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**REGULATION ON THE ADVERTISING AND PROMOTION OF *CRYPTO-ASSETS*: PROPOSALS BY *LEGE FERENDA***

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## **ABSTRACT**

The purpose of this work is to carry out an analysis of the current applicable regulation on advertising and information on crypto-assets, as well as the possible applicable regulation and the way forward.

In the first part of the work we will develop the basic concepts to facilitate the understanding of its operation and the particulars of the product.

In the following chapters we will analyze the Circulars proposed by the National Securities Commission (CNMV) already in force since February 2022 and the proposals on regulatory matters of the European Union and the rest of the world. On the other hand, we will assess the applicability of the regulations and directives currently in force in the field of the securities market. All this, with the aim of pointing out the problems that are presented to us and offering a series of guarantees for consumer protection.

**Keywords:** cryptoassets, cryptocurrencies, smartcontracts, European Union, CNMV, tokens, DLT, legal security, blockchain, wallet, bitcoin, binance, MiCa, Stablecoin, Exchange, DMA, Digital Markets Act, crpyto.com, digital assets



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## INTRODUCTION

The objective of this work is to facilitate the analysis of the legal regime on the regulation of advertising, information and promotion of *crypto-assets* we will carry out a legal-descriptive analysis in which we will introduce the current problems due to the boom in the use of *crypto-assets* and their derivative financial products, such as the consequences that this type of activities entail, as is its advertising. To do this, we must be clear about the basic concepts about what we are facing and how they work.

Our purpose is to expose the issues that can arise from such a primitive field and how we should direct or improve the regulation of these financial products that have obtained great relevance through social networks, and therefore we will determine what are the problems that arise and we will warn of the different initiatives that have been taken by the European Union and the Spanish legislator with the objective of offering a series of guarantees for consumer protection.

We will carry out a legal approach analyzing the problems posed by advertising related to *crypto-assets* in the legal field. A sector that is not supported by any institution and is very complex when it comes to creating laws that regulate them. So far the only regulation we have on *crypto assets* is the one approved last January and in force since February 2022 on the advertising and promotion of *crypto assets*. It is a regulation that does not regulate the financial product directly, but in a collateral way, regulating only its advertising activity. In Europe we have the *Digital Finance Package*<sup>1</sup> and the already approved proposal of the MiCa Regulation since June 30, 2022.<sup>2</sup>

From the deontological perspective, the *crypto-asset* market is in constant question between ethics and morality since we understand that the objective of the investor is to seek quick profits through speculation, and due to the characteristics that this type of financial products have, such as the privacy they present, they also suppose a high probability for the financing of illegal activities that added to the lack of supervision enters into conflict with the fight against the prevention of money laundering, drug trafficking and terrorist financing. A lack of oversight that makes investors vulnerable to scams, cyberattacks or system failures that can result in the loss of all invested capital.

Therefore, lawyers are working on finding a regulation that offers guarantees and protects the consumer.

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<sup>1</sup> EUROPEAN COMMISSION, "*Digital Finance Package: Commission presents an ambitious new approach to foster responsible innovation that benefits consumers and businesses*" Available at: [https://ec.europa.eu/commission/presscorner/detail/es/ip\\_20\\_1684](https://ec.europa.eu/commission/presscorner/detail/es/ip_20_1684)

<sup>2</sup> EUROPEAN COMMISSION, "*Digital finance: agreement reached on European-crypto assets regulation (MiCA)*" 30 June 2022. Available in: <https://www.consilium.europa.eu/es/press/press-releases/2022/06/30/digital-finance-agreement-reached-on-european-crypto-assets-regulation-mica/>



## I. CURRENT CONTEXT AND CONCEPTUALIZATION OF CRYPTO-ASSETS

We must establish a starting point on the impartiality of the internet and understand it as a technical principle that does not discriminate or limit the applications where data is treated equally and in constant evolution, thanks to technological innovation as social networks and recent distributed ledger technologies, also known by their acronym in English as *DLT technologies*, emerged at the time<sup>3</sup>. We can define that distributed ledger technology refers to the protocols and support infrastructures that allow computers in different locations to propose and validate transactions and update the records in a synchronized way through a network, to which blockchain belongs.

Blockchain *technology*<sup>4</sup> is a shared digital ledger that encompasses a chain of blocks connected and stored in a distributed and decentralized network that, protected by a cryptographic network, serves as a repository of irreversible and incorruptible information leaving all transactions recorded, which can involve any type of value, money, property or vote. We can define it as a shared and unalterable ledger that facilitates the recording of transactions and the tracking of assets within the same network, anything of value can be tracked by a *blockchain technology*, reducing its risk levels and maintenance costs.

*DLT technologies* have gained popularity thanks to the *Fintech* revolution (a term that refers to technological finance), thanks to their products and services that encompass the application of technology to offer products and services to consumers. These products and services have revolutionized all traditional financial products, such as mobile phone payments or fundraising, this new technology replaces physical commercial networks and traditional intermediaries which causes attractive cost savings.

After these events arise the "*crypto bonds*" that allow companies to capture financing through *blockchain technology platforms* where these *crypto assets* are issued and transmitted.

This technological revolution arises after the financial crisis of 2008 that harmed the profitability of the traditional financial system, to which we should add the development of digital technologies, such as the aforementioned *DLT technologies*, smartphones or the development of *BigData* along with the enormous availability we have on the data that allows us to profile the interest of consumers, together with the disintermediation that allows all the above, they disrupt certain functions provided by the traditional financial system and offer new ways to carry out operations and it is at this point where *crypto assets* arise.

To understand the framework where we find ourselves, it is necessary to differentiate between a **cryptocurrency wallet** (*hereinafter also called a wallet*) and an **Exchange platform**. A *wallet* is a tool where cryptocurrencies are stored, while an *Exchange* is a

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<sup>3</sup>MORTEN BECH, RODNEY GARRAT, "Central Bank Cryptocurrencies", in the September 2017 BIS *Quarterly Report*. p.12.

<sup>4</sup>ROMAN BECK, CHRISTOPH MUELLER-BLOCH, «Blockchain as Radical Innovation: A Framework for Engaging with Distributed Ledgers as Incumbent Organization», *acta de Conferencia*, enero 2017, p.2.

platform that allows you to exchange fiat money<sup>5</sup>, (which is legal tender designated as such and issued by a central authority, with no more support than the trust you have in institutions and central authorities) for "*cryptocurrencies*" that the platform manages.

*Exchange* platforms provide a wallet address so that the user has a balance on their "*cryptocurrencies*", but without having full control over it until they are transferred to an external *wallet*.

## 1. BASIC CONCEPTS ABOUT *CRYPTO ASSETS*

*Crypto assets* refer to a wide variety of assets, but we do not yet have a definition that describes them, so the regulatory authorities have defined them in different ways, highlighting the following:

The European Central Bank (ECB)<sup>6</sup> considers any digitally registered asset that does not represent a right or a financial obligation of any natural or legal person and that does not incorporate a property right against an institution.

The Financial Action Task Force (FATF)<sup>7</sup> defines them as digital representations of value that can be traded or transferred digitally, as well as used for payment or investment purposes.

The International Organization of Securities Commissions (IOSCO)<sup>8</sup> has described it as a private active model that depends on cryptography and *distribution registration technology* or similar technologies as part of its perceived value, and an asset can be represented as a currency, a security, a commodity or its derivatives.

The Financial Stability Board (FSB)<sup>9</sup> and the Bank for International Settlements (BIS)<sup>10</sup> have defined it in a very similar way, understanding it as a type of asset that depends primarily on cryptography and its distributed ledger as part of its perceived value.

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<sup>5</sup> MARÍA ÁNGELES NIETO GIMÉNEZ-MONTESINOS AND JOAQUÍN HERNÁEZ MOLERA, «Virtual and local currencies: The paracurrency New forms of Money?» *Banco de España Financial Stability Review* NO.35, November 2018, p.106.

<sup>6</sup> ECB CRYPTO-ASSETS TASK FORCE, «Crypto-Assets: Implications for financial stability, monetary policy, and payments and marketinfrastructures», *ECB Occasional Paper N.223*, 7 de mayo de 2019, p.7. Disponible en: <https://www.ecb.europa.eu/pub/pdf/scpops/ecb.op223~3ce14e986c.en.pdf>

<sup>7</sup>FATF, "Guidelines for a Risk-Based Approach to Virtual Currencies" June 2015. p.28. Available in: <https://www.fatf-gafi.org/media/fatf/documents/Directrices-para-enfoque-basada-en-riesgo-Monedas-virtuales.pdf>

<sup>8</sup> IOSCO, «Final Report on the Issues, Risks and Regulatory Considerations Relating to Crypto-Asset Trading Platforms», febrero de 2020. p.12. Disponible en: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD649.pdf>

<sup>9</sup> FSB, «Crypto-assets: work underway, regulatory approaches and potential gaps», 31 de mayo de 2019, p.10. Disponible en: <https://www.fsb.org/wp-content/uploads/P310519.pdf>

<sup>10</sup> G7 WORKING GROUP ON STABLECOINS, «Investigating the impact of global stablecoins», octubre de 2019, p.24. Disponible en: <https://www.tresor.economie.gouv.fr/Articles/5f8c26f2-a2cd-4685-ba82-fa9e4d4e5d67/files/d10fb97f-a9a6-472b-842a-8b279e8863c4>

The European Securities and Markets Authority (ESMA)<sup>11</sup> has defined a "crypto-asset" as a type of private asset that depends on cryptography and *blockchain* technology, and also refers to virtual currencies as tokens which it defines as "any digital representation of an interest, which may have a value, a right to receive a profit or to perform specific functions or may not have a purpose or use. specific".

The Proposal for a Regulation of the European Parliament and of the Council on crypto-asset markets and amending Directive (EU) 2019/1937<sup>12</sup> describes it as 'a digital representation of value or rights that may be transferred and stored electronically, using decentralised registration technology or similar technology'.

In short, the proposals of the authorities could understand that a *crypto asset* is a digital asset that is registered in some form of distributed ledger secured with cryptography, making use of *DLT or Blockchain technology* that is used as a means of payment exchange or for investment purposes to access products or services. These *crypto assets* can exhibit different characteristics and this is where their nature lies.

The main classification distinguishes between "*cryptocurrencies*" and "*token*". The "*cryptocurrency*"<sup>13</sup> can be defined as a distributed, open source and cryptography-based virtual currency that does not have a central administrative authority or central supervision or surveillance so it is designed to perform functions of a currency, its objective is to function as a medium of exchange of value, store of value and unit of account.

The objective of the "*cryptocurrency*" is to propose an alternative to the legal tender currencies issued by the states, despite lacking physical support, except for the "*stable coins*"<sup>14</sup> that are cryptocurrencies associated with the value of a fiat currency or material goods such as gold or real estate, and even another currency controlled by algorithms. "*Cryptocurrencies*" still lack legal recognition as money, in legal terms they still do not have the consideration of money, nor can you pay with them.

Today they are **not** considered as a means of payment, The National Commission of Markets and Securities (*hereinafter CNMV*) together with the Bank of Spain launched two press releases by which they recorded the **non-obligatory** acceptance as a means of payment for debts or obligations due to its strong volatility and notorious changes in its value.<sup>15</sup>

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<sup>11</sup> AEVM-ESMA, «Advice on Initial Coins Offerings and Crypto-Assets», 9 de enero de 2019, p.8  
Disponibile en: [https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391\\_crypto\\_advice.pdf](https://www.esma.europa.eu/sites/default/files/library/esma50-157-1391_crypto_advice.pdf)

<sup>12</sup> EUROPEAN COMMISSION, 'Proposal of the Parliament and of the Council on crypto-asset markets and amending Directive (EU) 2019/1937', COM(2020) 593 final, 24 September 2020.

<sup>13</sup> MOISÉS BARRIO, "Concepts and classes of cryptoassets" *Cryptoassets. Regulatory challenges and challenges* edition nº1, LaLey, 2021, p.8.

<sup>14</sup> GOBIERNO REINO UNIDO, «Managing the failure of systemic digital settlement asset (including stable coin) firms:», mayo de 2022, p.6.

<sup>15</sup>CNMV AND BANCO DE ESPAÑA, "Joint statement of the CNMV and the Bank of Spain on "cryptocurrencies" and "initial offers of cryptocurrencies" ICOS". February 2018

CNMV AND BANCO DE ESPAÑA, "Joint communiqué of the CNMV and the Bank of Spain on the risk of cryptocurrencies as an investment", February 2021

On the other hand, "*tokens*" are a cryptographically protected digital representation of physical goods, rights or other digital goods such as a license to use a digital platform or services.

