



# TikTok without filters

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## > Sources of the report:

- Except as otherwise indicated, the screenshots featured in this report were taken by BEUC between November 2020 and February 2021.
- The analysis is based on the following Tiktok policy documents: the **Virtual Item Policy** (last updates: December 2019), the **Terms of Service** (last updates: February 2020), the **Privacy Policy** (last updates: July 2020) and the **Community Guidelines** (last updates: December 2020) accessed in the English language version and applying to users domiciled in Europe.

## > Disclaimer

Terms and conditions of all the above-mentioned TikTok policies may not be exactly the same in all language versions. Furthermore, not all features of all TikTok services may be available in the same manner in all EU Member States and EEA countries. However, an investigation should consider all aspects raised in the report as they seem to be relevant in most EU Member States and EEA countries.

# ➤ Just for fun, really? Looking at the dark sides of TikTok

## 1. TikTok and its (real) audiences

TikTok is one of the fastest-growing social media application in the world. It is owned by the Chinese company ByteDance and has offices across Europe. The app has over two billion downloads on the Google Play and Apple's app stores<sup>1</sup>, and counts over 800 million active users worldwide<sup>2</sup>. The app enables its users to create, post and share, in a simple and entertaining way, 15-to-60 seconds videos sound-tracked with music clips, such as dance competitions, lip-syncs, funny sketches and more. A large part of TikTok's popularity can be explained by the wide range of content-editing tools and filters that users can easily use when making videos. It is also a consequence of TikTok's algorithm which actively exposes users to never-ending streams of videos tailored to their personal characteristics and continuously adapted to their online behaviour and reactions. As TikTok explains:

**“When you open TikTok and land in your For You feed, you're presented with a stream of videos curated to your interests, making it easy to find content and creators you love. This feed is powered by a recommendation system that delivers content to each user that is likely to be of interest to that particular user”.**<sup>3</sup>

As the description of TikTok on the Google Play store more straightforwardly highlights:

**“Watch millions of videos selected specifically for you - A personalized video feed specifically for you based on what you watch, like, and share. TikTok will quickly adapt to your taste to offer the most relevant, interesting, fun, quirky, head-turning videos that you'll never want to stop watching”.**<sup>4</sup>

TikTok users spend hours on the app, watching, creating, and sharing videos.<sup>5</sup> In addition, the app enables its users to purchase “virtual coins”, which can then be used to send “virtual gifts” to reward content providers during live videos. Because of its popularity, TikTok has become over the years a go-to-point for businesses willing to promote their brands and products and wishing to reach out to younger audiences.

TikTok does not disclose detailed information about its users' demographics and states that it does not allow registration for users who are below the age of 13.

<sup>1</sup> <https://techcrunch.com/2020/04/29/tiktok-tops-2-billion-downloads/> (accessed January 2021).

<sup>2</sup> <https://datareportal.com/reports/digital-2020-global-digital-overview> (accessed January 2021).

<sup>3</sup> <https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you> (accessed January 2021).

<sup>4</sup> <https://play.google.com/store/apps/details?id=com.zhiliaoapp.musically.go&hl=en&gl=US> (accessed January 2021).

<sup>5</sup> One hour on average in France (<https://blog.digimind.com/fr/agences/tiktok-chiffres-et-statistiques-france-monde-2020>). On average, Norwegians open the app 17 times a day amounting to 74 minutes in total ([www.bloomberg.com/news/articles/2020-09-30/tiktok-users-in-uk-germany-france-italy-norway-ages-screentime-open-rates](http://www.bloomberg.com/news/articles/2020-09-30/tiktok-users-in-uk-germany-france-italy-norway-ages-screentime-open-rates)) (accessed January 2021).

For example, TikTok's privacy policy claims:

**“TikTok is not directed at children under the age of 13. If you believe that we have personal data about or collected from a child under the relevant age, contact us at: <https://www.tiktok.com/legal/report/privacy>”<sup>6</sup>**

Yet, it is a matter of fact that TikTok's primary audience is composed of children (including children under 13) and teenagers. In other words, it can be assumed that a very big part of TikTok's users are children below 18.

In France, 45% of children below 13 have indicated using the app.<sup>7</sup> In the United Kingdom, a 2020 study from the Office for Telecommunications (Ofcom) revealed that 50% of children between eight and 15 upload videos on TikTok at least weekly.<sup>8</sup> In Czech Republic, a 2019 study found out that TikTok is very popular among children aged 11-12.<sup>9</sup> In Norway, a news article reported that 32% of children aged 10-11 used TikTok in 2019.<sup>10</sup> In the United States, The New York Times revealed that more than one-third of daily TikTok users are 14 or younger, and many videos seem to come from children who are below 13.<sup>11</sup> The fact that many underage users are active on the platform does not come as a surprise as recent studies have shown that, on average, a majority of children owns mobile phones earlier and earlier (for example, by the age of seven in the UK).<sup>12</sup>

In practice, it is very easy for underage users to register on the platform as the age verification process is very loose and only self-declaratory (see the screenshot below, dated November 2020).



In its Community Guidelines, TikTok claims that its “users must meet the minimum age requirements to use TikTok, as stipulated in our [Terms of Service](#). When underage account holders are identified, [TikTok] will remove those accounts”.<sup>13</sup> Yet according to media reports several of TikTok former employees have highlighted that the platform does not take any proactive measures to ensure that the underage users' accounts are swiftly deleted when they are identified.<sup>14</sup> According to media reports, TikTok seems to be aware that many users under 13 are active on its platform.

<sup>6</sup> [www.tiktok.com/legal/report/privacy](https://www.tiktok.com/legal/report/privacy) (accessed in January 2021)

<sup>7</sup> <https://blog.digimind.com/fr/agences/tiktok-chiffres-et-statistiques-france-monde-2020> (accessed in January 2021).

<sup>8</sup> [www.ofcom.org.uk/about-ofcom/latest/features-and-news/uk-internet-use-surges](https://www.ofcom.org.uk/about-ofcom/latest/features-and-news/uk-internet-use-surges) (accessed in January 2021).

<sup>9</sup> [www.e-bezpeci.cz/index.php/ke-stazeni/vyzkumne-zpravy/117-ceske-deti-v-kybersvete/file](https://www.e-bezpeci.cz/index.php/ke-stazeni/vyzkumne-zpravy/117-ceske-deti-v-kybersvete/file) (accessed in January 2021).

<sup>10</sup> <https://nrkbeta.no/2019/06/20/en-av-tre-10-aringer-bruker-tiktok-ukentlig/> (accessed January 2021).

<sup>11</sup> [www.businessinsider.com/tiktok-children-users-data-privacy-safety-concerns-coppa-ftp-report-2020-8?r=US&IR=T](https://www.businessinsider.com/tiktok-children-users-data-privacy-safety-concerns-coppa-ftp-report-2020-8?r=US&IR=T); [www.nytimes.com/2020/08/14/technology/tiktok-underage-users-ftp.html](https://www.nytimes.com/2020/08/14/technology/tiktok-underage-users-ftp.html) (accessed in January 2021).

<sup>12</sup> [www.theguardian.com/society/2020/jan/30/most-children-own-mobile-phone-by-age-of-seven-study-finds](https://www.theguardian.com/society/2020/jan/30/most-children-own-mobile-phone-by-age-of-seven-study-finds) (accessed in January 2021).

<sup>13</sup> [www.tiktok.com/community-guidelines?lang=en#31](https://www.tiktok.com/community-guidelines?lang=en#31) (section on minor safety) (accessed in January 2021).

<sup>14</sup> Complément d'enquête – Tous toqués de TikTok !, (2021- France 2). In the US, the New York Times highlighted that “a former TikTok employee told the Times that workers regularly pointed out videos from children on the platform who appeared to be younger than 13, but those users weren't immediately removed” ([www.businessinsider.com/tiktok-children-users-data-privacy-safety-concerns-coppa-ftp-report-2020-8?r=US&IR=T](https://www.businessinsider.com/tiktok-children-users-data-privacy-safety-concerns-coppa-ftp-report-2020-8?r=US&IR=T), accessed in January 2021).

### 2. Issues with TikTok

TikTok is already on the radar of several European authorities investigating possible violations of data protection and privacy rules (including issues relating to children's privacy)<sup>15</sup> and consumer laws.<sup>16</sup> In January 2021, the Italian data protection Authority (Garante per la protezione dei dati personali) issued a temporary ban on the app after a young Italian girl aged 10 died from asphyxiation after taking part in a viral "blackout challenge" on TikTok.<sup>17</sup> In other parts of the world, TikTok has also been facing bans and fines from several public authorities.<sup>18</sup>

This report serves to substantiate BEUC's external alert to the European Commission and the Consumer Protection Cooperation network (hereafter "CPC-Network") according to Article 27 CPC Regulation (EU) 2017/2394. It highlights how the company has been engaging into several unfair and misleading commercial practices infringing the rights of EU consumers. In particular, regarding:

- **Unfair terms in TikTok's "Term of Service"**. Several of these terms are unclear, ambiguous and/or create an unbalanced relationship between the platform and its users in favour of TikTok.
- **Unfair terms and misleading practices in TikTok's "Virtual Item Policy"**. This includes, among other things, a lack of clear pre-contractual information, several unfair terms, or the absence of an effective authorisation mechanism to prevent abuses with the in-app payment system used for purchasing virtual coins.

- **TikTok's misleading practices for the processing of users' personal data**. TikTok does not clearly inform its users, especially children and teenagers, about what personal data is collected, for what purpose and for what legal reason. These practices are problematic *inter alia* as they do not allow consumers to make a fully informed decision about whether to register to the app and/or to exercise their rights under the GDPR<sup>19</sup>.
- **TikTok's failure to take diligent measures to protect children and teenagers from hidden advertising and potentially harmful content**. TikTok fails to take adequate measures preventing hidden advertising from proliferating on its platform, fails to limit the exposure of its users below 18 to such advertising, and fails to limit their exposure to inappropriate content for children.

In its Common Position on social networks of 2016,<sup>20</sup> the CPC-Network already identified the lack of fairness and opacity of some terms used by social media services. The present analysis reveals that many of these terms and practices can be found in TikTok's policies. Furthermore, in its Common Position on in-app games,<sup>21</sup> the CPC-Network already stressed that consumers should not be debited through default settings without consumers' explicit consent. A similar practice is however also ongoing on TikTok. Where relevant, we refer to the above-mentioned Common Positions in the report.

<sup>15</sup> Among others, the European Data Protection Board (EDPB) has set up a task force to investigate TikTok privacy practices; the Danish Data Protection Authority has launched investigations into TikTok to check whether the platform complies with EU rules on data protection (GDPR), the Dutch, French, Italian and UK Data Protection Authorities have also launched investigations to check whether the platform adequately protects children privacy

<sup>16</sup> The Hungarian competition Authority has initiated investigations into TikTok in October 2020.

