to promote crypto products, and to adopt appropriate mechanisms to prevent consumers from being exposed to unfair commercial practices related to these products.
- The CPC-Network should require that the concerned social media platforms submit reports to the European Commission about the effectiveness of the measures put in place to prevent consumers from being misled by the promotion of crypto, and that they strictly enforce these measures.

In parallel, as the topic is at the crossroad of consumer protection and financial services, we call on the CPC-Network to closely collaborate with European Supervisory Authorities, namely the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA). In its communication “Enforcing EU law for a Europe that delivers” of October 2022⁵², the European Commission pointed out:

“Enforcement is about cooperating and working hand in hand with Member States in the first instance, as well as with specialised authorities like consumer or data protection authorities, competition and regulatory authorities, NGOs, businesses and the public. For the system to function effectively, it relies both on the full commitment of national authorities responsible for the proper application and enforcement of the law, and the involvement of the public, civil society, business, and others to identify potential breaches.”

Therefore, BEUC and its members:

- Ask the CPC-Network to work closely with the ESAs (EBA, ESMA and EIOPA) to ensure that Twitter, Instagram, TikTok and YouTube adopt the sufficient safeguards in their advertising policies to prevent the misleading promotion of crypto on their platforms and require that these the traders put in place measures to prevent consumers from being misled by the promotion of crypto and that they enforce these measures.
- Ask the CPC-Network to engage, together with the ESAs (EBA, ESMA and EIOPA) in consumer awareness campaigns about the risks associated with crypto.

⁵² COM (2022) 518 final, 13.10.2022