These *crypto-assets* offer their holders economic rights, which in general terms are digital representations of interests or access rights to a good or service.

At this point we can include the "*Security Tokens*"<sup>16</sup> that represent a type of digital asset, such as the ownership of a property or a representative title of participation in an entity, its value derives from an external and negotiable asset. And the *NFT* or *non fungible token* defined as a **unique digital certificate**, which is registered in a blockchain, in the same way as with cryptocurrencies, serves to register the ownership of an asset such as a work of art or an object of the collection.

*To give a practical example, in an imaginary world one hundred percent digitized, Leonardo Da Vinci paints his famous painting "La Monna Lisa" but instead of doing it on an easel, he does it 100% digitized. How would we know the authenticity of this one? Since just like there are thousands of copies of the copy that is hanging on the walls of the Louvre. To do this, you will have to verify the information of the smart contract, and thus be able to see its blockchain, which will lead you to verify the authenticity and value of said Token.*

In conclusion, *crypto-assets* are a revulsive for the financial system, but at the same time they affect its security and therefore the need arises to create a new legal framework that takes into account the constant evolution of the "*crypto*" sector and that deserves supervision and continuous attention by the sector and regulation.

It is important that legal operators understand *crypto assets* with a double perspective, first we must understand that it is a reality that transforms new tools by the way their financial services present and on the other hand understand that the technological evolution of *crypto assets* causes numerous legal issues.

## 2. SITUATION OF CRYPTO-ASSETS IN SPAIN

The main attraction of these digital assets is that they are not regulated by any financial institution, so they do not require intermediaries to carry out their transactions, which means a reduction in costs that is attractive to the investor.

*Cryptocurrencies* do not present any backed value, but their value varies depending on the confidence of investors as supply and demand fluctuate, following the patterns of speculative bubbles, so it can be said that cryptocurrencies are merely an investment product and is not a type of currency, so we can say that the variation in the price of these financial products supposes an increase or a loss in the investor's equity.

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<sup>16</sup> MARÍA NIEVES PACHECO JÍMEZ, "From Blockchain Technology to the Token Economy" *Journal of the Faculty of Law PUP*, in July-December 2019 p.10.

The Association of Financial Users (*hereinafter ASUFIN*) conducted a study last year where it is estimated that almost 4.4 million Spaniards invest or have invertido en criptomonedas, lo que representa un aproximado al 11,2% de la población total del país.<sup>17</sup>

This study allows us to know the behavior of investors, reflecting how up to 70% of investors have invested more than € 1,000, being only 28% of investors who have declared that they have obtained losses, deepening where more than a quarter of investors have exceeded 6,000 euros of investment, which only 59.1% were aware of the risk that this type of investment entails.

The figures of this study are alarming, since the vast majority of investors do not know about the products they are investing, being **69.8%** of investors who believe that they are supervised by some authority. Data that contradicts the message of investors, since the main attraction of these assets is characterized by being a decentralized product without intermediaries.

To all the uncertainty about the product we must add the user's ignorance about the tax implications of these instruments, where 41.4% think that they will not have to pay any tax on the profits obtained in their investments, compared to 28.4% who admit to having no knowledge about it.

Despite not having a regulation that protects the provision of services on *crypto assets*, in Spain, the CNMV has pronounced on regulation on its advertising campaigns and is working with the rest of the countries of the European Union to find a way to regulate these products.

That is why it is important to regulate the information offered about these products, since the lack of entities that verify the veracity of these advertising campaigns, or the professionalism of those who transmit this information put the small investor in a vulnerable situation and complete ignorance. Therefore, the legislator has to work on creating entities or registries that provide veracity and honorability to communications about these financial products with the aim of preventing investors from buying or investing in these products from ignorance.

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<sup>17</sup> SPANISH MINISTRY OF CONSUMER AFFAIRS AND ASUFIN, "III Study on knowledge, habits and use of Fintech in Spain" in November 2021. Available in [https://tech.asufin.com/wp-content/uploads/2021/11/III\\_ESTUDIO\\_CONOCIMIENTO\\_HABITOS\\_Y\\_USOS\\_DE\\_FINTECH\\_EN\\_ESPANA.pdf](https://tech.asufin.com/wp-content/uploads/2021/11/III_ESTUDIO_CONOCIMIENTO_HABITOS_Y_USOS_DE_FINTECH_EN_ESPANA.pdf)

## II. THE COMMUNICATION OF *CRYPTO-ASSETS* AND THE WORLD OF THE INTERNET

The growth of technology and the constant evolution of the internet has allowed us to reach globalization and with it its impact on the form of interaction between human beings, providing a new virtual space that shortens distances and allows new forms of interpersonal communication, which has allowed the birth of social networks, platforms that have become our main means of communication.

The growth of social networks has created the figure of the *influencer* that could be defined as those people who stand out in a social network where they express their opinions having great acceptance by a certain audience.

The constant technological innovation and the rise of social networks open the doors to new digital businesses that focus their activity on advertising campaigns or digital marketing reaching any average user.

### 1. THE ADVERTISING OF "*CRYPTOCURRENCIES*" ON SOCIAL NETWORKS AND THEIR IMPACT ON THE VALUE OF ASSETS AND ON CONSUMER DECISIONS

Within the framework of cryptocurrencies, as we have already mentioned above, they emerged in 2008 as an alternative to the traditional financial system, gaining strength in recent years and obtaining a great impact since the beginning of the pandemic.

In Spain, content creators who dedicated their activity to *informing, promoting and encouraging investment in cryptocurrencies* gained strength, highlighting the account of *@WallStreetWolverine* that has more than 200,000 followers on the "Twitter" platform and more than 400,000 followers on Youtube, with a reach of more than 100,000 visits per video, basing its main content on economic news and on cryptocurrencies and financial assets. It has also created its own academy to advise and train investors on this product, under the name of "Mr.Crypto".

This phenomenon can also be observed in the great world celebrities, such as **Elon Musk**, founder of PayPal, Tesla, Inc or SpaceX among others, being one of the main supporters of these financial assets. During the year 2021, he made a series of statements through the Twitter platform where he has more than 92 million followers, a platform of which he is also in negotiations for his purchase reaching an offer of 44,000 million dollars last April.

Elon Musk is mentioned especially about two coins in particular *DogeCoin*, an asset that arises as a counterpart and mockery towards Bitcoin, with an insignificant value for the investor, being its price 0.003320 euros in the month of December 2020, an amount much lower than the cent. Being the months of January and February of that same year where Elon Musk makes two statements referring to the asset, by which he launches the message that anyone can buy Tesla, Inc products with this asset and will also show his support for the cryptocurrency, considering *DogeCoin* as the cryptocurrency of the people, stating that anyone who invests in this currency will be able to obtain benefits, whose objective is to take the asset "to the moon".

Image 1: Twitter Elon Musk @elonmusk



At the time of the events, DogeCoin had a value of 0.008672 euros (*dated January 14, 2021*) experiencing a variation in the price reaching 0.046597 euros on January 29, 2021, it can be said that it experiences an increase of 537% of its value just 15 days after publication, reaching in the month of August 2021 a maximum of 0.33 euros, that is, a 3,800% profitability after the support of the South African tycoon. It is currently around 0.16 euros, which clearly reflects the high volatility of these assets.

Successively and after several statements about **Bitcoin** (*it is the first cryptocurrency to appear, in addition to being the most important and which has the greatest value in the market*). In the month of February 2021 he announces that his company Tesla, Inc would invest 1,500 million dollars (*1,403 million euros*) in Bitcoin. After this news, Bitcoin exceeded a 17% increase in its value, reaching a record price of 41,550 euros, and a month later, on March 24, 2021, it is made public through an official statement through the official media of the company and Elon Musk's own account, that the Tesla company itself, Inc will accept Bitcoin as a means of payment.



Image 2: Twitter Elon Musk @elonmusk



After this new statement, Bitcoin experiences an increase from 52,325 euros on March 24 to 63,540 euros on April 13, 2021. In a temporary period of 60 days that elapse from the first statement by which Tesla, Inc invests in Bitcoin, the cryptocurrency experiences a change from 41,550 euros to 63,540, a difference of approximately 20,000 euros per asset, or rather a 150% return.

In the same year, in the month of May 2021, Elon Musk through a statement on his Twitter account announced that **Tesla, Inc would stop accepting** payments with bitcoin *due to the environmental impact* of the mining process of cryptocurrencies, something that according to the tycoon is contradictory to the strategy and the message of sustainability that they transmit from Tesla, Inc.

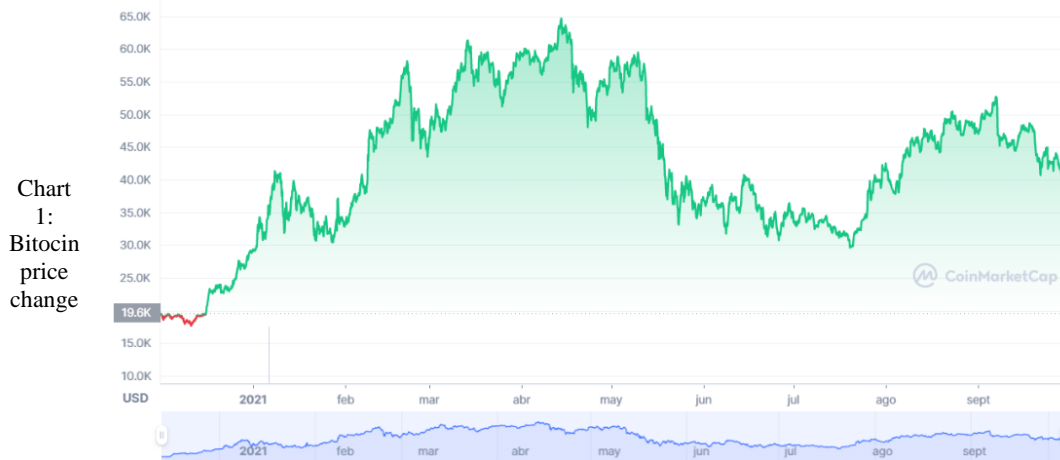


Image 3: Twitter Elon Musk @elonmusk

After this statement, Bitcoin would suffer a loss of 11% of its value, despite this, the CEO of Tesla Inc, returns to pronounce on Bitcoin through his Twitter account, making a statement in which he **confirms that Tesla, Inc will accept Bitcoins again** at the time it used clean energy in its mining process, statement that would cause an increase in the price of 9% on the value of the cryptocurrency.



After the data we have exposed, in the month of April 2022 the price of Bitcoin is around 30,000 euros per asset, which represents a loss of 50% on its value in the month of August, which again highlights the volatility of this type of financial instruments.



between December 2020 and September 2021<sup>18</sup>

The graph presented confirms the joint statements of the CNMV and the Bank of Spain in which their **extreme volatility and the lack of transparency** that these financial products represent are mentioned, assuming a very high risk for the investor.

By not having mechanisms that prevent manipulation on their price, this type of publication can cause an impact on the investor's decisions based on the trust they have on the user.

## 2. CRYPTOCURRENCIES AND PUBLIC FIGURES

In Spain, the CNMV has already given a wake-up call to the footballer Andrés Iniesta for a publication on his Twitter account by which he made his account on Binance in which he commented that he was starting in the world of cryptocurrencies, insisting the footballer to be informed of the risks involved in these products before recommending to third parties the investment in them.

Others like Kim Kardashian or Floyd Mayweather, famous for their extravagant lifestyle, have been sued for promoting cryptocurrencies that turned out to be scams. A problem that must be faced from the perspective of the millions of followers who trust these public figures and consume under the trust placed in them, everything they can advertise, without taking into account the risks that come from these activities.

También habría que añadir a la lista a Elon Musk, Tesla y SpaceX que ha sido demandado por presunta estafa con *DogeCoin* ante las autoridades de Nueva York.

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<sup>18</sup> COINMARKETCAP, "Bitcoin Price", Chart between December 2020 and September 2021. Available in <https://coinmarketcap.com/es/currencies/bitcoin/>

Keith Johnson, a US citizen who considers himself defrauded by *DogeCoin* has sued Elon Musk and his companies for an amount amounting to \$ 258,000 alleging that they constitute an illegal company on a pyramid scheme whose objective is to inflate the price of the "*cryptocurrency*".<sup>19</sup>

The president of El Salvador, Nayib Bukele did an experiment where he used money from the country's federal reserves to issue debt bonds for the acquisition of *Bitcoin* becoming the first country to adopt *Bitcoin* as legal tender<sup>20</sup>

The European Securities and Markets Authority (ESMA) has warned of the increasing reliance on social media in financial decision-making by binding parties.