<sup>17</sup> [www.euronews.com/2021/01/22/italy-orders-tiktok-to-block-underage-users-after-10-year-old-girl-dies-doing-viral-challenge](https://www.euronews.com/2021/01/22/italy-orders-tiktok-to-block-underage-users-after-10-year-old-girl-dies-doing-viral-challenge) (accessed in January 2021).

<sup>18</sup> In 2019, the US Federal Trade Commission fined TikTok for infringing children privacy. In 2020, the Pakistan Telecommunication Authority decided to temporarily ban the app for immoral and indecent content. In June 2020, India banned the app due to data and privacy concerns.

<sup>19</sup> See J. Ausloos & V. Verdoodt, (2021). *TikTok and the GDPR - Legal Analysis of TikTok's Privacy Policy in light of the GDPR. Study for BEUC.*

<sup>20</sup> Common position of national authorities within the CPC-Network concerning the protection of consumers on social networks.

<sup>21</sup> [https://ec.europa.eu/info/sites/info/files/common-position\\_of\\_national\\_authorities\\_within\\_cpc\\_2013\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/common-position_of_national_authorities_within_cpc_2013_en_0.pdf) (accessed January 2021).

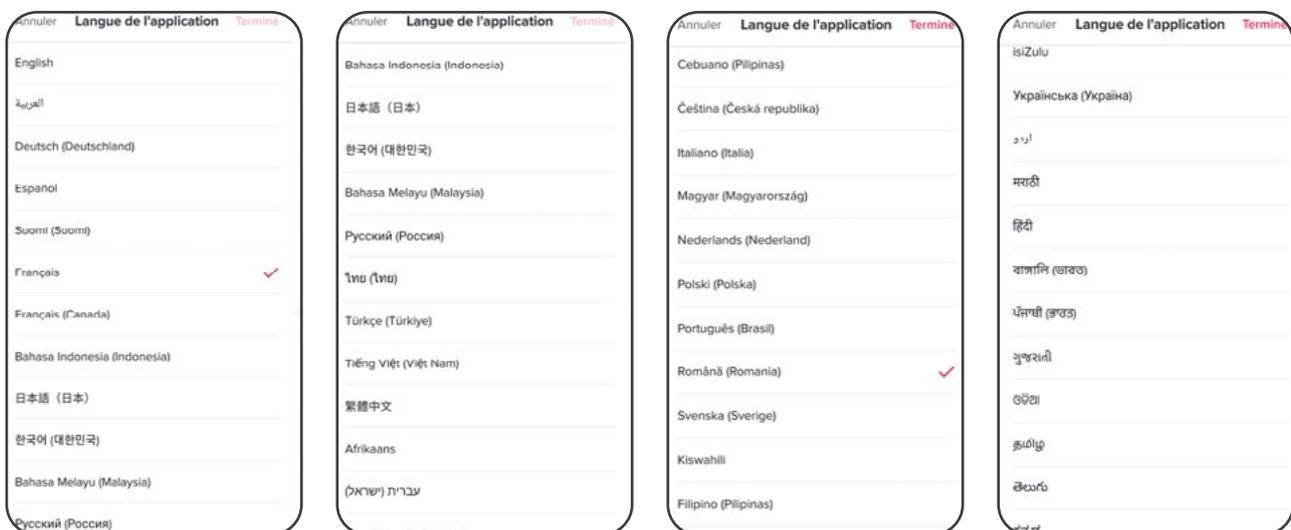
### 3. TikTok's unfair practices constitute a widespread infringement with an EU dimension

Under Article 3(4) of Regulation (EU)2017/2394 (hereafter “CPC Regulation”)<sup>22</sup>, a widespread infringement with a Union dimension is defined as “an infringement which does or is likely to do harm to the collective interests of consumers in at least two-thirds of the Member States, accounting, together, for at least two-thirds of the population of the Union”. Consequently, to be considered as a “widespread infringement with a EU dimension”, the unfair practices should affect or potentially affect 18 Member States representing at least 298 million Europeans.<sup>23</sup>

TikTok is available for users in all EU Member States. Based on the language of the app as a criterion to identify targeting of consumers, as the screenshots (taken in February 2021) below show, TikTok targets EU consumers in many EU

Member States. It proposes the app in 14 different European languages (English, German, Spanish, Finnish, French, Czech, Italian, Hungarian, Dutch, Polish, Portuguese, Romanian, Swedish and Greek), which are also official languages **of 18 Member States** (Ireland, Germany, Austria, Spain, Finland, France, Belgium, Luxembourg, Czech Republic, Italy, Hungary, the Netherlands, Poland, Portugal, Romania, Sweden, Greece and Cyprus). **Altogether, these Member States represent more than 415 million Europeans.** This is notwithstanding the other EU countries where the app is not available in the national language but which may still count numerous users accessing the platform in a foreign linguistic version.<sup>24</sup>

According to BEUC's assessment, TikTok's unfair practices constitute a widespread infringement with a Union dimension.



Screenshots (February 2021) showing TikTok's available languages

<sup>22</sup> OJ L 345, 27.12.2017, p. 1–26

<sup>23</sup> The 27 EU Member States counted 447,7 EU citizens on 1 January 2020 ([www.touteurope.eu/actualite/la-population-des-pays-de-l-union-europeenne.html](http://www.touteurope.eu/actualite/la-population-des-pays-de-l-union-europeenne.html), accessed January 2021).

<sup>24</sup> For example, the app is not available in Lithuanian language but it appears that TikTok is still the 22nd most downloaded app in this country (see e.g. [www.similarweb.com/apps/top/google/store-rank/lt/all/top-free/](http://www.similarweb.com/apps/top/google/store-rank/lt/all/top-free/)).

#### 4. Assessing TikTok’s practices through the lens of children and teenagers as target groups

While the practices highlighted in this report are already problematic from the point of view of adult users, they are all the more alarming when considering that the platform hosts a significant number of children and teenagers who are particularly vulnerable to unfair commercial practices and whose behaviour may easily be distorted or manipulated. As also explained later in this report, the app explicitly invites advertisers and proposes tools to target an audience aged between 13 and 17.<sup>25</sup>

EU consumer protection law imposes a higher fairness standard to protect vulnerable consumers who may be particularly at risk due to, among other things, **their age, credulity, or lack of maturity**. Consequently, particular care needs to be taken to protect them from traders’ unfair practices. In accordance with this approach, a commercial practice could be unfair if assessed based on a vulnerable consumer even if it is considered fair compared to the ‘average consumer’ or an average consumer of a particular group of consumers.

Directive 2005/29/EC (**Unfair Commercial Practices Directive** – hereafter “**UCPD**”)<sup>26</sup> identifies children as an example of “vulnerable consumers” who may be affected by unfair commercial practices.<sup>27</sup> In its Guidelines on the UCPD, the European Commission also identifies teenagers as a group of vulnerable consumers.<sup>28</sup> According to Article 5 UCPD, where a commercial practice is aimed at a particular group of consumers, its impact should be assessed from the perspective of the average members of that group.

Directive 2011/83/EU (**Consumer Rights Directive** – hereafter “**CRD**”)<sup>29</sup> makes a similar reference to the vulnerable consumer benchmark, and requests traders to “take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee”<sup>30</sup>.

Finally, although Directive 1993/13/EEC (**Unfair Contract Terms Directive** – hereafter “**UCTD**”)<sup>31</sup> does not make any direct reference to the vulnerable consumer benchmark, it is considered that the same standard should be applied when assessing the unfairness of contract terms.<sup>32</sup>

Since it is clear that a very high number of children are using the app, Tik Tok could reasonably be expected to foresee the impact of its services and commercial communication provided/hosted by it on children and teenagers. TikTok’s contractual terms and commercial practices must be analysed from the specific perspective of the vulnerable group of children and teenagers who are particularly at risk.

<sup>25</sup> See screenshot on “Ad targeting” at p.37 of this report.

<sup>26</sup> OJ L 149 11.6.2005, p. 22

<sup>27</sup> Recital 18 of the UCPD.

<sup>28</sup> UCPD Guidance, SWD(2016)163 final. at point 2.6.1

<sup>29</sup> OJ L 304, 22.11.2011, p. 64–88

<sup>30</sup> Recital 34 of the CRD.

<sup>31</sup> OJ L 95, 21.4.1993, p. 29–34

<sup>32</sup> See (inter alia) S. Whittaker, “Language or Languages of Consumer Contracts?”, *Cambridge Yearbook of European Legal Studies*, 2005-2006, 244.

# ➤ TikTok's unfair Terms of Service

## 1. Unfair terms due to a lack of transparency in TikTok's Terms of Service

**Legal basis:** Article 5 of the UCTD provides that all contract terms must be drafted in plain, intelligible and unambiguous language. Article 3(1) of the UCTD further states that the terms should not cause significant imbalances between the parties' rights and obligations, contrary to good faith to the detriment of consumers. As the UCTD Guidance explains, this means that, inter alia, the terms of services must be clear and transparent both in substance and format.<sup>33</sup> They must also be drafted and presented in a format and style that is adapted to the public,<sup>34</sup> which means, in the case of TikTok, suited for children and teenagers. Article 7(2) of the UCPD requires traders to provide information in a clear and intelligible way further strengthening the requirements of Article 5 of the UCPD. As the CPC network clearly highlighted in its Common Position on social networks of 2016, social media operators "are also prevented from using contract terms to implement unfair commercial practices in their relations with consumers, given that such conduct is prohibited by Directive 2005/29/EC".

**Application to Tik Tok's Terms of Service:** the analysis of TikTok's Terms of Service reveals that **several of its provisions infringe these fairness requirements**. It is also noteworthy that terms comparable to those highlighted below have been considered as unfair by the CPC-Network in its Common Position of 2016 on social networks.<sup>35</sup>

The list of issues presented below does not intend to be exhaustive:

- **The general presentation of TikTok's Terms of Service is ambiguous and unclear.** For example, the provisions relating to the exclusion of liability of the company are dispatched between different lengthy sections of the policy document.<sup>36</sup> Moreover, the section describing how content (section 9 of the Terms of Service)<sup>37</sup> is available and shared on the platform is lengthy and hardly understandable for users. Also, TikTok compiles its Terms of Service applicable for all the geographical areas on a single page.<sup>38</sup> All of this make the policy particularly difficult to understand for users, especially children and teenagers.

<sup>33</sup> See point 3.3 of the Guidance Notice on the interpretation and application of Directive 93/13/EEC.

<sup>34</sup> Case C-96/14, Van Hove (ECLI:EU:C:2015:262), Points 40 to 50.

<sup>35</sup> Common position of national authorities within the CPC-Network concerning the protection of consumers on social networks.

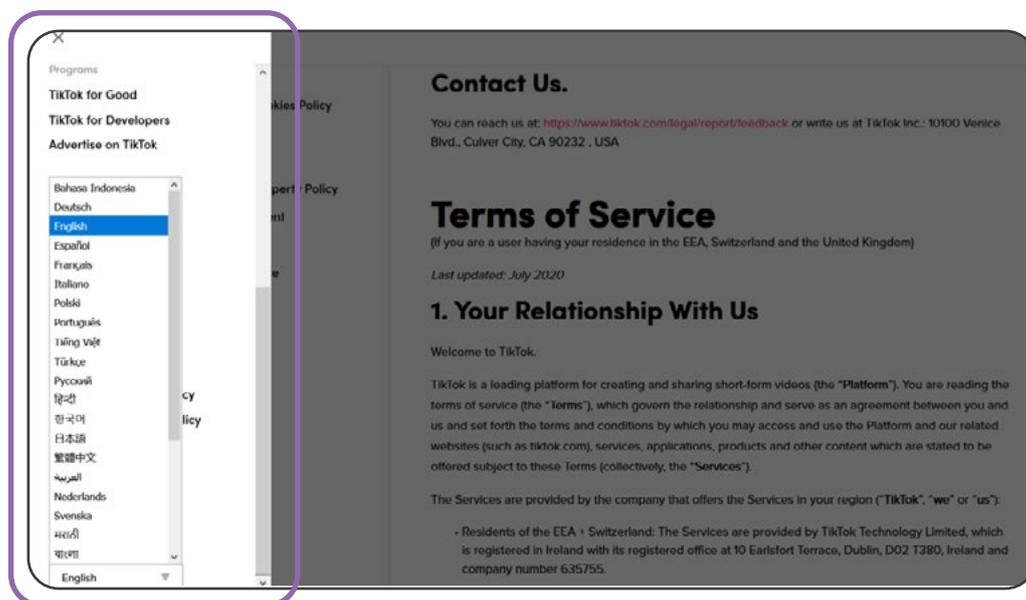
<sup>36</sup> See for instance "Liability" and "Exclusion of warranties" terms dispatched between Sections 9, 11, 12 and 13 of TikTok terms of service.

<sup>37</sup> [www.tiktok.com/legal/terms-of-use](https://www.tiktok.com/legal/terms-of-use) (accessed in January 2021)

<sup>38</sup> [www.tiktok.com/legal/terms-of-use#terms-us](https://www.tiktok.com/legal/terms-of-use#terms-us) (accessed in January 2021)

- **The way the terms are presented disregards the fact that the platform is used by many children and teenagers. Their format should be adapted to fit this audience.**<sup>39</sup> The Terms of Service and the Virtual Items Policy and other documents should be understandable and communicated in a way that is adapted to the target audience, as also clearly stated by the CJEU in its decision Van Hove (case C-96/14).<sup>40</sup> Children below 18 should be able to fully understand the full economic and legal consequences of the decisions they take on the platform.<sup>41</sup>
- **TikTok only provides some of its policies in English language in several EU Member States, which makes them unintelligible to many consumers, in particular children and**

**teenagers who may not be able to read English.** As the screenshots (dated February 2021) below show, TikTok's Term of Service are available in German, English, Spanish, French, Italian, Polish, Portuguese, Dutch, Swedish and some other non-European languages. However, they are, for example, not available in Croatian although media reported a "boom" of users in Croatia.<sup>42</sup> Lithuania is another example of countries counting a growing number of users but for which the documentation is not available in the national language. Recently, the Hungarian Competition Authority also highlighted that TikTok's Terms of Service are not available in Hungarian.<sup>43</sup> This seems all the more ironic considering that Hungarian users are targeted by commercial communications in Hungarian.



<sup>39</sup> See e.g. Section "9. Content" of TikTok's Terms of Service.

<sup>40</sup> CJEU case C-96/14, Van Hove, ECLI:EU:C:2015:262 points 40 to 50.

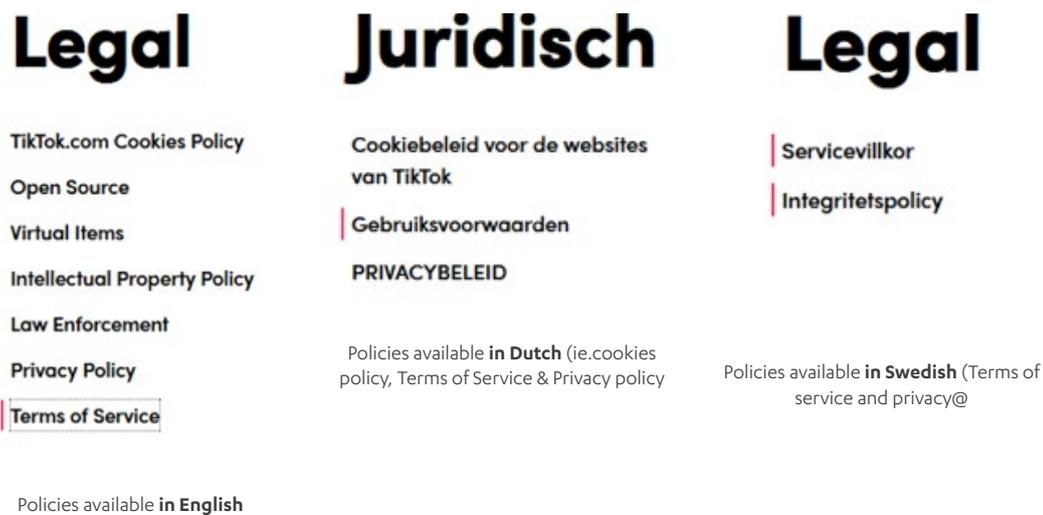
<sup>41</sup> Case C-26/13, Kasler and Kaslerne Rabai, points 71 & 72 (ECLI:EU:C:2014:282).

<sup>42</sup> [www.dentsu.com/hr/en/tik-tok-in-croatia](http://www.dentsu.com/hr/en/tik-tok-in-croatia) (accessed in January 2021).

<sup>43</sup> [www.gvh.hu/en/press\\_room/press\\_releases/press-releases-2020/the-competition-authority-has-initiated-a-proceeding-against-tiktok](http://www.gvh.hu/en/press_room/press_releases/press-releases-2020/the-competition-authority-has-initiated-a-proceeding-against-tiktok) (accessed in December 2020).

As highlighted also below as well as in the accompanying data protection report,<sup>44</sup> a similar observation can be made concerning TikTok's other policy documents. The three screenshots below (taken in February 2021), which focus on

the English, Dutch and Swedish languages, show that several TikTok policy documents are still not available in certain national languages although there are consumers using the app in these countries.



It is noteworthy that the Berlin Superior Court of Justice (Berlin Kammergericht) in a ruling in a 2016 case brought BEUC's member organisation vzbv against Whatsapp - which provided its terms of use and privacy policy only in English - decided that everyday English is common in Germany but legal, contractual and commercial English is not. No consumer should expect to be exposed to "an extensive, complex set of rules with very, very many clauses" in a foreign language which they can hardly understand. The court ruled that as long as the terms and conditions were not translated into German, all clauses were deemed 'untransparent' and therefore invalid<sup>45</sup>.

As a consequence, the Terms of Service are highly complex and not comprehensible, particularly when considering that many children and teenagers are exposed to a foreign language.

#### Breaches of:

- Article 3(1) and 5 UCTD
- Article 7(2) UCPD

## 2. Unfair term on content ownership and license for intellectual property rights

**Legal basis:** under Article 3(1) of the UCTD, terms should not cause significant imbalances in the parties' rights and obligations to the detriment of the consumer. In addition, national copyright laws may consider users having to give broad licenses to platforms over inexistent or future users' content as unlawful practices.<sup>46</sup>

#### Application to TikTok's Terms of Service:

several terms define the rights and obligations of the parties regarding so-called "user-generated content". When registering on the platform, users

<sup>44</sup> See J. Ausloos & V. Verdoodt, (2021). *TikTok and the GDPR - Legal Analysis of TikTok's Privacy Policy in light of the GDPR. Study for BEUC.*

<sup>45</sup> [www.vzbv.de/sites/default/files/en\\_kom\\_2016-05-13\\_pm\\_whatsapp\\_ibu.pdf](http://www.vzbv.de/sites/default/files/en_kom_2016-05-13_pm_whatsapp_ibu.pdf) (accessed in January 2021).

<sup>46</sup> For example as highlighted by the "Commission des Clauses Abusives" in France ([www.clauses-abusives.fr/recommandation/contrats-de-fourniture-de-services-de-reseaux-sociaux-nouveau/](http://www.clauses-abusives.fr/recommandation/contrats-de-fourniture-de-services-de-reseaux-sociaux-nouveau/), accessed in January 2021).

have to accept them. One of these terms relates to intellectual property rights (see below) and reads as follows:

**“User-generated content: (...) except as expressly provided otherwise in these Terms, you or the owner of your User Content still own the copyright and any other intellectual property rights in User Content sent to us, but by submitting User Content via the Services, you hereby grant:**

**(i) to us and our affiliates, agents, services providers, partners and other connected third parties an unconditional irrevocable, non-exclusive, royalty-free, fully transferable (including sub-licensable), perpetual worldwide licence to use, modify, adapt, reproduce, make derivative works of, publish and/or transmit, and/or distribute and to authorise others users of the Services and other third-parties to view, access, use, download, modify, adapt, reproduce, make derivative works of, publish and/or transmit your User Content in any format and on any platform, either now known or hereinafter invented;**

**(ii) to other users of the Services an unconditional irrevocable, non-exclusive, royalty-free, perpetual worldwide licence to use, modify, adapt, reproduce, make derivative works of, download, publish and/or transmit, and/or distribute some or all of your User Content in any format and on any platform, either now known or hereinafter invented for the purpose of generating other**

**User Content or viewing your User Content for entertainment or other private, non-commercial purposes (...).**

**You further grant us and our affiliates, agents, services providers, partners and other connected third parties a royalty-free license to use your user name, image, voice, and likeness to identify you as the source of any of your User Content” (...).**

This allows TikTok, its partners, affiliated companies and third-party companies to (amongst other things) use, distribute and reproduce all content published by users (videos, images, voices, names etc.) worldwide. This license is granted without remuneration for consumers and is irrevocable.

It is noteworthy that, **in two cases brought by our member organisation UFC-Que Choisir against Twitter<sup>47</sup> and Facebook,<sup>48</sup> the Paris court of first instance (Tribunal judiciaire de Paris) took the view in 2018 and 2019 that similar terms were unfair.** In these two cases, the social networks granted themselves an absolute, royalty-free, worldwide license to transfer and sub-license all content published by their users. The Paris Court ruled in both decisions that this provision was unclear and ambiguous, and created a significant imbalance between parties’ rights and obligations, to the detriment of consumers. These arguments also apply to Tik Tok’s terms which impose an unfair licence on consumers.