In the United States, the company "*Betterment*" advisory company aimed at inexperienced young people used an *influencer* with almost half a million followers on TikTok to make videos on the platform, where the hashtag *#FinTok* has more than 900 views and that of *#cryptocurrenci#* almost 5,000 million.<sup>21</sup>

During the month of December 2019 the Youtube platform deleted several videos that talked about *cryptocurrencies* claiming that it was 'harmful or dangerous content' and 'sale of unregulated products', creating where several *influencers* showed their discomfort after having worked for more than 10 years and having achieved more than 7 million visits and more than 200,000 followers on the platform, as expressed by Youtuber Chris Dunn through his Twitter account.<sup>22</sup>

Faced with this situation that poses a risk to financial stability, ESMA has warned that following investment recommendations on social networks not only poses an individual risk, but also affects the integrity of markets and possibly financial stability since the power of social networks and their influence on decision-making processes can pose several risks for consumer protection.

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<sup>19</sup> GONZALO HERNÁNDEZ, "The bitcoin crash, Bill Gates against NFTs and Elon Musk sued for promoting dogecoin: the week in cryptocurrencies" *in the cryptocurrency section of Engadget Mexico*, June 2022

<sup>20</sup> JONATHAN S. HARTLEY, «Pre-Análisis Plan for El Salvador Bitcoin monetary experiment» *Universidad de Stanford*, septiembre de 2021

<sup>21</sup> PABLO MARTÍN SIMÓN, "The damage that 'influencers' can cause in the pockets of social media users" *Cinco Días*, February 2022

<sup>22</sup> RACHEL WOLFSON, "Cryptocurrency Influencers Talk About Removing Crypto-Related Content on Youtube" *cointelegraph in Spanish*, December 2019. Available in: <https://es.cointelegraph.com/news/cryptocurrency-influencers-speak-out-on-youtube-deleting-crypto-related-content>

### III. REGULATORY FRAMEWORK

#### 1. PREVIOUS REGULATIONS ON ADVERTISING IN OUR SYSTEM

##### 1.1 THE REGULATION ON BETTING ADVERTISING

The market for sports betting and gambling show similarities with the consumer profile to which advertising and information of *crypto assets* is directed, even using the same techniques to attract customers.

During the last decade we have been able to observe how the advertising of the bookmakers were in any means of information, television ads, advertising in social networks, newspapers and their digital platforms, sponsorship of sporting events as teams that had a great social impact.

That is why, in November 2020, Royal Decree 958/2020, on commercial communications of gambling activities, is published. Its objective is the prevention of addictive behaviour and the protection of the rights of minors and other particularly vulnerable groups.

The purpose of the rule refers to the conditions under which entities or bookmakers may develop their advertising activities, sponsorships or promotion of their activity and the conditions under which certain responsible or safe gambling policies must be developed, with the aim of **protecting the consumer**.

The scope of application of the standard will focus on the dissemination of any type of commercial communication, such as web pages, social networks or affiliate systems.

Article 3 regulates the activities of promotion of bonuses, bonuses or discounts or gifts of bets, as well as the multipliers of odds acquired by the promotion to participation in the game, or customer loyalty systems.

In Spain, the gambling sector has used these "welcome bonuses" as an advertising claim with the aim of attracting more consumers and achieving greater dissemination.<sup>23</sup>

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<sup>23</sup> FRANCISCA CANTERO AND JOSÉ MANUEL BERTOLÍN, «Influence of new technologies on gambling problems and impulsive purchases of young people» *Revista española de drogodependencias* 40(4), June 2015, pp.34-47.

The Royal Decree also refers to free gaming applications, such as those that allow participation in the game without making an economic contribution and without receiving any prize for the victories obtained.

The regulations introduce sports betting forecasters as those natural or legal persons who publicly make predictions about sporting, equestrian or any other nature events.

Publications that suggest that the game can be a solution or an alternative to personal, educational, professional or financial problems such as those publications that offer loans to participants are prohibited.

Messages that suggest that the skill or experience of the person in the game eliminates the chance on which the profit depends or appeal to their knowledge about the domain of the platform as determining elements of the success of the activity are prohibited.

The most important point that we find in the regulations is regulated in article 11 that refers to the **principle of protection of minors**, the regulations prohibit any type of communication that incites minors to practice gambling by themselves or through third parties. These types of publications should make use of warnings such as "minors no", "+18" messages.

There have been studies that relate minors as a vulnerable group to develop pathologies associated with disordered use in the game, in the United Kingdom a study was made in 2008 and 2009 to 8,958 adolescents between 11 and 15 years where the rate was higher than in relation to adults 1.9% compared to 0.6-0.9<sup>24</sup>%.9%

In Spain, studies were carried out where more than 1.5% of the adult population has been diagnosed with pathological gambling criteria while in children under 18 years of age it exceeds 2%.<sup>25</sup>

Sponsorship activities at sporting events are also prohibited, as well as the inadmissibility of wearing sponsorship on sports jerseys.

In the 2018 season, nineteen of the twenty teams of the Spanish La Liga had a sponsor related to sports betting as a sponsor, being 30% of the total main sponsorships, while in La Liga Inglesa fifteen of the twenty teams are sponsored by bookmakers, amounting to 45% of the total of main sponsorships.<sup>26</sup>

This study establishes that 33% of the total sponsors of the Spanish La Liga are sportsbooks, analyzing more deeply the study, in a meeting between two teams there will

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<sup>24</sup> FORREST Y MCHALE, «Gambling and Problem Gambling Among Young Adolescents in Great Britain» en noviembre de 2011

<sup>25</sup> ERNESTO JOSÉ VERDURA "Pathological game. Addiction without substance» *Universidad Complutense de Madrid*, in 2014, p.10.

<sup>26</sup> GEMA LOBILLO AND ALBERTO ENRÍQUEZ, "Bookmakers in sports sponsorship: Study of La Liga Santander and the Premier League in 2018-2019" *Study by the University of Malaga* year 2020

be a 60% chance of being impacted by advertising of the bookmakers as the main sponsor in the Spanish League, compared to England who will have a 90% chance.<sup>27</sup>

Promotions to attract new customers are prohibited, and requirements are established for those who can enjoy the promotional offers, having an account open for at least thirty days, and that the documents have been verified. As in turn the prohibition *not to alter the return of the prizes*, which can not suppose the impossibility of withdrawing the balance of the account whose origin comes from deposits made with real money.

In addition, entities will be prohibited from using public or famous people with high public relevance in their commercial and advertising communications.

To conclude, the legislator has a series of prevention and intervention mechanisms by which web portals and mobile gaming applications will have information on 'responsible gambling', a technique that can be used to raise awareness of the risks of any investment. As well as protocols that allow detecting risk behaviors in registered users.

## 1.2 CIRCULAR 2/2020 OF 28 OCTOBER OF THE NATIONAL SECURITIES COMMISSION, ON ADVERTISING OF INVESTMENT PRODUCTS AND SERVICES

This regulation completes and develops Order EHA/1717/2010, on the regulation and control of advertising and investment services and products. The objective is to homogenize the advertising regime of investment services and banking services, so it develops and expands the obligations provided for in the Order.

In the first place, it establishes a delimitation of the content of advertising activities, limiting the scope of communications that are subject to the Circular, referring to that advertising campaign that is aimed at the investor or potential investors residing within the national territory. We refer to the advertising activity that is linked to financial products, services or activities that are under the supervision of the CNMV.

Secondly, it **excludes from** its scope communications that are provided to investors prior to contracting, including warnings about the characteristics and risks of financial products or services, corporate advertising campaigns or the publication of objective data on financial instruments or documentation provided to professional investors or analysts.

A communication shall be of an advertising nature where reference is made to or provided to financial products and services of a particular identity cualquier tipo de remuneración a cambio de su difusión. Del mismo modo, se **prohíbe** la actividad publicitaria que esté dirigida a inversores **minoristas** o al público en general.

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<sup>27</sup> IBID

The Circular includes in its scope of application the entities that have traditionally been providing investment services, both national and foreign entities that have their center of operation in Spain and more limited to those entities that are authorized to operate in Spain under the regime of freedom to provide service such as participatory financing platforms.

The precepts of this Circular will also apply to other types of entities when advertising campaigns are carried out on products and services provided for in it and are aimed at investors or potential investors residing in Spain. Including any interested party in a public offer to acquire or sell securities.

The regulation will regulate advertising activity in its format and content control in a similar way to the regulation of advertising in terms of banking services, I understand both traditional formats and any digital media or social network. Therefore, commercial communications must be consistent with all informative content and must include the warnings that are required in the framework of the commercialization of their products and services by virtue of a resolution or requirement of the CNMV.

Its Annex sets out the criteria to which this type of campaign must conform and, among other issues, establishes the conditions in relation to the minimum information that must be submitted, including secondary messages and the responsibility of the entities with the dissemination content, as well as specific criteria in relation to the format of the messages and their language.

In its annex, reference is made to the content of the advertising that must be done in a clear, balanced, impartial and not misleading manner, in addition the information must be consistent and may not contradict the warnings of the entities obliged to provide to customers in the marketing of the services. At all times, expressions that may induce investments to consider that legal documentation is less important than any other advertising information should be avoided, establishing a series of conditions on the pieces that provide information on cost or returns avoiding creating disproportionate expectations and including warnings about risks.

In addition, distinctions must be made between the products and products offered, so as to avoid expressions that may generate doubts about their characteristics such as the prohibition of superlative or diminutive adjectives or expressions that indicate advantages over the product, as in turn the prohibition of alluding to gift terms.

The reference to past returns will be limited to twelve months, but returns of more than one year may be provided provided provided that it is additional information to the minimum required and cannot be highlighted from the rest.

It expands the commercial communication policy already seen in The Order, expanding the obligation to have an internal policy for all the entities obliged by The Circular and develops in a more external and specific way the content of this.

Regarding the registration of advertising and its adherence to advertising self-regulation systems, the characteristics and minimum content of the internal register on the different advertising activities to be carried out are specified and must be kept

constantly updated, maintaining the possibility of voluntary adherence by the entities to the advertising self-regulation systems.

The CNMV will be responsible for supervising the advertising activity and may require the cessation or rectification of the advertising activity that does not comply with the established requirements, without prejudice to the application, and when appropriate the sanctioning regime provided for in the regulations required of the affected entities.

In conclusion, it is intended to strengthen the control of advertising in the field of investment products and services, as well as to adapt it to changes in the sector and with it, to the new participants in it.

## 2. CIRCULAR 1/2022 OF THE NATIONAL SECURITIES COMMISSION

### 2.1 CONTEXT

Spain is one of the first countries to regulate *matters in cryptoassets* despite not offering a direct regulation on products, regulates advertising avoiding certain behaviors that can become abusive or deceptive against the most unprotected, that is, consumers.

The objective pursued by Circular 1/2022 of February 17, 2022 is to strengthen investor protection and ensure that they are duly informed of the *characteristics and risks of the crypto-assets* that are offered to them.

The interest of the CNMV is that the advertising is true, easy to understand and not misleading, which includes all the risks associated with the products and the necessary information that allows the investor to make decisions with the greatest possible knowledge about the investment product.

A balance is sought between advertising and informative language, as well as information on the risk and characteristics of the products that are advertised, avoiding lies, exaggerations about profitability and ambiguities that may cause confusion in the consumer, all advertising must offer veracity, balance and clarity.

We must take into account the presence that *technologies and crypto-assets* have gained in recent years on the financial system, taking into account the incentive of reducing costs and processing time of transactions or the scarce intervention of public authorities for these financial products, as well as the absence of supervision and regulation that we can find when making use of *Blockchain* technologies . At the same time, it is common for these *crypto-assets* to be offered as an object of investment not only to specialized investors, but also to retail investors, who are not familiar with the financial environment, these advertising activities being practiced by a wide variety of media, taking importance websites and social networks.

The situation created by the pandemic has had a great impact on the impact of *crypto-asset* advertising, so the CNMV and the Bank of Spain issued the statement already mentioned in the previous section, of February 2021, which warns about the possible risks of this type of *crypto-assets* that they pose for the participants of the financial system and especially for the small investor.