**Breaches of:**

- Article 3(1) UCTD
- National copyrights laws (where applicable)

<sup>47</sup> TGI Paris, 9 April 2010, No 14/07298 (available here).

<sup>48</sup> [www.quechoisir.org/action-ufc-que-choisir-reseaux-sociaux-et-clauses-abusives-l-ufc-que-choisir-obtient-la-suppression-de-centaines-de-clauses-des-conditions-d-utilisation-de-twitter-n57621](http://www.quechoisir.org/action-ufc-que-choisir-reseaux-sociaux-et-clauses-abusives-l-ufc-que-choisir-obtient-la-suppression-de-centaines-de-clauses-des-conditions-d-utilisation-de-twitter-n57621) (accessed in January 2021). An appeal is pending in the Twitter case.

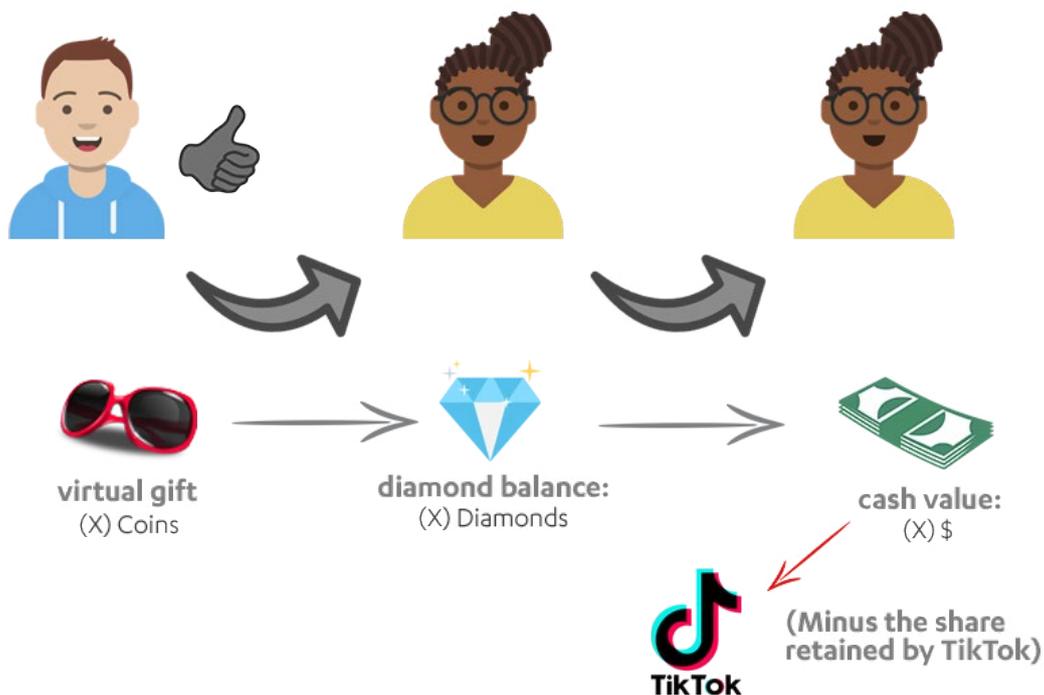
## ➤ TikTok's unfair and abusive "Virtual Items Policy"

### 1. TikTok "coins" and "virtual gifts": how does it work?

In addition to the personalised video feeds displayed on their "For You" pages, users have the possibility to follow "live" streams of other users. According to TikTok's rules, live streams are reserved to users aged 16 or above. However, as pointed out earlier, the platform hosts many underage users. On several occasions during our investigation, we came to observe many users who were (or seemed to be) underage.

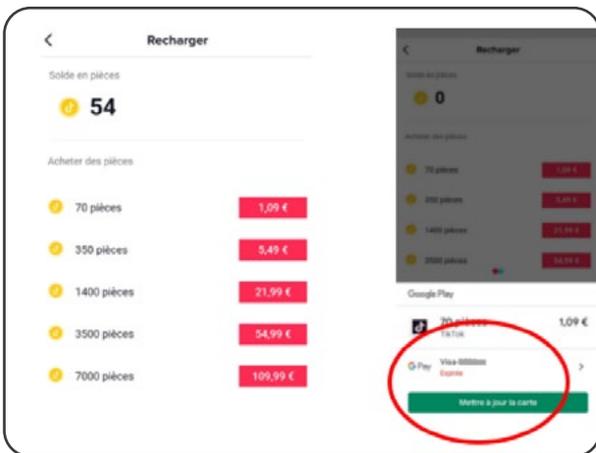
During live videos, users can send "virtual gifts" to reward their favorite content providers and to express their appreciation of their videos. Virtual gifts are exchanged against TikTok "coins" that users have previously purchased on the platform. According to TikTok's Virtual Items Policy, only users aged 18 and above are allowed to buy and send virtual gifts to live streamers. Those users who receive virtual gifts may then convert them into "diamonds", and ultimately cash in real money.

The process can be summarised as follows:

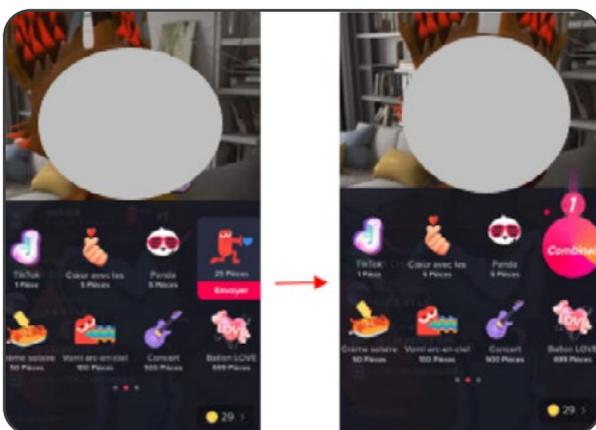


(Graph by BEUC)

To be able to send virtual gifts, users first need to buy “coins”. The price of the coins is displayed at the point of purchase and users can choose between different bundles, ranging from 70 coins for €1.09 and up to 7000 coins for €109.99 (see screenshots below dated December 2020). The payment is either added to the user’s monthly phone bills or made via a bank transfer through a payment provider authorised by TikTok. The user’s bank details may be pre-filled if they have already indicated their details in the Apple or Google Stores for past purchases (see screenshots below dated November 2020). Once the purchase is completed, users accounts are credited with the virtual coins.



Once the coins have been credited on the users’ accounts, they can be used to buy and send “virtual gifts” during live videos (see screenshots below dated January 2021 where BEUC sent a gift of 25 coins to a content provider).



Once the user has sent the gift to the content provider, the gift is converted into Diamonds in the content provider’s account. In simple terms, diamonds are thus virtual credits measuring the popularity of the videos posted. They are based on the virtual gifts received by the content provider “at a rate of conversion to be determined by [TikTok] from time to time in its absolute and sole discretion”.<sup>49</sup>

The content provider may then convert the diamonds into real money denominated in US dollars. However, the amount of the final monetary compensation that is ultimately earned by the content provider remains obscure. According to TikTok, the compensation is calculated “based on various factors including the number of diamonds that the user has accrued”.<sup>50</sup> The conversion of diamonds into cash payments is made directly into the user’s nominated PayPal account or processed via other third-party payment channel accounts.

TikTok does not indicate how much the app retains when content providers decide to convert their diamonds into cash. In 2019, a BBC article stressed that “TikTok declined to say how much of that money it kept – but several influencers told the BBC they took home 50% of all gift revenue earned”.<sup>51</sup> A French television documentary went even further and claimed that TikTok retains up to two thirds of these amounts.<sup>52</sup>

Playful at a first glance, TikTok’s Virtual Item Policy is highly problematic from the point of view of consumer rights.

<sup>49</sup> <https://www.tiktok.com/legal/virtual-items#virtual-items-eu>

<sup>50</sup> *Idem.*

<sup>51</sup> [www.bbc.com/news/technology-48725515](http://www.bbc.com/news/technology-48725515) (accessed in January 2021).

<sup>52</sup> *Complément d’Enquête – Tous toques de TikTok (France 2 – 2021, at 50’).*

## 2. What’s wrong with TikTok’s Virtual Items Policy?

→ TikTok’s Virtual Item Policy is not available in all the languages where the app is used.

**Legal basis:** Article 5 of the UCTD provides that all contract terms must be drafted in plain, intelligible and unambiguous language. They must also be drafted and presented in a format and style that is adapted to the public.<sup>53</sup> In parallel, Article 7(2) of the UCPD requires traders to provide information in a clear and intelligible way.

**Application to TikTok’s virtual items policy:** as the screenshot below (taken in February in 2021)

show, **TikTok’s Virtual Items Policy is available in only a few national European languages** (German, Spanish, French, Italian, Polish and Portuguese). This means that users who live, for example, in Sweden or in the Netherlands cannot have access to TikTok’s Virtual Items Policy in their own language. As also shown on the screenshot below, in Norway, users can buy virtual coins in Norwegian Krone but the Virtual Items Policy is not available to them in Norwegian language. As highlighted before concerning TikTok’s Terms of Service, although users may be able to understand ‘everyday English’, many are not familiar with legal English used in such policy documents. The terms of TikTok’s Virtual Items Policy are thus highly complex and presented with legal and commercial vocabulary. As a consequence, they are unclear and unintelligible for consumers, particularly the young audience of TikTok.

The screenshot shows the TikTok app interface. On the left, a menu lists various sections like 'Programs', 'Resources', and 'Help Center'. A language selection menu is highlighted with a purple box, showing options for Deutsch, English, Español, Français, Italiano, Polski, Português, Tiếng Việt, 한국어, and 日本語. The main content area displays the 'Virtual Items Policy' document, which is written in English. Below the policy text, there is a 'Recharge' screen showing a 'Coins Balance' of 0 and a list of virtual items for purchase, such as 65 coins for NOK 11,00, 330 coins for NOK 55,00, 1321 coins for NOK 219,00, 3303 coins for NOK 549,00, and 6607 coins for NOK 1,090,00.

**Explanation of the screenshot:**  
Norwegian users can buy virtual coins in their local currency (Norwegian Krone) but do not have access to TikTok’s Virtual Items Policy in Norwegian language.

**Breaches of:**  
- Article 3(1) and 5 UCTD  
- Article 7(2) UCPD

<sup>53</sup> Case C-96/14, Van Hove, Points 40 to 50.

→ Clear pre-contractual information is missing.

**Legal basis:** under Article 6 of the CRD, consumers must be provided with a set of pre-contractual information to be able to make informed purchase decisions. As Article 6(1)(e) of the CRD further specifies, this includes information about the price. In parallel, Article 7(4)(c) of the UCPD provides that a commercial practice is misleading if it omits information relating to price.

#### Application to TikTok's Virtual Items Policy:

when users send "virtual gifts" to content providers, the value of the gift that is sent is only displayed in TikTok coins with no additional correspondence in real currency (euros or other applicable national currencies) (see screenshot below, dated February 2021). **Combined with shiny colours and funny emojis, everything is designed to ensure that users handling TikTok coins forget that they are actually using real money.**



This practice amounts to an omission of mandatory precontractual information to consumers. Purchasing coins and sending gifts are not two different and separate operations but are clearly two parts of the same action since coins can only be used on TikTok to buy and send virtual gifts. Furthermore, the term "gift" is actually misleading as this process can by no means be seen as a

donation but as a contract where TikTok retains an important share at the end of the process.

#### Breaches of:

- Article 6(1)(e) CRD
- Article 7(4)(c) UCPD

→ An effective authorisation mechanism to prevent abuse during the purchase of virtual coins is lacking.

**Legal basis:** In its Common Position on in-game apps, the CPC Network clearly stressed that consumers should be adequately informed about the payment arrangements as a matter of professional diligence and should not be debited through default settings without consumers' explicit consent.<sup>54</sup> A failure to do so is regarded as a breach of EU consumer law, in particular Articles 5, 7(2) and 7(4)(d) of the UCPD and Article 6(1)(g) of the CRD. In addition, the Guidelines of the Dutch consumer and market Authority (Autoriteit Consument & Markt – "ACM") on the Protection of online consumer issued in 2020 have pointed out that "if a game is frequently played by children, the business must design the payment settings in such a way that children cannot make any purchases without parental supervision, for example, by requiring a password for each purchase."<sup>55</sup>

**Application to TikTok's practices:** Media reported several examples of underage users who – while often pushed by social influencers – spent a lot of money to buy TikTok coins (TikTok accounts were in most cases linked to the pre-filled banking details of one of the parents).<sup>56</sup> In September 2020, the French consumer organisation "60M de consommateurs" reported that influencers had been calling on their young followers to send them virtual gifts.<sup>57</sup> A documentary broadcasted on French public television made a similar

<sup>54</sup> [https://ec.europa.eu/info/sites/info/files/common-position\\_of\\_national\\_authorities\\_within\\_cpc\\_2013\\_en\\_0.pdf](https://ec.europa.eu/info/sites/info/files/common-position_of_national_authorities_within_cpc_2013_en_0.pdf)

<sup>55</sup> [www.acm.nl/sites/default/files/documents/2020-02/acm-guidelines-on-the-protection-of-the-online-consumer.pdf](http://www.acm.nl/sites/default/files/documents/2020-02/acm-guidelines-on-the-protection-of-the-online-consumer.pdf) (accessed January 2021).

<sup>56</sup> See e.g. in the UK, "Mum's desperate warning after 11-year-old daughter racks up '£3,500 bill' on TikTok", in Canada: 12-year old girl spends 12 000 dollars to buy tiktok coins).

<sup>57</sup> [www.60millions-mag.com/2020/09/09/sur-tiktok-des-influenceurs-font-raquer-les-ados-17653](http://www.60millions-mag.com/2020/09/09/sur-tiktok-des-influenceurs-font-raquer-les-ados-17653)

observation.<sup>58</sup> In 2019, a BBC investigation also found evidence of influencers promising to share their phone numbers or to make "duets" (allowing users to collaborate with TikTok stars via split-screen videos) in exchange for virtual gifts.<sup>59</sup> Since TikTok knows that a big portion of the content of the site is clearly aimed at children and thus many children and teenagers are encouraged to buy coins and use virtual items, **its lack of necessary protective measures to prevent abuse and to monitor payments constitutes a breach of due diligence and the omission of material information is misleading consumers.** Users should be clearly informed about the price of the virtual gifts sent to content providers.

Breaches of:

- Articles 5, 7(2) and 7(4)(d) UCPD
- Articles 6(1)(e) and 6(1)(g) CRD

→ **The information about the right of withdrawal is unclear and insufficient.**

**Legal basis:** Under Articles 9 and 16 of the CRD, consumers may or may not, depending on the type of contracts concluded, benefit from a right of withdrawal when making online purchases.<sup>60</sup> Article 16 of the CRD lists several exceptions from the right of withdrawal, which among include service contracts when the service has fully been performed. Yet even in situations where the right of withdrawal is not provided, Article 6(1)(k) of the CRD stipulates that traders must still inform consumers about the absence of the right of withdrawal in a clear and comprehensible manner.

→ **Application to TikTok's policy: the wording that TikTok uses in its Virtual Item Policy to inform its users that the right of withdrawal is not provided is ambiguous and unclear.**

TikTok's policy reads as follows:

**"If you wish to make changes to your purchase, please contact us at the email address set out below. We will let you know if this change is possible. Please note that changes may impact price as well as other aspects of your purchase. If you live in the European Union, you have certain rights to withdraw from a purchase under the Consumer Rights Directive and its implementing legislation. However, if you purchase Coins, you acknowledge and agree that we start supplying the Coins to you as soon as the purchase is complete and therefore, your right to cancel or withdraw from the agreement to purchase is lost at this point".**

The provisions dealing with the right of withdrawal are mixed with other provisions (e.g. with provisions on how to "make changes to a purchase"). The proximity between different provisions dealing with different users' rights is confusing. While the first sentence suggests that consumers wishing to make changes to their purchase can do so (depending on TikTok's good will), the following sentences seem to indicate the contrary, by referring to the loss of the right of withdrawal. In addition, the contested clause does not explain what a "change" to a purchase is. The wording is therefore ambiguous, unclear, likely to mislead consumers and thus does not meet the requirements of Article 6(1)(k) of the CRD.

**Breach of Article 6(1)(k) CRD**

<sup>58</sup> Complément d'Enquête – Tous toques de TikTok, (France 2- 2021).

<sup>59</sup> [www.bbc.com/news/technology-50651125](https://www.bbc.com/news/technology-50651125) (accessed in January 2021).

<sup>60</sup> Art. 6, 9 and 16 CRD.

→ Several terms in TikTok's virtual items policy are unfair.

TikTok's virtual item policy contains several unfair terms from a consumer rights point of view. **It is noteworthy that similar terms have already been declared unfair by the CPC network in its Common Position on social networks.**<sup>61</sup>

Below we list on some of these unfair terms.

✘ TikTok keeps full and unilateral control over users' coins for a wide range of reasons the company may consider "valid".

**Legal basis:** under Art.3(3) of the UCTD and Points (j) and (k) of its Annex, traders must not modify any characteristics of the product or service unilaterally and without valid reason. Moreover, according to Points (b) and (q) of the same Annex, terms limiting or excluding the liability and legal rights of consumers are also deemed to be unfair.

**Application to TikTok's policy:** TikTok's virtual item policy reads as follows:

**"You agree that we have the right to manage, regulate, control, modify and/or eliminate such Coins, where we have a valid reason to do so such as where we reasonably believe you have violated this Policy, you are in breach of any applicable law or regulation or for legal, security or technical reasons and that we will have no liability to you based on our exercise of such right. If we decided to eliminate Coins from our services completely, we will do so by providing reasonable notice to you".**

This provides that TikTok keeps a unilateral right to regulate, control, modify or even remove its coins policy. A vague and non-exhaustive list of reasons that TikTok may consider "valid" is indicated. It includes, for example, a reasonable belief that the user has breached the platform's policy rules, or

a reasonable belief that law violations have taken place. The term also specifies that TikTok may eliminate its coins policy for "technical reasons", which does not provide for a sufficiently clear explanation for a user about changes to this policy. In addition, TikTok states that it cannot be held liable, even if this comes from a technical problem or a wrong appreciation from the platform. For example, in a situation where users would be erroneously suspected to be in breach of TikTok internal rules, TikTok would be allowed to cancel the coins accrued without bearing any responsibility. As a consequence, the term gives TikTok disproportionate unilateral powers to the detriment of the user and contrary to good faith (e.g. by deliberately using vague terms in the reasons given to dispose of users' coins).

Breaches of:

- Article 3(3) UCTD
- Points (b) (j) (k) and (q) UCTD Annex

✘ TikTok keeps an "absolute right to manage, regulate, control, modify and/or eliminate" the exchange rate between coins and gift "as it sees fit in their sole discretion, in any general or specific case, and has no liability" to the user.

**Legal basis:** Under Art.3(3) of the UCTD and points (j) and (k) of its Annex, terms granting traders an absolute and unilateral power to modify without a valid reason any characteristic of a contract is likely to be considered as unfair. According to Points (b) and (q) of the same Annex, terms diminishing or limiting the legal rights of consumers against the trader may also be deemed unfair. Furthermore, according to Point (i) of the UCTD Annex, changes in the terms should be communicated to the consumers sufficiently in advance.

**Application to TikTok's policy:** TikTok's Virtual Items Policy reads as follows:

<sup>61</sup> Common Position of national authorities within the CPC-Network concerning the protection of consumers on social networks.

**"You agree that we have the absolute right to manage, regulate, control, modify and/or eliminate such exchange rate as we see fit in our sole discretion, in any general or specific case, and that we will have no liability to you based on our exercise of such right".**

This gives TikTok disproportionate unilateral powers and deprives consumers of their rights. For consumers, it is essential to know upfront what the applicable terms are. However, TikTok does not specify that consumers will be notified in advance in case of changes.

**Breaches of:**

- Article 3(3) UCTD Points (b) (i) (j) (k) and (q) UCTD Annex

⊗ When users send virtual "gifts" to content providers, the gifts are converted into "diamonds" at a rate of conversion to be determined by TikTok from time to time at its absolute and sole discretion

**Legal basis:** under Article 7 of the UCPD, traders should not hide essential information, such as price (Article 7(4)(c) of the UCPD). The information must be disclosed in a clear, unambiguous, and timely manner. Furthermore, according to Art. 6(1) (e) of the CRD, users must be informed, prior the conclusion of their contract, of the total price of a service, or, at least, where applicable, of the manner in which the price will be calculated (this refers to the "applicable monetary conversation" from gifts to diamonds). Finally, Article 3(3) of the UCTD and Point (l) of its Annex provide that terms allowing traders to display the price of goods or services only upon their delivery should be considered as unfair.