The statement emphasizes the complexity and volatility of these products as well as the lack of liquidity of these investments. At the moment, *crypto-assets* do not have their own regulation either at the national or European level.

In the European Union we find the MiCa project, which is a proposal of the European Union that aims to establish a series of requirements to authorize the issuance of a specific "*crypto-asset*", for its operation, organization and governance of *crypto-asset service providers*. This regulation regarding the *Crypto-asset Market* will enter into force in 2024, so until then, "*cryptocurrencies*" remain products without regulation, and therefore, they are not yet subject to supervision and for this it is necessary that the investor who acquires this product is aware of all the risks involved in investing in cryptocurrencies since they can conclude in large losses due to constant price variations, situations of lack of liquidity or even the loss of the entire investment due to cyberattacks or failures in the custody of the technology.

The investor must have knowledge about the technologies that present these assets have many risks, such as the difficulty of controlling the interveners due to the realization of the operations anonymously, such as the destination in which the funds can end, being able to be used to finance illegal situations.

## 2.2 SCOPE

The scope by which the Circular is developed applies exclusively to the rules, principles and criteria that the advertising activity must adjust with the aim of offering *crypto-assets* as an object of investment, it does not regulate the products themselves, nor their suppliers nor their characteristics until the MiCa Regulation enters into force.

The Circular regulates a very specific aspect, its advertising and does not cover all *crypto-assets*, but those that are the object of investment and are not subsumed with financial objects of the LMV. In this sense, *crypto-assets* are considered as an investment object when its acquisition is promoted or its profitability is referred to. Including advertising in any medium, social networks and online platforms and websites.

Article 4 introduces the subjective scope of the standard, subjecting to regulation *crypto-asset service providers*, advertising service providers and in general any natural or legal person who, on his own initiative or through third parties, carries out an advertising activity on *crypto-assets*. That is, the Circular also affects *influencers* who publish advertising content of *crypto-assets* that are the subject of a promotional activity including those tips or comments that may be given in exchange for considerations.

The Circular excludes unpaid opinions because they are not within the scope of the Circular.



Among the exclusions we can highlight the so-called "*whitepapers*"<sup>28</sup> which are informative documents that highlight the characteristics of a product, solution or a service offered or offered by a company since they do not constitute any advertising activity as they are documents that are used by the issuers of *crypto assets* to inform about the product and is considered a common practice within the market, whose content could be considered as an investment prospectus, so it is not yet expected that the CNMV will regulate this type of documents.

Certain assets are also excluded, such as *NFTs* or those for which their characteristics cannot be invested, as well as advertising about seminars, courses or conferences provided that investment in the products themselves **is not encouraged**.

### 2.3 CONTENT OF THE REGULATIONS

It requires that advertising be clear, balanced, impartial and not misleading, so it must use simple language that is easy for the consumer to understand, avoiding the omission of information that is relevant, in order to avoid that this information may be ambiguous, biased or incomplete or contradictory that may lead to confusion.

All advertising on *crypto-assets* should necessarily include information on risks in a prominent and easily visible place, including the phrase "*Investment in crypto-assets is not regulated may not be suitable for retail investors and the entire amount invested may be lost*". It must include a link that facilitates access to the rest of the information about the product.<sup>29</sup>

As a general rule, advertising on the *crypto-asset* will be free and will not need prior communication to the CNMV, except those that are considered massive advertising campaigns, that is, those that are aimed at more than 100,000 people using any advertising medium, and those who want to carry them out must inform prior to their initiation within ten days before and inform the CNMV by providing the necessary documents that can already be found on the CNMV website, where the necessary information on such advertising is found so that the CNMV can determine if the requirements established by the Circular are met.

After the period of 10 days, the advertising campaign may be started unless the CNMV deems otherwise and sends the appropriate requirements with the aim of complying with the requirements of the Circular, in the event that the CNMV does not pronounce it does not mean that it gives its agreement, so it may request the advertiser at any time the information it deems necessary to verify that said advertising meets the conditions that marks the circular.

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<sup>28</sup>*Whitepapers* refer to information documents that promote or highlight the characteristics of a product, solution, or service offered or offered by an entity

<sup>29</sup>Circular 1/2022, of January 10, of the National Securities Market Commission, Regarding the publicity on crypto-assets presented as an object of investment

The CNMV has the power to request the cessation or rectification of advertising as long as it considers that it is not complying with the requirements established in it, requirements that are quite detailed regarding its content beyond the warnings.

The content of advertising campaigns must avoid referring to past returns and if reference is made to them they must follow certain safeguards established by the circular, such as references to gifts, the use of superlative adjectives or the requirement that the warnings occupy at least one fifth of the advertising space, in the case that it is done by audiovisual means it will be required that the warning has a certain duration so that it can be transmitted clearly and completely.

Annex I establishes the general principles and criteria where advertising must be impartial, with simple language and not be misleading, forcing the avoidance of any omission or incomplete information, all information must be consistent and when reference is made to profitability must contain clear, accurate, sufficient and complete information such as describing the characteristics of the media used and the target audience to which they are addressed. The communications may not make references to past high returns and in the case of being made must indicate the period to which they refer, may not exceed 12 months old and must avoid creating false expectations that suppose an incentive to operate with said *crypto-asset*. In addition, where it is not possible to add as much information as possible on *crypto-assets*, they should be referred to alternative sources of information via a link or a QR code where the consumer can have access to further information. Advertising messages may not use superlative or diminutive adjectives that indicate advantages over the *crypto-asset*, the term "gift" may not be used as an incentive to operate on such *crypto-assets*, this idea could serve to develop it in the future and include the "welcome bonuses". Finally, the format used must be of sufficient duration to be able to be transmitted clearly and completely, when it is audiovisual content it must last more than 60 seconds.

In Annex II it is referred to that they are a high-risk investment product in the beginning establishes that the value of investments may undergo changes due to the volatility of the product, reaching the loss of the entire investment as well as emphasizing that *crypto-assets* are not regulated by any law or by guarantee mechanisms so they may be lacking in liquidity.

Secondly, it refers to the *risks of the technology* that are still in a phase of maturation and may be susceptible to cyberattacks, being able to lose all the *crypto-assets* added to the ease of anonymity that *crypto-assets* can provide, it hinders their recovery since custody is a very relevant responsibility and in case of theft they can be lost in their entirety, identifying the entities that carry out the custody of advertising *crypto-assets* in the country in which it is carried out and its applicable legal framework.

Finally, the *legal risks* of the acceptance of *crypto assets* are not yet considered a medium of exchange and do not have acceptance as such, so no one is obliged to accept them, the providers are usually outside the European Union or in tax havens which makes it difficult to resolve any conflict and leaves it outside the scope of the Spanish authorities and finally when the investor does not have digital wallets of the service provider and does not have access to the private keys, the situation shall be indicated and the investor's rights to the products shall be described.

The Circular provides for sanctions in the case of non-compliance, empowering the CNMV the sanctioning power, being able to impose sanctions of up to 300,000 euros to natural persons or 2% of own resources to legal persons or entities.

The objective of the Circular is that the announcements about *crypto-assets* that are offered as an object of investment meet all the requirements to guarantee the protection of those who decide to invest in them.

### 3. APPROACH IN EUROPE

In Europe we have in development the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937 (or MiCa Regulation)<sup>30</sup>, in which advertising in some aspects has a narrower scope, while in others it has a wider scope. Its narrow scope only regulates advertising to what it considers advertising communications with respect to public offers and the application of the trading platform in a secondary market.

This definition will pose problems since it defines the offer made to a third party, and an offer made to a third party is one in which it is offered to a third party to buy or exchange *crypto assets*, a definition that will bring conflict for its interpretation.

MiCa is limited to those who make public offers or those who make a request for them, but when it makes an objective delimitation it speaks of those *crypto-assets* from which any advertising that intends to make a public offer or its incorporation into a trading platform is intended.

At this point we must attend to the figure of the *influencer*, who is also subject to the MiCa regulation, despite not being considered as issuers or service providers, when advertising on behalf of a third party, it is not clear if they will become within the scope of MiCa, although if they were within what Circular 1/2022 of the CNMV applies.

This interpretation must be made from an extensive sense, because *influencers* have to be regulated since they are a powerful focus of investment for young people and people who have no experience in the financial sector.

MiCa establishes that the requirements of advertising must be impartial, clear and not misleading and communications must be identified as such, despite not needing a specific message that adds that they are advertising, although the issuer of the advertising must be included facilitating the consumer the possibility of going there.

The issuer of advertising about *crypto assets* must have a record that lasts on their own website until the *cryptoasset* leaves the market, this aspect is very important, since thanks to *blockchain* technology we can follow the advertising and assess how it has evolved, as well as its past corrections.

In the event that the CNMV asks an issuer to modify the advertising, we must verify that said advertising has been modified, and in what aspects, what *blockchain* technology allows us to track how that evolution has evolved. So this record should be

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<sup>30</sup> Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on crypto-asset markets and amending Directive (EU) 2019/1937 COM(2020) 593 final Available at: <https://eur-lex.europa.eu/legal-content/ES/TXT/PDF/?uri=CELEX:52020PC0593&from=ES>

considered while the *crypto asset* circulates through the market, since this form allows us to protect the situation.

The procedure proposed by MiCa is much slower than that proposed by the CNMV since all advertising must be notified at least 20 days before within the objective scope set out in the rule, without prior authorization or consideration of mass campaigns, all advertising must be notified.

The obligation on the publicity of service providers, *exchanges* or advisors will be required to give clear information, exercising duties of diligence with clients, and must not be misleading, so the client must know the real advantages of the *crypto-assets* they are acquiring and must also inform the client of the risks associated with the acquisition of *crypto-assets*.

Once the MiCa regulation enters into force in 2024, all service providers must have protocolized how they will exercise their communications with customers for any type of transaction, as well as the existence of risks and must anticipate the acquisition of *the crypto-assets* or operations in which they participate.

## IV. ADVERTISING STRATEGIES

### 1. ADVERTISING IN THE *CRYPTO-ASSET SECTOR*

To analyze the way in which *crypto assets* are advertised, it is important to draw a dividing line between the advertising of the *exchange platforms* for the provision of services and influencers. To begin, we are going to analyze the strategies used by *influencers* in social networks since the Circular only take them into account when they carry out paid advertising activities that talk about investment products and **excludes** the information offered about a product and this is where I really see a problem, since this type of techniques pose two problems, the first, the existence of trainings without any support and no institution that verifies the knowledge of who imparts and officializes them and the second the advice they offer to their followers or clients that put them in a situation of vulnerability.

### 2. INFLUENCERS, CRITPO E INTERNET

Therefore, we have made a navigation through the Instagram social network that offers an advertising system for users in exchange for a price, where the interested in carrying out an advertising campaign can decide which audience to target, the impact and durability of the promotion.

As we mentioned at the beginning of the work we are in the neutrality of the internet, so we must assume that most of us use the internet and social networks, and that of course, minors browse them, the most vulnerable to this type of advertising.

As can be seen in the images shown below, *influencers* use social networks as a sales showcase to offer their products, in this case a training service. In the course of ten minutes using Instagram and browsing their "stories"<sup>31</sup> have appeared for every three stories of real users, two advertising images that redirected to the subsequent sale of a training course.

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<sup>31</sup> It is a format offered by the platform where users can share videos and photos that disappear after 24 hours.

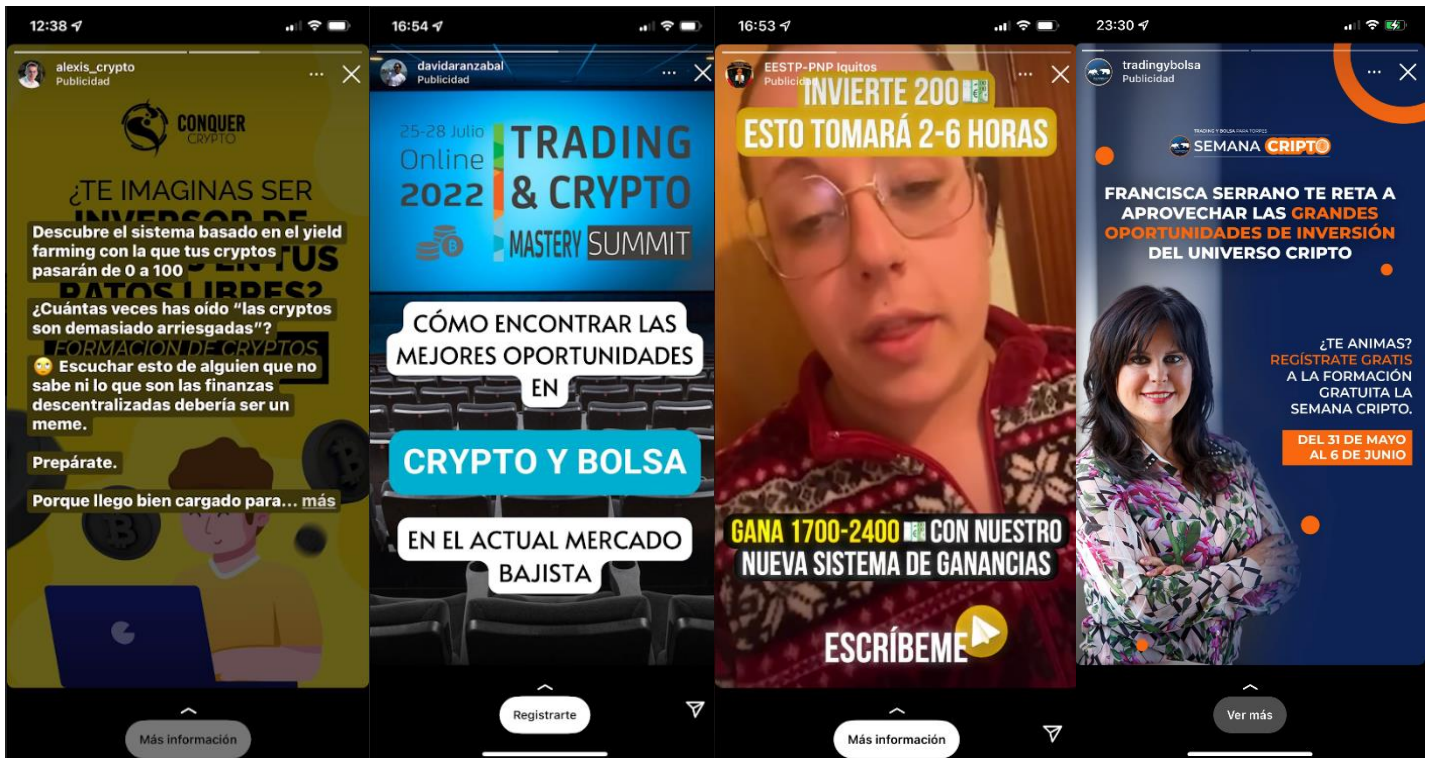


Image 4: crypto on Instagram

The objective of these publications once invite a *masterclass* or a *free webinar* where the consumer needs to fill out a form where the organizer collects all the necessary information to constantly send the user information of their courses in order to sell their services.

In this online class the organizer explains his experience about the world of finance and in particular *cryptocurrencies* and why it is better to invest in *cryptocurrencies* compared to any other type of investment, they show certain technical knowledge about what kind of products we are facing and once this course is over, they offer to join their "school" where they are constantly training, sharing tips or advice on investment and daily contact for anyone who wants to join.

This must be analyzed from a legal perspective, because as we have mentioned before in the chapter on regulation on advertising in the game, forecasters are prohibited from talking about betting as an alternative to work, while in the case of *cryptocurrencies influencers* are constantly talking about two important issues "*financial freedom*" and "*quick and easy money*" and even as it appears in the third image starting from the left, they ensure returns in just hours.



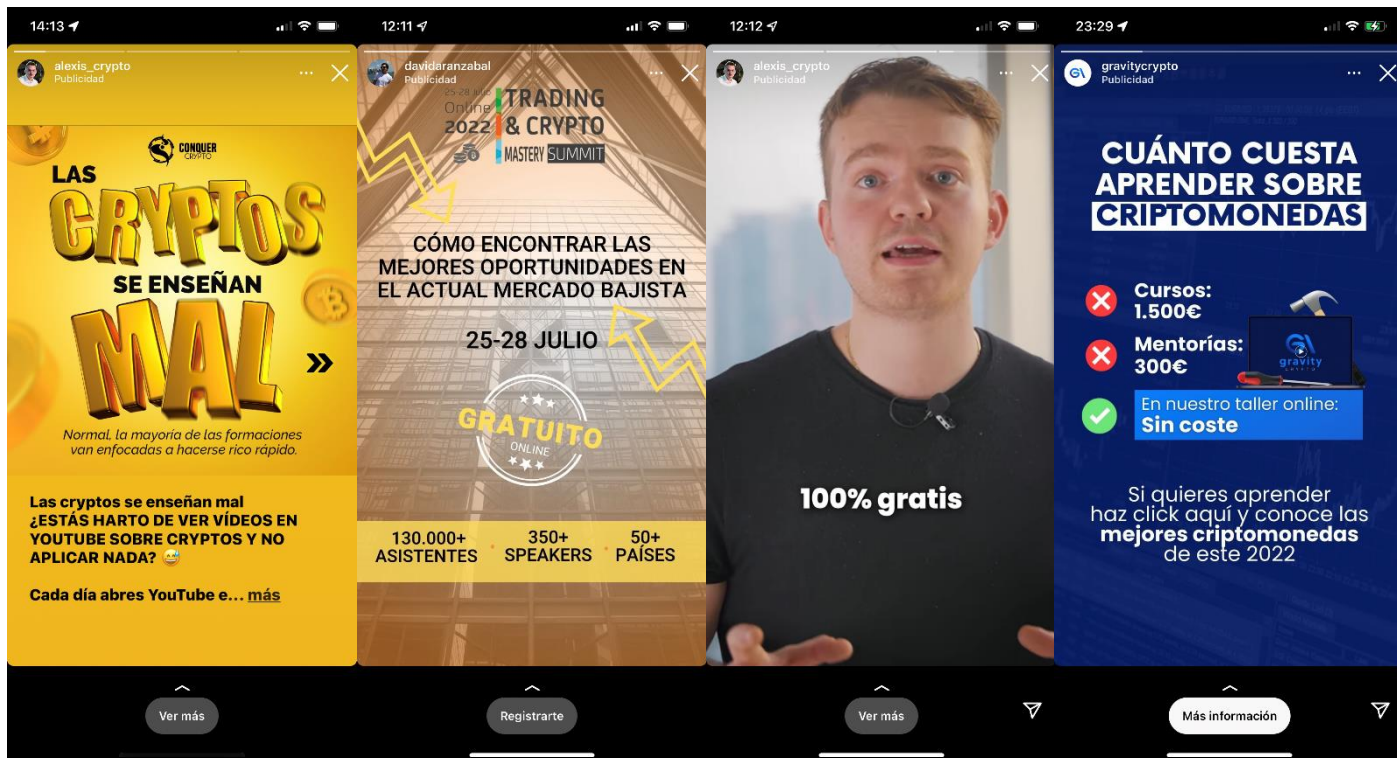


Image 5: Crypto advertising on Instagram

To begin this analysis we must mention that the Circular is governed by the provisions of Law 34/1988, of November 11, General Advertising<sup>32</sup> (*hereinafter General Advertising Law*) and Law 3/1991, of January 10, Unfair Competition<sup>33</sup> (*hereinafter Unfair Competition Law*).

The first of the practices that we can find is the one included in article 22 of the Unfair Competition Law on *decoy practices and* deceptive promotional practices.

Decoy practices consist of offering a service through techniques that can influence consumer decision-making. For example, in the advertising images that we find above, three of them talk about a workshop, a free talk where they offer training to obtain the knowledge that allows them to find the best opportunities in the market. But these publications must be analyzed further, because once the consumer clicks on the link, it directs him to a web page where the owner of the advertising campaign offers a series of products, which we will analyze below.

<sup>32</sup> Law 34/1988, of 11 November, General Advertising

<sup>33</sup> Law 3/1991, of 10 January, on Unfair Competition.

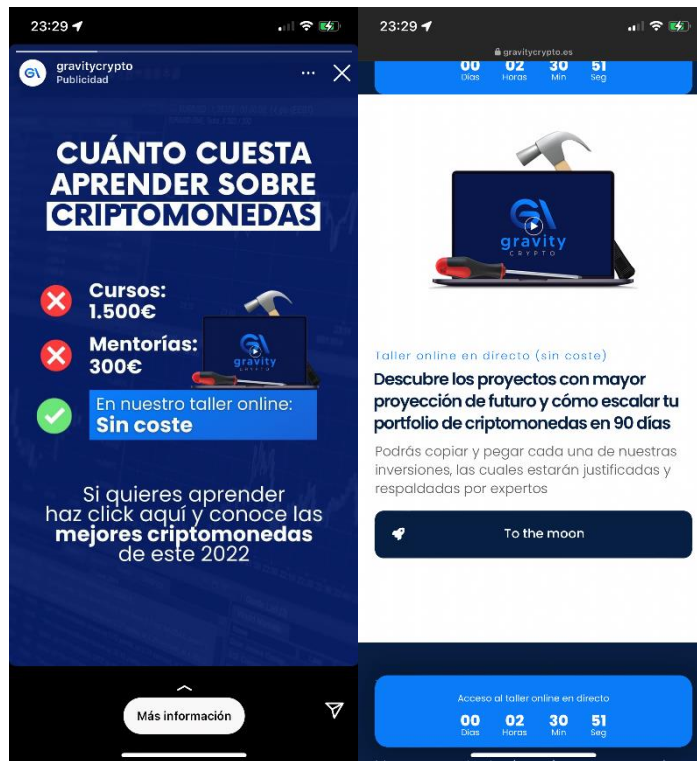


Image 6: Gravitycrypto.es on Instagram

The Unfair Competition Act considers it misleading to make offers on services at a certain price that make the consumer think that they will not be available at the price offered for a sufficient period and also those practices that describe a service as 'free' if the consumer has to pay money for any concept other than the inevitable cost of the response to the commercial practice.<sup>34</sup>

To analyze a little more thoroughly, we have searched for "gravitycrypto.es" on Google.



Image 7: Gravitycrypto.es website

<sup>34</sup> See Article 22 of Law 3/1991 on Unfair Competition



As soon as we enter we are faced with the two decoy techniques that appear in the mentioned article, the first of them, the feeling that the price will not be available for a sufficient time, a stopwatch with a countdown appears and we also appear some crossed out prices and below a final price on offer, A practice that is also included in article 23 of the same law when it refers to the availability and after-sales services of the properties of goods and services when a service is advertised that will only be available for a very limited time under certain conditions depriving the consumer of having sufficient time to have knowledge of the facts and make his choice.<sup>35</sup>

As for the practice, we can develop little since they are articles that define very well the practice that is being carried out, and the objective of these techniques is to create the feeling to the consumer that the product can be lost, generating a feeling of scarcity, limited time or offer that directly influences the attitude of the consumer and that must be taken into account by applying the Unfair Competition Law and avoid this type of practices so that the consumer has enough time to meditate on the product and make a decision.



Image 8: Products (services in this case) free only for members

In addition to this feeling of availability that the offeror seeks in the consumer, we find the aforementioned describe a service as "free" but under a series of conditions, as indicated in the photo the value is a price higher than that of the registration for members, which also members acquire that product "free" or "free of charge"

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<sup>35</sup> See Article 23 of the Unfair Competition Act



Image 9: @alexis\_crypto conquercrypto website

Entering the link of another of the images that have appeared as advertising, we can see that this technique is common in *influencers* who offer this type of content, and as always it is to generate the feeling in the consumer that they are obtaining something of great value, with creating a false sensation in the attitude of the consumer with the aim of buying this product without taking rational measures.



Image 10: ConquerCrypto Academy Pricing

No podemos salir de lo que recoge el artículo 22 de las prácticas señuelo, ya que en todo momento hemos accedido a esta página web a través de un enlace donde se ofrecía una formación «gratuita» pero en todo momento nos encontramos con formaciones con un precio superior a los 1.000€ y en el caso de no acceder a este servicio estaremos perdiendo un servicio de un valor mucho mayor que el ofrecido.

TE LO CUENTAN NUESTROS MIEMBROS DE LA COMUNIDAD  
TESTIMONIOS

Image 11: Testimonials

In these testimonials appear some videos of one minute of duration of supposed users where they identify themselves with name and surname, age, profession and place of residence and talk about their experience in the supposed academy, it should be noted that the three users who appear use this message "I have managed to multiply my portfolio and I have acquired knowledge that I will hardly be able to find elsewhere and allows me to filter opportunities to know if the investment is good or bad."