**Application to TikTok's policy:** TikTok's Virtual Items Policy reads as follows:

**"A content provider can choose, by selecting the relevant options in their user account,**

**to withdraw Diamonds in exchange for monetary compensation (to be denominated in US dollars). The applicable monetary compensation will be calculated by us based on various factors including the number of Diamonds a user has accrued".**

This is unclear as it does not allow users to fully understand how the monetary compensation is calculated. It merely specifies that the calculation is based on "various factors" without any further clear explanation. In addition, the contentious term allows TikTok – once again - to unilaterally modify the applicable monetary compensation at its sole and only discretion.

**Breaches of:**

- Article 3(3) UCTD and Point (l) of the UCTD Annex,
- Article 7 UCPD,
- Article 6(1)(e) CRD.

⊗ TikTok keeps full and unilateral control over the withdrawal feature of diamonds for a very wide range of reasons that the company considers "valid".

**Legal basis:** under Article 3(3) of the UCTD and Points (i) (j) and (k) of its Annex, allowing traders to alter unilaterally and without valid reasons or prior notification, any characteristics of a product or service should be considered unfair. According to Points (b) and (q) of the same Annex, terms diminishing or limiting the legal rights of consumers against the trader may also be deemed unfair.

**Application to TikTok's policy:** TikTok's Virtual Items Policy reads as follows:

**"You agree that we have the right to manage, regulate, control, modify and/or eliminate such withdrawal feature where we have a valid reason to do so such as where we reasonably believe you have violated this Policy, you are**

**in breach of any applicable law or regulation or for legal, security or technical reasons, and that we will have no liability to you based on our exercise of such right”.**

As explained earlier, live content providers may decide to convert their diamonds into real money. However, according to TikTok’s virtual items policy, the platform retains the right to manage, regulate, control, modify or unilaterally eliminate the possibility for users to withdraw their diamonds when it has a “valid reason” for doing so. Similarly, and without further explanation, the platform retains the right to eliminate its diamond policy for “technical reasons”, whatever this may mean in practice. Once again, like for the virtual coins, TikTok provides a vague and non-exhaustive list of possible violations that would authorise the platform to take such steps. Also, once again, TikTok grants itself the power to use this right unilaterally without bearing any liability towards its users.

Breaches of:

- Article 3(3) UCTD and Points (b) (i) (j) (k) and (q) UCTD Annex

⊗ **TikTok grants itself a unilateral right to cancel the operation of the Diamond incentive at any time, for a wide range of reasons and without automatically informing users.**

**Legal basis:** under Art. 3 (3) of the UCTD, traders may not grant themselves the right to alter unilaterally and without a valid and clearly defined reason, the characteristics of the service to be provided to their users.<sup>62</sup> Such terms are likely to be considered unfair. In addition, prior to any modification to the contract, users should be

clearly informed and be given a reasonable notice to potentially react to the changes.<sup>63</sup> Finally, terms limiting or excluding the liability and legal rights of consumers against a trader would also be considered unlawful.<sup>64</sup>

**Application to TikTok’s policy:** TikTok’s Virtual Item Policy reads as follows:

**“We may cancel the operation of the Diamond incentive at any time. If we cancel the Diamond incentive, we shall make reasonable efforts to provide you with prior notice to enable you to convert your Diamonds into cash. Where we have a valid reason (such as where we reasonably believe you have violated this Policy, you are in breach of any applicable law or regulation or for legal, security or technical reasons), we may cancel the operation of the Diamond incentive without notice. In either case, you shall have no right or entitlement to any financial compensation in respect of any Diamond accrued prior to the date of cancellation of the incentive that has not been converted into cash using the mechanism set out in this Policy”.**

TikTok grants itself the right to cancel the ‘Diamond incentive’ at any time, without providing any clear grounds to do so, and without bearing any responsibility towards consumers. Consumers cannot obtain financial compensation for the diamond collected prior to the date of cancellation of the incentive when the latter have not been converted into cash. If the platform decides to cancel the diamond incentive, it will only make “reasonable efforts” to provide the user with a prior notice. Where the platform considers it has a “valid reason” - such as a reasonable belief that the user has violated the internal rules, are in breach of any applicable law, or for other technical reasons (again whatever this may mean), TikTok may cancel the

<sup>62</sup> Art. 3(3) UCTD and Points (j) and (k) of its Annex.

<sup>63</sup> Art. 3(3) UCTD and Points (i) of its Annex.

<sup>64</sup> Art. 3(3) UCTD and Point (b) and (q) of its Annex.

operation of the diamond incentive without notice to its users.

Yet TikTok should always inform consumers, not merely "make reasonable efforts" to do so. Furthermore, by indicating that consumers will not be systematically informed about the elimination of the diamond incentive, and that they will not be able to benefit from a financial compensation for unconverted diamonds before the cancellation of the initiative, TikTok retains the right to keep the sums paid by consumers.

**Breaches of:**

- Article 3(3) UCTD Points (b) (i) (j) (k) and (q) UCTD Annex

## ➤ TikTok's misleading commercial practices about the processing of users' personal data

**Legal basis:** when consumers register on a video-sharing platform like TikTok, they are entering into a contract which must comply with the requirements laid down in EU consumer rights legislation.

**Under Article 6(1)(a) of the CRD**, before being bound by a contract, consumers must be informed about the main characteristics of a service in a clear and comprehensive manner. This would include a complete explanation of the app's business model and what personal data is collected, processed, and transferred to third parties by the app as this is an essential feature of the services provided by TikTok.

**Under Article 5 of the UCTD**, all contractual terms must be drafted in plain and intelligible language for consumers to whom the clauses are addressed. This would require that TikTok's privacy policy terms and terms of use should be intelligible by the children and teenagers users of the application as to their wording, the terminology used, their structure and whether important provisions are duly highlighted and not hidden among other provisions. The transparency of TikTok's policies should allow (young) consumers to foresee the economic consequences that flow from the privacy policy.

Further to this, **under Article 7 of the UCPD** consumers should not be misled by not informing them about the key characteristics of the product needed to make an informed purchase decision. To be understandable to the consumer, this

information should be communicated in a clear, intelligible, timely and unambiguous manner. Failure to do so may constitute a misleading omission and be considered as an unfair commercial practice. It is also noteworthy that the UCPD guidelines recognise on two occasions that "the data protection obligation to inform consumers about the data processing [...] may be considered substantial under Article 7 of the UCPD<sup>65</sup> and that "The data protection information requirement of consumers about the processing of personal data, not limited only in relation to commercial communication, may be considered as material [under] Article 7(5) [UCPD]"<sup>66</sup>.

Furthermore, as highlighted earlier, **Article 5(3) of the UCPD** deals specifically with the situation of vulnerable consumers, which includes children, who may be particularly at risk and therefore need more protection. Thus, the fairness of a commercial practice should be assessed from the perspective of the average member of that vulnerable group. Since TikTok's primary audience is composed of children (including children under 13) and teenagers, the upmost professional diligence<sup>67</sup> should guide the platform when delivering this information.

**Application to Tik Tok's Privacy policy and Terms of Service:** the analysis of TikTok's Terms of Services and Privacy Policy shows that the information communicated to consumers is unclear, in particular about the way data is collected, used and transferred to third parties.

<sup>65</sup> See UCPD Guidance point 1.4.9, point 1.4.10 and point 3.4.1.

<sup>66</sup> See UCPD Guidance point 1.4.10.

<sup>67</sup> Article 2 (h) UCPD: "professional diligence" means the standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader's field of activity".

Furthermore, it does not contain sufficient provisions relating to the protection of children and teenagers.

TikTok's terms of use and privacy policy provide a mix of unclear privacy statements related to **the collection and sharing** of data. For example, TikTok's Privacy Policy<sup>68</sup> states:

**“[TikTok] share[s] your data with third party service providers who help us to deliver the Platform including cloud storage providers. We also share your information with business partners, other companies in the same group as TikTok (including TikTok Inc in the US which provides certain services for us in connection with the Platform), content moderation services, measurement providers, advertisers and analytics providers [...]”.**

This information is not sufficient as it does not indicate the exact list of recipients of the personal data that TikTok collects and shares. In parallel, the terms of service provide that by uploading content to the platform, users grant TikTok and an unspecified group of third parties a “royalty-free license” to use certain personal data:

**“[...] affiliates, agents, services providers, partners and other connected third parties a royalty-free license to use your username, image, voice, and likeness to identify you as the source of any of your User Content”<sup>69</sup>.**

Another example relates to the processing of location data. It is unclear in the Privacy Policy whether Global Positioning System (GPS) data would be collected or not. TikTok states it might collect this data in certain jurisdictions, but the user would not know by looking at the policy whether they are in one of those jurisdictions.

**“When you use the Platform on a mobile device, we will collect information about your location in order to customise your experience. We infer your approximate location based on your IP address. In certain jurisdictions, we may also collect Global Positioning System data.”**

In addition, under the Privacy Policy it is not clear under which legal basis<sup>70</sup> location data is processed.

TikTok does not provide much information either regarding the countries to which the data from users is transferred. It just states that:

**“The personal data that we collect from you will be transferred to, and stored at, a destination outside of the European Economic Area (“EEA”).”**

TikTok's provision of information on the collection and use of users' data, which are part of the main characteristics of the service, is not complete and not understandable to the average consumer, particularly not to children and teenagers. In addition, as with the “virtual items policy”<sup>71</sup>, TikTok's “privacy policy” is only available in a limited number of EU languages<sup>72</sup>. A large number of users in the EU cannot access the Privacy Policy in their own language, which further increases the difficulties of understanding. This is even more true for children and teenagers. The terms of this policy are therefore unclear and unintelligible which is in breach of the requirements of the article 5 of the UCTD.

Concerning the provision of information to children and teenagers, point 9 of TikTok's Privacy Policy states that for users “[...] between 13 and 18 years old, [TikTok] also prepared a separate summary of this policy and what it means for [them]. It is available in the app under the ‘Privacy Policy’ tab”.

<sup>68</sup> All references to TikTok Privacy Policy (accessed on 01 February 2021).

<sup>69</sup> See TikTok Terms of service (accessed on 01 February 2021)

<sup>70</sup> Article 6, Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (‘GDPR’)

<sup>71</sup> See point 3.2. – “What’s wrong with TikTok’s virtual items policy?”

<sup>72</sup> Dutch, English, French, German, Spanish, Polish, Portuguese, Swedish and Italian.

Besides this reference to the “summary” and an indication that TikTok is not directed at children under 13, the Policy does not contain any specific provisions for children under 18 that tailor the information given to them or the actual practices that TikTok carries out. TikTok has recently announced that it will improve the summary of its Privacy Policy on the app for users under the age of 18, to explain, in an accessible and engaging way, the types of data it collects and how these are processed. This mainly comes as a result of the action launched against the company by the Italian Data Protection authority<sup>73</sup> (“Garante Per la Protezione Dei Dati Personali”) and clearly highlights TikTok’s shortcomings regarding the information it provides to children and teenagers. In any case, at the time of writing this report, it is unclear whether this change will be extended to other EU or EEA countries.

Despite TikTok’s commitments to provide clearer information to its children and teenagers, at the time of drafting this report, we found several elements still in contradiction with consumer rights.

First, the “summary” of the Privacy policy for TikTok users between 13 and 18 is only available in the TikTok App and not via the web-version, de facto excluding children who only access the web-version<sup>74</sup>. Furthermore, to consult the “summary”, it is indicated in the Privacy Policy that users need to go to the ‘privacy policy tab’ of the App, and for this you need to have an account. The essential information is therefore not given to children and teenagers upon registration and at the pre-contractual stage.

Secondly, the “summary” is once again only available in a limited number of EU languages<sup>75</sup>, making its understanding difficult for children between 13 and 18. Also, the information provided is incomplete for example with regards to data subjects’ rights (no mention to the right to object,

the right to data portability or the possibility to withdraw consent at any time). The “summary” also makes no reference to the fact that TikTok infers users’ interests, gender and age for the purpose of personalising content, including advertising.

Thirdly, as a matter of professional diligence toward children and teenagers, TikTok should inform them immediately, prominently, and systematically, at registration stage about the existence of the simplified information. However, our tests<sup>76</sup> revealed that TikTok does not proactively provide the information to its users between 13 and 18. They also revealed that depending on the way children and teenagers create their TikTok account, they will not systematically receive the same information regarding the “privacy policy”.

Existing problems are well illustrated by looking at the registration process that users under 18 would go through to set up a TikTok account. Below we explain how users can register and what information is provided during the process when using different identification means.

### Creation of a TikTok account using a “Facebook” account

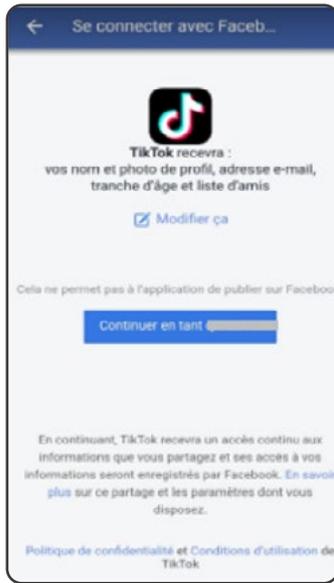
Despite registering as a 15-year-old, TikTok only provides general links at the bottom of the page referring to the “general” TikTok Privacy Policy. Users must scroll down between the different policy versions (US, EEA etc.) to find the right one, and cannot access the “summary” of the Privacy Policy before completing their registration. Furthermore, despite the configuration done on a French language website and in French language, the Privacy Policy is still provided in English making it difficult, if not impossible, to understand the terms.

<sup>73</sup> <https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9533424>

<sup>74</sup> See J. Ausloos & V. Verdoodt, (2021). *TikTok and the GDPR - Legal Analysis of TikTok’s Privacy Policy in light of the GDPR. Study for BEUC.*

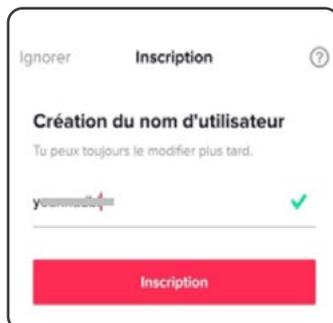
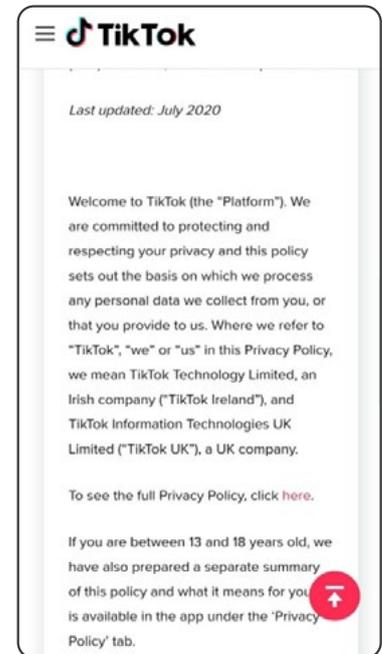
<sup>75</sup> The summary appears to be given only in the language set for the entire app. As the application is only available in a limited number of EU languages, if users’ languages are not available for the entire application, they also cannot understand the summary of TikTok’s privacy policy (ex. a Slovakian or a Slovenian user). In-house» test performed on 4 February 2021.

<sup>76</sup> All tests and screenshots in section 4 date from February 2021 and all registrations were made as a 15-year-old user.



**Explanation of the screenshots:** when users choose to register on TikTok via Facebook (left screenshot), they simply click on “continue”. A simple link to the general “terms of uses” and “Privacy policy” is available at the bottom of the page. (right screenshot). No further actions are required to go to the next steps.

**Explanation of the screenshot:** when users click on the «Privacy Policy» link, they must scroll down the different versions to find the relevant one (Right screen of the precedent page and screenshots above). The «summary» for users between 13 and 18 is mentioned at this stage but is accessible only on the app for the EEA region (Screenshot on the right).



**Explanation of the screenshots:** consumers only need to indicate their self-declared date of birth (left screenshot) and create a username to access the platform (right screenshot). No additional information is provided by TikTok to their children and teenagers, neither at this time nor at a later stage.



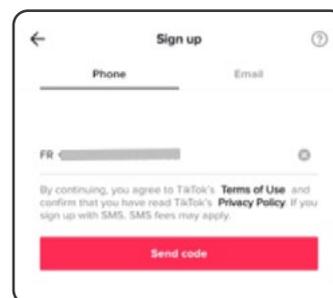
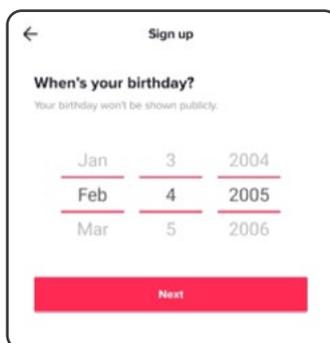
**Explanation of the screenshots:** After the validation of the username, by swiping their screens (Left screenshot), all users can access the App, and the “for you” video feed (right screenshot)

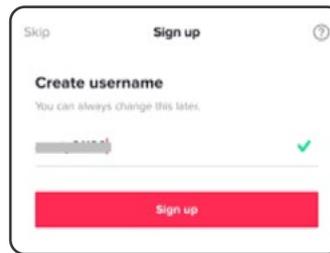
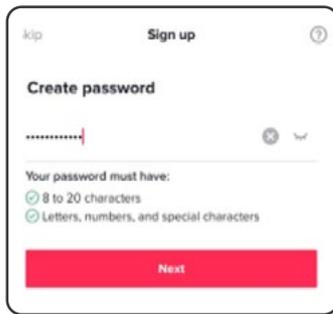
Creation of a TikTok account using a phone number

Once again, despite registering as a 15-year-old, TikTok only provides the general links at the

bottom of the page referring to the “general” TikTok Privacy Policy. Users must also scroll down between the different policy versions (US, EEA etc.) to find the right one but cannot access the “summary” of TikTok’s Privacy policy before completing their registration.

**Explanation of the screenshots:** when users choose to register on TikTok with a phone number, they shall simply enter their self-declared date of birth (left screenshot), their phone number and click on “send code”. A link to the general «terms of uses» and «Privacy policy» is available in the bottom of the page. (right Screenshot). No further actions required to go to the next steps.





**Explanation of the screenshots:** the user should then create a password, (Left Screenshot) and a username (Right Screenshot).

No additional information is provided by TikTok to their users, neither at this time nor at a later stage.

**Explanation of the screenshots:** after the validation of the username, all users can access the app, and the "for you" video feed (Screenshot on the right)



These examples demonstrate that, TikTok fails to clearly and fully inform its users, especially children and teenagers, about its data processing practices which does not allow them to take an informed decision on whether to register on the app and to understand the functioning of the service and its potential risks.

This failure to provide clear and complete pre-contractual and essential information about the collection and the use of users' personal data **constitutes breaches of Article 6(1)(a) CRD, a lack of due diligence under article 5(3) of the UCPD** since the way the information is provided does not take into account the situation of children and teenagers as the targeted vulnerable group, **a misleading omission under Article 7 of the UCPD** regarding the main characteristics of the service

in what concerns its data collection processes **and a breach of Article 5 of the UCTD** due to the contractual nature of the privacy policies.

Furthermore, as BEUC's legal analysis of TikTok's Privacy Policy from a data protection law perspective<sup>77</sup> indicates, the company's practices are also in breach of Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ('GDPR'). Providing misleading or unclear information to data subjects can negatively affect their ability to assess the respect and exercise of their rights. For example, TikTok's Privacy Policy explicitly states that the platform relies on consent as a lawful ground for processing personal data to provide personalised

<sup>77</sup> See J. Ausloos & V. Verdoodt, (2021). *TikTok and the GDPR - Legal Analysis of TikTok's Privacy Policy in light of the GDPR. Study for BEUC.*

advertising. Yet it is unclear, from the policy, what exactly this consent relates to in particular.

More specifically, the way in which the data processing purpose related to the inference of interests and personalised advertising is formulated in the Privacy Policy, allows TikTok to only consider consent to relate to the delivery of personalised advertising. In other words, the actual commercial profiling underlying the personalisation appears not to fall under this processing purpose, and hence cannot be halted by data subjects by exercising their right to withdraw their consent. This can mislead data subjects about the effect that withdrawing consent (or not consenting in the first place) will have on how their personal data is processed. They could think that if they do not give, or if they withdraw, their consent for personalised advertising the profiling that powers the personalisation of ads would stop. This is not the case. For example, according to TikTok's Privacy Policy, the company processes personal data on the basis of its legitimate interests (i.e. without consent) to infer user's interest for advertising purposes:

**“infer your interests for optimising our advertising offerings, which, where you've consented to personalised advertising, may be based on the information our advertising partners provide to us”**

TikTok also relies on legitimate interests to use personal data to inform its algorithms to deliver the most relevant content to users. Moreover, the use of personal data for the personalisation and tailoring of the content that users see is considered part of the performance of the contract that users enter into with TikTok. All these activities are beyond the reach of users' consent.

Furthermore, according to our legal analysis of TikTok Privacy policy from a data protection perspective<sup>78</sup>, TikTok also fails to sufficiently protect children when it comes to the processing of their personal data. For example, the Privacy Policy allows TikTok to carry out the same practices concerning profiling and the processing of personal data for targeted advertising purposes on adult- and child-users of the service. This is contrary to the GDPR's requirement that special protection needs to be awarded to children when their personal data are processed, and particularly in the context of profiling and marketing.