These practices must be analyzed with a magnifying glass and observing article 27.7 of the Unfair Competition Law, which considers deceptive practices those that "affirm that the reviews of a good or service are added by consumers and users who have actually used or acquired the service without taking reasonable and proportionate measures to verify that such reviews belong to such consumers and users"<sup>36</sup> and the following in point 27.8 "Add or commission another natural or legal person to include false consumer reviews or approvals, or distort user reviews or social approvals for the purpose of promoting goods or services"<sup>37</sup>

Traders should facilitate access to consumer reviews and have an obligation to inform consumers of procedures to ensure that reviews belong to consumers who have actually used these services and it is considered an unfair practice to mislead consumers by claiming that reviews of a product have been added by consumers when they have been commissioned from third parties to distort the perception about the product, in accordance with Directive 2019/2161 of the European Parliament and of the Council on the modernisation of Eu consumer protection rules

After what is applicable in the European Union Directive we must interpret articles 27.7 and 27.8 of the Unfair Competition Law since it makes two distinctions, 27.7 refers to those who do not have mechanisms to check reviews, and aware that reviews may be false does not take the necessary measures, while 27.8 refers to the entrepreneur who commissions a third party to make a review with the aim of distorting the consumer's opinion about his product or service, in order to make the purchase.

The hook they use to get the attention of the consumer is to advertise an image on a social network with the following message "Would you like to be of that 5% who understands money in the future?" where a link appears that opens the interaction with the consumer launching an open question "Do you have little capital and would you like to start in the *crypto* world?" added the following message "in my case, with 11 years I heard for the first time the word "*crypto*", but it was not until I was 17 years old when I started investing" after this message begins to narrate his story with the aim of gaining the consumer's trust of advertising activity and thus have an impact on his decision making, the same publication appears phrases trivializing *crypto assets* expressing in quotes the following message "investing in *cryptos* is dangerous, how was your teacher going to teach you well? If you don't even invest" so you're comparing the "financial

<sup>36</sup> See 27.7 of the Unfair Competition Act

<sup>37</sup> See 27.8 of the Unfair Competition Act

education" as an alternative to the traditional education system, where it lists the multiple benefits of joining its academy.

Continuing the analysis of influencer advertising on *crypto assets* on social networks, we must take into account Article 20 on deceptive practices due to confusion for consumers, which includes comparative advertising and that taking into account the characteristics, may create confusion, including the risk of association with the services of another competitor and may affect consumer behavior<sup>38</sup>

In this case we do not have another company as a competitor, but as stated in the advertising message the competitor is the traditional education system, which we can reaffirm with what Article 6 of the same law says about acts of confusion considering unfair any behavior that creates confusion about the activity or the provision of services and the reigo of association by consumers regarding the origin of the provision<sup>39</sup>, followed by article 7 of the same law concerning misleading omissions, when the information necessary for the addressee to take a decision on his economic behaviour is concealed with due knowledge of the facts.

To what the law says we must add the comment it makes in the first line of advertising activity "Investing in *cryptos* is dangerous" trivializing with the risks posed by the activity to generate a sense of confidence in the consumer and that does not analyze the consequences of the activity, this point is important since the Circular obliges all advertising campaigns on *crypto assets* warn about the risks posed by the activity and above all that they are not regulated or protected by any entity that supervises them.

This type of activities are very dangerous because the largest audience of interest and to which these activities are usually directed in the vast majority is usually adolescent public finishing their secondary studies that still does not have the necessary maturity to analyze this type of advertising, but if it has the necessary knowledge to make decisions. We are talking about that everything revolves in the world of the internet, and that there is no control over the service platforms of these products, and there are even *cryptocurrencies* that can be purchased without age requirement.<sup>40</sup>

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<sup>38</sup> See Article 20 of the Unfair Competition Act

<sup>39</sup> See Article 6 of the Unfair Competition Act

<sup>40</sup> <https://damecoins.com/comprar-btc-para-todos>

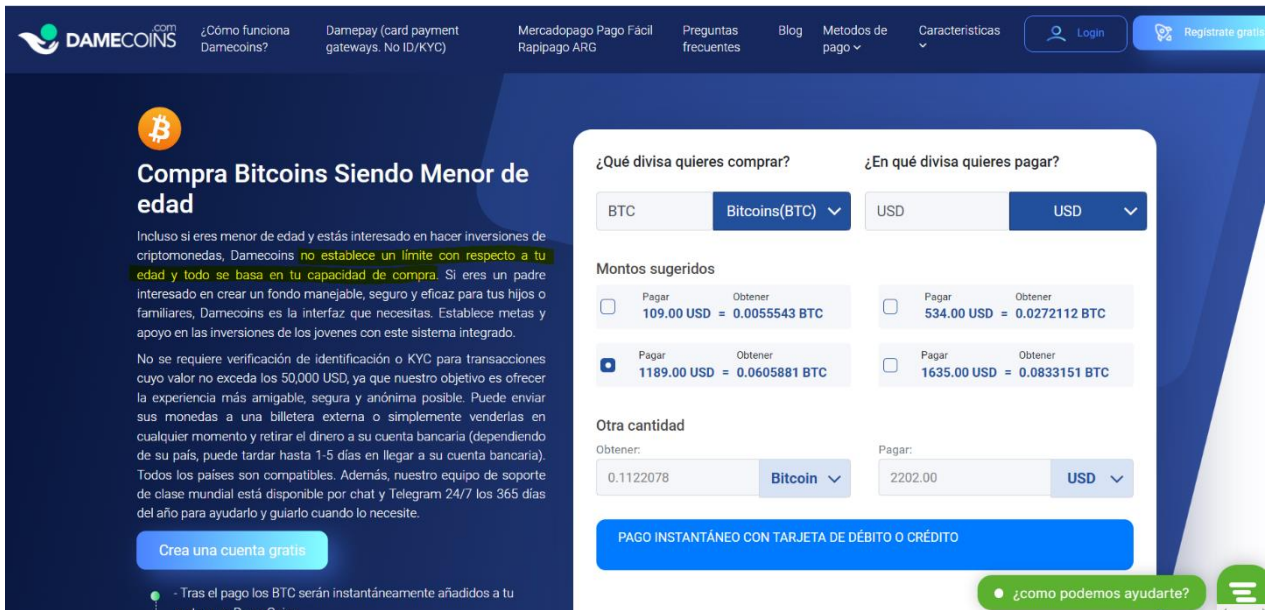


Image 12: Third link on Google after searching for "buying *cryptocurrencies* as a minor"

In the United States, one of the most important banks, Wells Fargo did a study where more than 45% of teenagers believed they knew more than their parents about *cryptocurrencies*,<sup>41</sup> in addition this same study collected figures that can be alarming, 17% opened a custody account to their son and invested on behalf of the teenager, 13% encouraged their teenage son to play stock market games where they could operate without having to invest money Real and 7% gave shares to their children so that they can continue operating and learning about the market, we are talking about children who are not yet of legal age and who in Spain would not have the legal capacity to operate on their own.<sup>42</sup>

Data that makes it clear that children receive this information without any control and as Kathleen Malone, financial advisor at Wells Fargo warns, there is a disconnect between the perceptions that parents and their children have about financial education since they lack knowledge about investing.

This same study talks about social networks as a catalyst that has driven the consumption of these assets, where parents consider that children are quite informed by the content they get on the network. Therefore, Mariana Martínez, Consultant for Investment Wealth Management at Wells Fargo believes that social networks have a profound influence on our generations. más jóvenes y que estas generaciones han crecido con las redes sociales y confían más en los creadores de contenido.

<sup>41</sup> SOPHIE KIDERLIN, «45% of teens think they know more about crypto than their parents- and social media got them hooked, studyfinds» *insider*, junio 2021 Disponible en: <https://markets.businessinsider.com/currencies/news/crypto-investing-social-media-teens-wells-fargo-study-2021-6-1030496990>

<sup>42</sup> HELEN BOW «Social Media Increases Teenage Interest in Wall Street» *Comunicado de prensa Wells Fargo* febrero de 2021 Disponible en: <https://newsroom.wf.com/English/news-releases/news-release-details/2021/Social-Media-Increases-Teenage-Interest-in-Wall-Street-Wells-Fargo-Survey-Finds/default.aspx>

This study raises another problem: Who regulates the content on *crypto assets* in social networks? In recent years digital platforms and social networks have experienced numerous updates with the aim of improving their user experience and therefore have developed algorithms thanks to the technology of *BigData* and *cookies*<sup>43</sup> that have previously had to be consented by the user to collect a whole series of data according to the content of interest in such a way that through the use of this technology it is enough to interact about a type of content so that the platform I recommend publications according to the user's interactions on the platform and in this way it is constantly updated on certain content.<sup>44</sup>

If we use Google's search engine to search for information about *crypto assets*, **billions of** results will appear in less than a second..

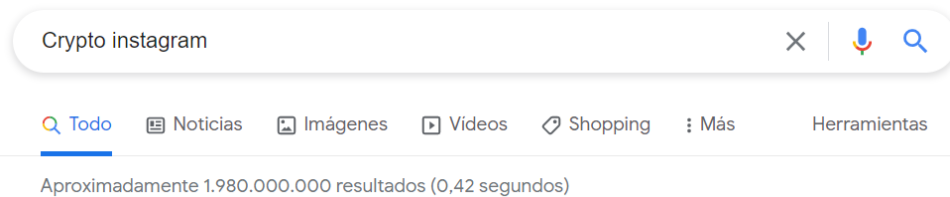


Image 13: 1,980,000 results for the word "crypto" on Instagram

By using the Youtube search engine we can find publications where *influencers* with a high number of visits talk about *criptocurrencias* without any supervision

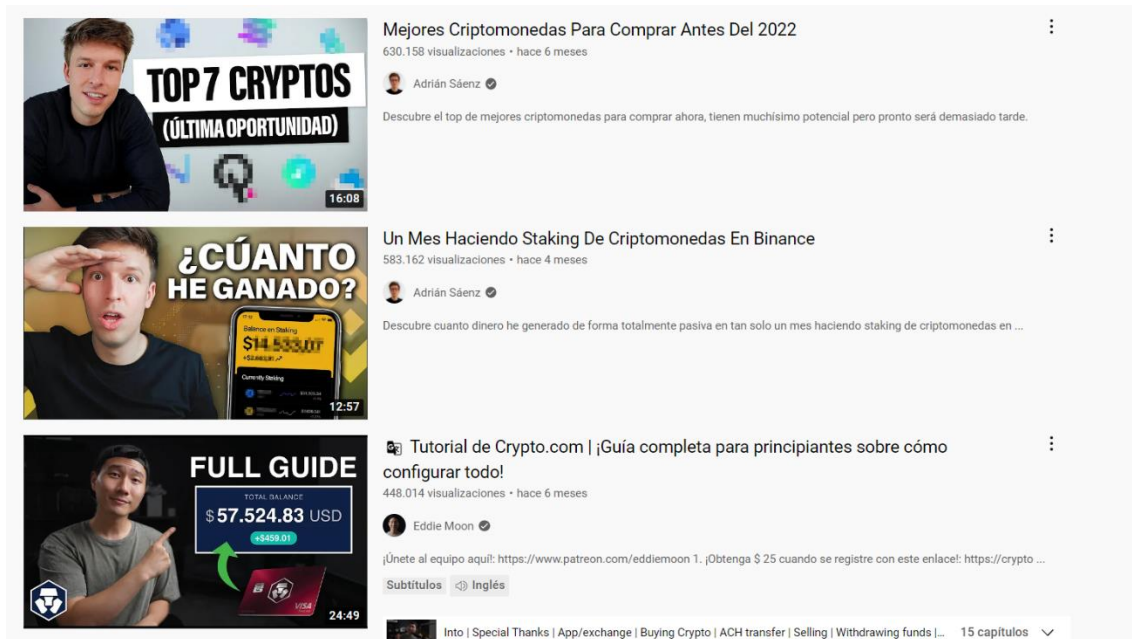


Image 14: Number of influencer visits talking about crypto

<sup>43</sup> MIGUEL ALONSO-MARTINEZ DE LA LLANA, "Analysis of the business of social networks as an advertising channel" *Final Degree Project, Universidad Pontificia de Comillas, supervised by Raquel Redondo Palomo*, in April 2014

<sup>44</sup> ESTEBAN MAGNANI, "Big data and politics. The power of algorithms» *Revista Nueva Sociedad N° 269*, between May and June 2017



In this image we find the *influencer* Adrián Sáenz who has more than 500,000 visits for each video where there is also another content creator Eddie Moon who touches the same number of visits.

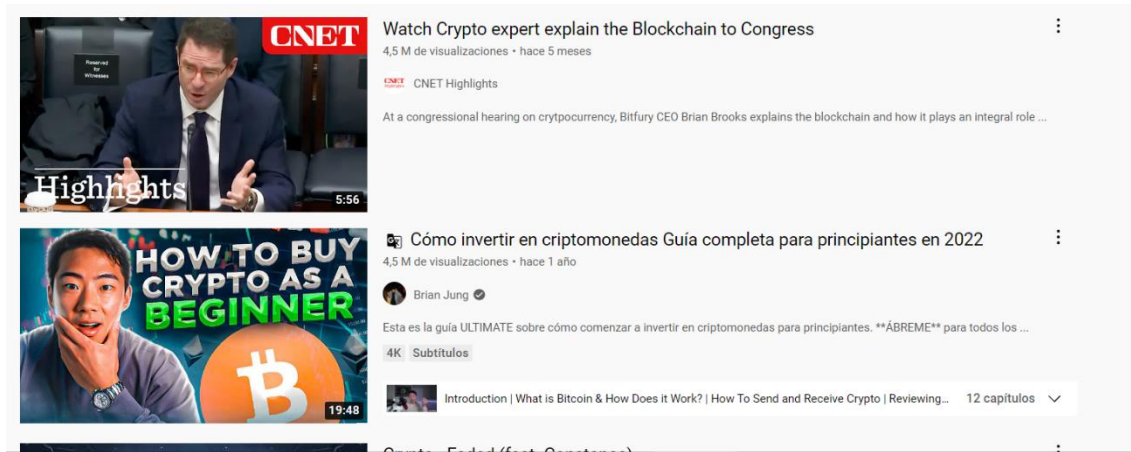


Image 15: Algorithm and BigData show us search-based content

In this case, we find how the algorithms of social networks work, where it appears just below a video of the American Congress where it is talking about "*crypto assets*" and *blockchain technology* an advertisement with **4.5 million** visits on "*How to invest in cryptocurrencies, complete guide for beginners*" by the *influencer* Brian Jung.

In short, it is enough to do a superficial search on this matter so that the artificial intelligences of the platforms facilitate access to that type of information in a way that reduces the field of vision to a single objective content, allowing *influencers* to gain more followers and visualizations in their publications.

Analyzing this type of practices, the CNMV must take into account the figure of *influencers* far beyond when they refer to *crypto assets* as financial products since here the Unfair Competition Law is being infringed and we do not have any body that supervises this type of practices and in the case of training, courses and services on *cryptoassets* the CNMV should be in charge of supervising these practices.

### 3. SERVICE PROVIDERS AND THEIR ADVERTISING

The following form of advertising is that carried out by service providers that are mentioned in the Circular proposed by the CNMV and will be regulated from the entry into force of the MiCa project who must request authorization to operate in the European Union market and must be registered in a Registry of *crypto-asset providers* that will be included in a website by ESMA.<sup>45</sup>

Service providers also use social media to promote their services, in this case we have the FTX commercial which is a *cryptocurrency* exchange company based in the Bahamas that boasts an average of 10 billion in daily transaction volume and has over a million users operating on its platform and its advertising campaigns boast over 10 million views, an impact that would have the consideration of *mass advertising* campaign regulated in the seventh rule of the Circular.



Image 16: Bonus 5€ welcome in *crypto*

One of the techniques used by the service *platforms for the crypto-asset* exchange was the issuance of "welcome bonuses" for the recruitment of new users, under the condition of making a purchase as it appears on the screen, in this case of 100 euros or more to collect the bonus. They use this technique so that the consumer has the feeling of "*free money*" using the rest of the users as a reward and referral program. This type of practice is regulated in article 3 of Royal Decree 958/2020 on commercial communications of gambling activities, something that I have missed in Circular 01/2022 on advertising on *crypto-assets* presented as an object of investment, since the activities of *purchase, sale and exchange* are within the scope of application of the regulations.

It is true that some *buying, selling and exchanging* platforms have adapted to the regulations to carry out their advertising campaigns in the national territory as is the case of "*Capital.com*" that through a promotion on the social network Twitter the following

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<sup>45</sup> See Chapter 1 and Articles 53,54,55,56 and 57 of the MiCa Proposal – COM(2020) 593 final



message appears: "79.17% of the accounts of small investors lose money when trading CFDs with this provider. You should consider whether you can afford to take a big risk of losing your money." A message that we can understand that does not follow with what is required by the CNMV that as it pointed out in the press release of January 17, 2022 on Circular 01/2022 where it requires that the messages of information on the risks of the product be transmitted in a legible and perceptible way "They must include clear content, balanced, impartial and non-misleading and information about the risks in a prominent way in addition to the following warning: "*Investment in crypto assets is not regulated, may not be suitable for retail investors and lose the entire amount invested*"»<sup>46</sup> I consider that this publication by the platform far from warning about the risks of the product, holds the investor responsible and is not the message that the CNMV wants to convey, the risks of the product must be mentioned, in addition to missing the mention of the risks of not being regulated.

Other platforms such as "Bitpanda" have included in their advertising activities the following message "Investing carries risks. Bitpanda Stocks are contracts that replicate underlying shares or EFTs provided by Bitpanda Financial Services. More information in bitpanda.com" and "**investment in crypto assets is not regulated, cannot be suitable for retail investors and lose the entire amount invested. It is important to read and understand the risks of this investment that are explained in bitpanda.es**"

Faced with this situation we find two service providers that carry out their activity in a very different way and positioned in the comparison we can understand that *Capital.com* does not comply with the provisions of the Circular and the CNMV should act ex officio and *Bitpanda* we can mention favorably regarding the provisions of the circular since it respects the warning, makes very clear the risks posed by the activities, describes the product they offer in a clear and transparent way and redirects as indicated in the Circular to a tab where you can obtain more information about the risks posed by the activity.

At this point, it is important to attend to what the Circular says and make clear the risks involved in investing in *crypto assets*, since as we have mentioned in the introductory chapter, many people have ignorance about the product they are acquiring and do not value the possible consequences it can have, such as the loss of all the money invested, as has happened in the case of Terra Luna, which fell by up to 98%.

Returning to refer to what we have developed in previous chapters, when Bitcoin was at its maximum above 60,000 euros, many *influencers* warned of maintaining the *cryptocurrency* since it would rise to 100,000 euros. The reality was the opposite, and it has fallen to 20,000 euros that it is currently, and that is why, so the platforms must warn of the risks posed by the activity, since Bitcoin experienced a loss of 67%.

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<sup>46</sup> CNMV, "New Circular of the CNMV of publicity on crypto-assets presented as an object of investment", January 2022 Available at: <https://www.cnmv.es/portal/verDoc.axd?t={67a4f7e8-49b7-42ec-8328-f8f4b2004cd8}>



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0.528044.61  
0.61821497.47  
0.78622173.38  
110296.04

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Invertir conlleva riesgos. Bitpanda Stocks son contratos que replican acciones o ETF subyacentes facilitados por Bitpanda Financial Services. Más información en bitpanda.com

La inversión en criptoactivos no está regulada, puede no ser adecuada para inversores minoristas y perderse la totalidad del importe invertido. Es importante leer y comprender los riesgos de esta inversión que se explican en bitpanda.es

Consíguelo en el App Store DISPONIBLE EN Google Play

VALOR ACTUAL DE LA CARTERA  
**1255,00 €**  
+2.34 % (24h)

TRANSACCI... DEPÓSITO AHORROS

850,00 € Poder adquisitivo total

Favoritos Gestionar

Bitcoin BTC -2,51% 36.886,55

Bitpanda Ecosystem Token BEST

**Más información**

Image 17: Warning about the risks of *crypto assets*

Referring to the warnings required by the CNMV when it comes to service providers to carry out advertising campaigns, we find a promotion on June 10, 2022 where the cryptocurrency exchange platform "*Binance*" offers promotions where they distribute prizes with the aim of promoting or encouraging investments in *cryptocurrencies*, as we have made reference to the welcome bonuses or rewards, but this time they add the warning of the CNMV.

It should be mentioned that regarding the prior to the entry into force of the Circular of the CNMV adds a warning about the risk, we can not say that it complies with the requirements of the Circular since it warns of the risk by referring that "el comercio de las criptomonedas está sujeto a un mercado de alto riesgo. *Binance* hará todo lo posible

to choose high-quality coins, but you will not be responsible for your trading and trading losses. Trade with caution." At no time is there a clear and transparent message about the risks, nor is there any mention that the products are not regulated nor is there a link that redirects the consumer to obtain more information about the products, so it is important that the regulator is aware of this type of practices.

Regarding this type of publications, the Ministry of Consumer Affairs sanctioned 19 bookmakers for very serious infractions during the year 2021 imposing fines of more than 58 million euros and closing 13 web portals, for offering activities related to the game without having an enabling title<sup>47</sup>

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<sup>47</sup> SANCTIONING RESOLUTIONS MINISTRY OF CONSUMPTION. Available in: [https://www.ordenacionjuego.es/es/resoluciones\\_sancionadores](https://www.ordenacionjuego.es/es/resoluciones_sancionadores)

## V. CRITICAL ANALYSIS OF REGULATION AND ROOM FOR IMPROVEMENT

### 1. REGULATION OUTSIDE SPAIN AND MEASURES TO BE ADOPTED

#### 1.1 REGULATION ON "CRYPTO-ASSETS" IN SINGAPORE

In Singapore, despite being one of the most advanced countries in the regulation on *crypto-assets*, advertising on *crypto-assets* is totally prohibited, because they have understood that being a very complex instrument, information cannot be given that is misleading and can cause unthought acquisitions by the consumer who is in desperate situations in search of quick returns.

The Monetary Authority of Singapore (MAS) has published guidelines on the regulation of advertisements and the marketing of digital payment services where any service provider, company or agency or intermediary that *trades cryptocurrencies* is restricted from advertising their services in Singapore.<sup>48</sup>

Advertising is regulated in the second guideline where it refers to the fact that service providers should not trivialize about the high risks posed by these financial products and should not advertise it in public areas including any type of media aimed at the public such as websites or social networks.

With this guideline in Singar you can not trade cryptocurrencies in public areas or media aimed at the general public, so *influencers* or football players can not launch messages about the acquisition of "*crypto assets*".

The regulation on the advertising of *crypto assets*" is so strong that in the third guideline the ATMs have considered a means of promotion, so it is forbidden that they are in public places, they must be enabled by a controlled access and not commercialized so that ordinary people can not access them.<sup>49</sup>

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<sup>48</sup> MAS, «Guidelines on provisiono f payment token services to the public» enero de 2022 Disponible en: <https://www.mas.gov.sg/-/media/MAS-Media-Library/regulation/guidelines/PSO/ps-g02-guidelines-on-provision-of-digital-payment-token-services-to-the-public/Guidelines-on-Provision-of-Digital-Payment-Token-Services-to-the-Public-PS-G02.pdf>

<sup>49</sup> KOMFIE MANALO, «Singapore Ponders How Best to Regulate Retail Cryptocurrency Trading», marzo de 2022 Disponible en: <https://beincrypto.com/singapore-ponders-how-best-to-regulate-retail-cryptocurrency-trading/>

## 1.2 ADVERTISING REGULATION IN THE UK

The United Kingdom has a project by which it is trying to include it in its own legal system, with the aim of expanding its concept of investment instrument for the purposes of application that the European regime already has planned for *crypto-assets*.

British lawmakers consider that relevant *crypto assets* should be subject to the control regime of financial instruments, those that are fungible and susceptible to being transferable, that is, includes all cryptocurrencies and *utility coins*, but, they also leave out NFTs.

The ASA (*Advertising Standards Authority*) published guidelines governing financial promotions of *crypto assets*.<sup>50</sup>The objective of this document is to ensure the proper regulation of *crypto asset* promotions through the Economic Promotion Order (FPO) since it considers that they have an important role in the financial decisions made by individuals since it associates them as a deceptive promotion of *crypto assets*. so the regulatory authority, the FCA establishes certain drastic measures against the incentives for these risky investments, so the welcome bonuses that we have mentioned above or payments to new clients for referring friends under section 21 of the Financial Markets and Services Act 2000 (FSMA) are prohibited.

The regulation will include within the scope of application electronic *money tokens* , since they consider digital payment instruments that store value, and other *unregulated crypto assets* such as *utility tokens* and *exchangeable tokens* such as *Bitcoin* and *Ether* that are not currently subject to any regulation, but if they are under advertising regulations.

The British government also takes into consideration the lending activities of *crypto companies* or decentralized financial platforms that are within the scope of the regime will depend on the activities they carry out and their promotion.

In addition to the considerations about the legislators of the United Kingdom, we must take as an example their action by which they prohibit an advertisement in the subway about Bitcoin, an advertisement that contained the message of "*if you see bitcoin in the subway it is time to buy*"<sup>51</sup> is a very striking message since it can be seen by anyone, from an 8-year-old child to a 90-year-old man, there are crowds of people who use transport on a daily basis, so the public administration that is responsible for controlling advertising has stated that this announcement does not make clear the value of the investment nor does it mention the risks involved, as you can lose the entire investment, it is an advertisement accessible to everyone and therefore everyone who uses the metro must be protected, so advertising messages must say that *crypto assets* and their suppliers are not under any regulation nor is there a guarantee behind the funds of cryptocurrencies, so all the missing information caused the announcement of the subways of the United Kingdom to be removed.

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<sup>50</sup> HM Treasury «Cryptoasset promotions» Available in: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/104723/2/Cryptoasset\\_Financial\\_Promotions\\_Response.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/104723/2/Cryptoasset_Financial_Promotions_Response.pdf)

<sup>51</sup> KEVIN HELMS, «UK Bans ‘Time to buy’ Bitcoin Ads on Buses and Underground for Being Misleading» mayo 2021 Disponible en: <https://news.bitcoin.com/uk-bans-time-to-buy-bitcoin-ads-buses-underground/>

Last March an ad that could be found by London subway and bus users was banned that advertised the message "*if you have missed Doge, go to Floki*"<sup>52</sup> as we have mentioned in the previous section, Doge is a currency that arises as a mockery of Bitcoin, so Floki is exactly the same, but, with a different name. Both are highly speculative currencies. This advertising appeared with a drawing of a man with a Viking cap, and as mentioned by the ASA, the corresponding authority, the existence of drawings generates trivialization about cryptocurrencies generating a situation of closeness with the consumer and should be avoided since cryptocurrencies have a high volatile component that poses a risk to the consumer.

The fact that the possible fear of missing something is exploited responsibly, since if you have missed an opportunity that has evolved very quickly due to its high volatile character, do not go to the next, that is, that this fear generated does not make you lose the next opportunity

In short, we are facing two very advanced countries in this area with very restrictive mechanisms to allow a control of advertising. Legislators have a high feeling about the high risk posed by these instruments and consider that it is necessary to have knowledge and provide very complete information so that this type of investment is accessible to everyone.

## 2. EXCLUSIONS AND GAPS IN CIRCULAR 1/2022 THAT MAY POSE A PROBLEM

We find some exclusions and gaps in Circular 1/2022 that can be a problem, since it leaves out of the scope of its application some important *crypto assets* such as *NFTs* that have had special interest in recent months, being many public figures and influencers who were taking out their own *NFTs* and advertising them to their thousands of followers, which has caused a speculative bubble about these products.

The value of the NFT market in February was over \$280 million versus just \$50 million today, suffering a loss in the average value per NFT from \$7,000 per unit to \$2,000 last March.<sup>53</sup>

According to The Wall Street Journal, sales on this *crypto asset* plummeted up to 80%, where the number of users who used these wallets has also been reduced.<sup>54</sup>

Con estos datos podemos afirmar que la publicidad sobre NFTs supone un riesgo para el consumidor e inversor que pueda acceder a ellos debido a que no existe ningún tipo de normativa que los regule.

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<sup>52</sup> DAVID THOMAS, "UK Advertising Authority Bans Floki Inu (FLOKI) Ads" March 2022 Available at: <https://es.beincrypto.com/autoridad-publicitaria-reino-unido-prohibe-anuncios-floki-inu-floki/>

<sup>53</sup> ENRIQUE PÉREZ, "A third of the NFTs are no longer worth anything. The collapse of sales augurs the beginning of the end of the bubble", March 2022. Available in: <https://www.xataka.com/criptomonedas/tercio-nft-no-vale-nada-desplome-ventas-augura-principio-fin-burbuja>

<sup>54</sup> PAUL VIGNA, "NFT Sales Are Flatlining" Markets section in The Wall Street Journal, March 2022. Available in: <https://www.wsj.com/articles/nft-sales-are-flatlining-11651552616>



Another point that leaves out of its scope of application this Circular are the *whitepaper*, an instrument that can be of vital importance since at present all the issues of *crypto assets* are made through *whitepapers*, to which many investors go to accredit the fundamental elements of the investment without the need for direct advertising.

Nor can we forget, as we have said before, the figure of the influencer or the *advisor* about these *crypto assets*, since they can cause multiple crimes of Fraud, as is the case of Kuailian that recently the National Court issued an international arrest warrant against those investigated.<sup>55</sup>

Those involved in Kuailian used the technique mentioned in the previous section of offering a *masterclass* where they explained the activity through the zoom platform, from where they promised high benefits to their followers through the *Ethereum cryptocurrency* where at first it was acquired at 200 euros and later increased to \$ 2,000 the system they used was the "mass capture" where customers were dedicated to get more affiliates for the platform and in return they received 10% of the investment of those captured in the first level, 3% of those of the second level, 2% of those of the third level and so on up to a total of 20% of what was invested by each one, which generated an exponential network of massive recruitment.<sup>56</sup>

A technique that is not the only time it is performed, since the criminal courts are receiving multiple complaints for fraud crimes through this type of investor recruitment techniques, which are still advertising ways to attract customers that represent one of the greatest risks of these financial products as they are not regulated and is something for which we must establish a regulation that sanctions this type of practices to prevent any person from ignorance or knowledge and with the aim of manipulating transmit this information that poses a danger to the citizen.

We can recover certain aspects of the regulation on gambling advertising and sports betting. As we have mentioned earlier in the section on advertising about the game, the Circular **forgets about minors**, users who are highly vulnerable to this type of practice since they are the largest consumers of digital content, finding themselves with no supervision by the institutions, nor by the platforms themselves.

The regulation on advertising about the game prohibits advertising about sporting events, shirts or horse riding, something that La Circular does not take into consideration, since we have found how various platforms sponsor football teams such as BeInCrypto with the BitCoin symbol on the Watford shirt or Fan Token on the shirts of Inter Milan or Valencia Club de Fútbol. Despite not being found yet, the CNMV will monitor the promotion of *crypto assets* in eventos deportivos según un comunicado de Rodrigo Buenaventura, presidente de la CNMV, donde ya se emitió un escrito el pasado mes de

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<sup>55</sup> CENDOJ "The judge of the National Court issues an international arrest warrant against two investigated for the alleged Kuailian cryptocurrency scam" June 2022 Available at: <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Noticias-Judiciales/El-juez-de-la-Audiencia-Nacional-dicta-una-orden-de-detencion-internacional-contra-dos-investigados-por-la-presunta-estafa-de-criptomonedas-Kuailian>

<sup>56</sup> J.J. Gálvez "The judge accuses the founder of the Kuailian platform for an alleged pyramid scam with cryptocurrencies" The country. May 2022 Available in: <https://elpais.com/economia/2022-05-20/el-juez-imputa-al-fundador-de-la-plataforma-kuailian-por-una-presunta-estafa-piramidal-con-criptomonedas.html>

January where companies in the *crypto asset sector* were allowed to continue advertising in the sport.<sup>57</sup>

The techniques of attracting new customers are prohibited by the regulation of the game, while various *Exchange* platforms promote, give away or offer bonuses to their users in exchange for a referral system in which under a series of conditions cryptocurrencies or money are given away for registration on the platform.

The point that refers to forecasters could be taken as a reference for content disseminators in the field of "*crypto assets*" since it refers to the fact that in no case should this type of activities be taken as an alternative to work, when one of the techniques of the *influencers* of "*cryptocurrencies*" is to use phrases such as financial independence to reach the consumer, which can cause confusion and can cause people to leave their jobs to dedicate themselves solely to the investment of these products as a main activity.

The Bank of Spain has begun to take the first steps of the way forward with the creation of another advertising instrument where all providers of cryptocurrency buying and selling services must be registered, a registry of custodians where everything has to be registered and must pass a prior authorization process by the Bank of Spain that has to verify that the platforms have mechanisms and protocols for the protocol on money laundering, as well as minimum rules of good repute for those who run the companies.

This process that *exchange* entities must pass in front of the bank of Spain shows similarities with the banking license, where if the process is passed, the registration is obtained in the registry and those that are not registered, will not be able to have the consideration of *Exchange* nor will they be able to operate in Spain.

This register allows the consumer to go to the register and check which companies are registered in it and verify their provision of services.

In a framework where there are so many disseminators on information about these assets, the figure of the advisor is missing, which is who generates the greatest problems with *crypto assets*, and we do not have any rule on the regulation of this figure of advisor, being very interesting this record, establishing a series of requirements such as honorability, proof of knowledge about what is being advised, providing reliability since it is who assures us of the investment. This figure is proposed under the MiCa regulation.

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<sup>57</sup> L.I "The CNMV focuses on the promotion of crypto assets in sporting events" La Información, June 2022 Available at: <https://www.lainformacion.com/economia-negocios-y-finanzas/cnmv-pone-foco-promocion-criptoactivos-eventos-deportivos/2869241/>



## CONCLUSIONS

To close the work, we came to the conclusion that *cryptocurrencies* pose an alternative to the traditional financial system, and begins to take ground in our way of life. We have raised the various forms of advertising that we find about *crypto assets* that really pose a problem for society

FIRST. - *Cryptocurrencies* pose an alternative to the traditional financial system and therefore deserve the creation of organizations that guarantee the security of their operations as well as control the flow of their information.

SECOND. - In the flow of the internet there are many minors who are really vulnerable to this type of practice, because the circular only takes into account those products that are the object of investment or are promoted in exchange for a consideration, but forgets the training courses at high prices that are based on the trust that the user has on the content creator, which is really a problem as there is no control over the age of who receives and buys this training, nor is there a record or supervision that takes into account the professionalism or training and knowledge of the rapporteur on this subject.

Advertising about *cryptocurrencies* on the internet is much more harmful than that used through conventional means because of the reach they have.

Minors are helpless and in a very vulnerable situation before the scarce collaboration of digital platforms, since they use algorithms that can hide images depending on their sensitivity, show content through search but does not censor at any time or offer measures that prevent a minor from being informed through *influencers* about *cryptocurrencies*, however, a single interaction will suffice to constantly receive posts about *cryptocurrencies*.

THIRD. - The Circular only regulates those *crypto-assets* that are considered an object of investment or that advertising that is remunerated, therefore it does not take into account the advertising to the *training courses* that we have seen that serve as a great attraction for people with a high number of followers to capture public to obtain benefit thanks to it, as there is no authority that supervises this type of training, the trainings have no validity and we can not ensure that the knowledge we are receiving is the ideal one which can lead to the consumer continuing to have a *lack of knowledge* but consider that he is well informed, which increases the risks posed by the Circular since many of the consumers abuse the trust they have in the *influencer* and follow his advice, advice that on many occasions have turned out to be suitable and many people have lost their money.

FOURTH. - We have to mention again, that the Circular does not consider advertising activity the publications that are shared through social networks, so there is no authority that supervises this type of activities, which can lead to scams such as the famous and mentioned Kuailian case of which we spoke earlier.

FIFTH. - During the work we have been able to demonstrate the aggressiveness of these advertising activities since thanks to BigData and the new algorithms offered by social networks we are constantly receiving advertising about this type of products, which in one way or another do not cease to be an incentive for investment.

As we have been able to analyze, the Circular leaves out of its scope of application most of the activities carried out by *influencers* that involve several infractions on the General Advertising Law and the Unfair Competition Law that pose a danger to the consumer.

SIXTH. - Finally, it is important that the supervisor meets with social networks and offers censorship mechanisms, as they are done with images that may be sensitive or naked, where the platforms use a warning sign where the message "this content may be sensitive" appears and allows the user the option of decision on whether or not to see the publication, I believe that this type of control should be done before *crypto* words where a message appears "the information in this communication may or may not be true" and it is the user who decides whether to continue and read it or directly ignore it, so that minors and vulnerable public would be protected.

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