The provision of misleading and unclear information in the context of data processing has already been considered an unfair practice by national enforcement authorities. On 7 December 2018, the Italian competition Authority (Autorità Garante della Concorrenza e del Mercato - “AGCM”) imposed a €5m fine on Facebook for using its users' data for commercial purposes without properly informing them.<sup>79</sup> The AGCM took the view that the processing of personal data requires operators to respect important transparency requirements in their commercial transactions. As a consequence, Facebook must provide its users with complete information and not provide misleading information about its functioning and about the use of their personal data as soon as they set up their accounts<sup>80</sup>. In particular, the AGCM emphasised that Facebook users must be aware of the counter-performance underlying the adherence to a contract for the use of a social media. More specifically, the Authority decided that Facebook, in violation of articles 21 and 22 of the Italian Consumer Code, misled consumers when registering on Facebook, and failed to adequately and immediately inform them during the creation of their account that the data they provide will be used for commercial purposes.

<sup>78</sup> See J. Ausloos & V. Verdoodt, (2021). *TikTok and the GDPR - Legal Analysis of TikTok's Privacy Policy in light of the GDPR. Study for BEUC.*

<sup>79</sup> <https://en.agcm.it/en/media/press-releases/2018/12/Facebook-fined-10-million-Euros-by-the-ICA-for-unfair-commercial-practices-for-using-its-subscribers%E2%80%99-data-for-commercial-purposes>

<sup>80</sup> This reasoning has been confirmed by the Italian Administrative Judge (Rome) in the decision n.2020/260 on the appeal of the AGCM's decision by Facebook (Tar Lazio, Roma, Sez.I, Sent. 260/2020).

In other words, the AGCM found that the information provided by Facebook was too general and induced its users into making a transactional decision that they would not have taken otherwise – (i.e. registering on Facebook and continuing to use it). The same conclusion must be drawn with regards to TikTok, in particular because the app targets children under 18.

The Hungarian Competition Authority (Gazdasági Versenyhivatal – “GVH”) is currently looking at TikTok's potential failure to adequately inform consumers about its functioning and its data processing practices.

**Breaches of:**

- Article 6(1)(a) CRD
- Articles 5(3) and 7 UCPD
- Article 5 UCTD

# TikTok's failure to take diligent measures to protect children and teenagers against hidden advertising and potentially harmful content

## 1. Hidden advertising and TikTok's responsibility

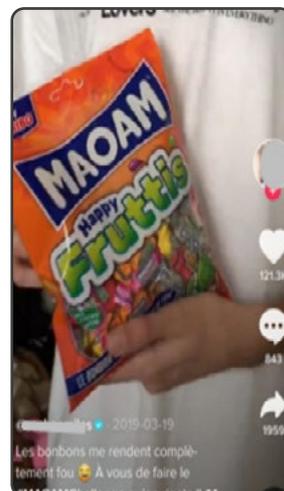
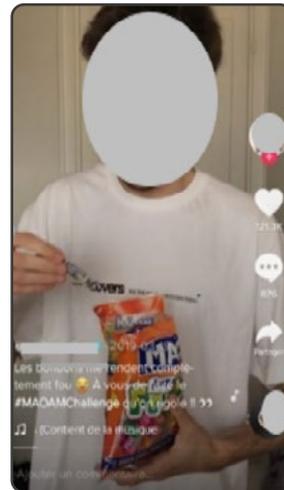
### → How does advertising work on TikTok?

Because of its growth and popularity, TikTok has rapidly raised the appetite of many businesses willing to tap into younger audiences for advertising and promoting their products. TikTok has set up "TikTok Business"<sup>81</sup> where it proposes several advert formats to advertisers and guides them when creating advert. TikTok also enables advertisers to target their audiences by general demographics, interests, devices, etc.

The range of TikTok advert proposed to businesses includes (among others):

- **"In-feed video"**: the advert appears in the news feed of TikTok on the "For You" page.
- **Branded "Hashtag challenges"**: the advert appears on the discovery page. It encourages users to participate in user content creation challenges (see for example the screenshots below featuring Haribo's "Maoam Challenge"). According to TikTok, approximately 37% of users would participate in such challenges.<sup>82</sup>
- **"Branded content"**: the advert appears as branded lenses, stickers, and other 2D/3D content for TikTok users to use in their videos (see screenshot below, dated November 2020).

- **"Brand takeover"**: the advert appears when users open the app and completely take over their screen for a few seconds before turning into an In-Feed Video ad.



Example of branded content (Levis')

<sup>81</sup> <https://ads.tiktok.com/help/> (last accessed February 2021)

<sup>82</sup> <http://mediamanagersclub.org/pitch-deck-tiktok-testing-cost-click-ad-pricing> (last accessed January 2021).

According to TikTok, advertisers remain fully responsible for the ads that they publish on the platform. As its advertising policies explain:

“Advertisers on TikTok are responsible for their ads complying with all applicable laws and regulations that apply to the ad targeting regions, being honest about the products or services the ad is promoting, creating truthful ads, and advertising safely”.<sup>83</sup>

When advertisers place an advert order on the platform, TikTok claims to internally review the content of the advert. The ad review purportedly takes approximately 24 hours and involves vetting the products/services promoted, ad caption, text, images, audio, visuals, age/region targeting, and landing pages, where necessary. In addition, TikTok's advertising policies list the prohibited content per country.<sup>84</sup>

#### → Hidden advertising practices on the app

**Legal basis:** according to Article 7 of the UCPD, traders should clearly identify the commercial intent of their communications.<sup>85</sup> Point 11 of the UCPD Annex further provides that using editorial content in a media to promote a product where a trader has paid for the promotion without making that clear or by images or sounds clearly identifiable by the consumer should be considered an unfair commercial practice. Moreover, Point 22 of the UCPD Annex specifies that falsely claiming (or creating the impression) that the trader is not acting for purposes relating to his business must also be regarded as an unfair commercial practice. Under Article 5(2) of the UCPD, a commercial practice must also be considered as unfair if it is contrary to the requirements of professional diligence and materially distort (or is likely to materially distort) the economic behaviour of consumers. Finally, Article 6 of Directive 2000/31/

EC on electronic commerce provides that commercial communications which are part of, or constitute, an information society service must be clearly identifiable as such. Ultimately, as the CPC-Network clearly highlighted in its Common Position on social networks,<sup>86</sup> “consumers must understand the eventual commercial nature of the content they may be exposed to when using social media services as with any other online content”.

**Application to TikTok's practices:** hidden marketing practices have mushroomed on the platform. In August 2020 in Spain, the Catalan Audiovisual Council (Consell de l'Audiovisual de Catalunya) published a study analysing the videos uploaded by eight s with more than a million followers.<sup>87</sup> They found that 93% of the content contained hidden adverts for fast food, sugary drinks, beauty products, clothing, and video games (see the screenshot below from the Catalan Audiovisual Council's study). In most cases, such videos do not display sponsored or advertised content in a way that would enable consumers to see and understand that they are dealing with advertising materials. Even when hashtags such as #sponsored or #advert (or similar) are displayed behind a video, this is mostly done in a misleading or ambiguous way, e.g., buried at the bottom of the description. In September 2020, the Catalan Audiovisual Council brought these findings to the attention of the Catalan consumer protection Authority (Agència Catalana del Consum).<sup>88</sup>

<sup>83</sup> <https://ads.tiktok.com/help/article?aid=9552> (accessed in January 2021).

<sup>84</sup> See TikTok Advertising Policies at <https://ads.tiktok.com/help/article?aid=9550> (accessed in February 2021).

<sup>85</sup> See also Art. 6(1) of the e-commerce directive.

<sup>86</sup> Common position of national authorities within the CPC-Network concerning the protection of consumers on social networks.

<sup>87</sup> Consell de l'Audiovisual de Catalunya, Report 122/2020, Advertising in video content created by TikTokers, 28 August 2020, [https://www.cac.cat/sites/default/files/2020-09/i122\\_2020%20Pres%C3%A8ncia%20de%20publicitat%20en%20els%20v%C3%ADdeos%20generats%20per%20tiktokers\\_EN.pdf](https://www.cac.cat/sites/default/files/2020-09/i122_2020%20Pres%C3%A8ncia%20de%20publicitat%20en%20els%20v%C3%ADdeos%20generats%20per%20tiktokers_EN.pdf) (accessed in February 2021).

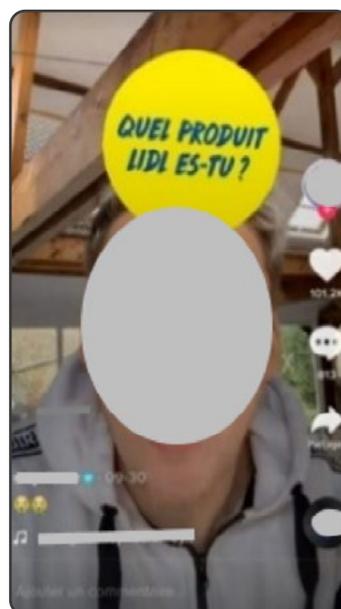
<sup>88</sup> [www.cac.cat/index.php/en/actualitat/cac-reports-tiktok-videos-30-million-views-hidden-advertising](http://www.cac.cat/index.php/en/actualitat/cac-reports-tiktok-videos-30-million-views-hidden-advertising) (accessed in January 2021).



Screenshots from the Catalan Audiovisual Council's report on hidden advertising on TikTok

Importantly, the ad format that TikTok proposes to businesses contributes to the proliferation of hidden advertising practices. The Catalan Audiovisual Council pointed out that a quarter of the examples analysed related to 'Hashtag Challenges'. **Hashtag challenges and other branded filters contribute to turning advertising into a game, which may be particularly appealing for young users. These practices transform users into advertising billboards** (see the screenshot below, dated November 2020), **without them being necessarily aware.** Users should be clearly informed that using such branded filters or participating in hashtag challenges serve to advertise products, services or content and promote brands.

**By allowing hidden advertising practices to take place on its platform, Tiktok's behaviour is not sufficiently vigilant and thus contrary to professional diligence. According to Article 5(2) of the UCPD, this practice which is likely to materially distort the economic behaviour of**



**consumers should be seen as a prohibited unfair commercial practice.** It is noteworthy that national authorities have fined media for letting hidden advertising practices happen on their programmes. For example, the Italian Competition Authority (AGCM) imposed several fines on the TV channel RAI notably on the grounds that it had “consented by way of omissive conduct and lack of vigilance to the adoption of (the) improper commercial practice”.<sup>89</sup>

In addition, in its Common Position on social networks of 2016<sup>90</sup>, the CPC network highlighted that “service providers have to ensure that there is sufficient clarity about the commercial nature or intent of a communication or a practice, especially when social media operators are informed of the practice, for example because they have contributed to the presentation of the practice and/or they derive revenues from it (e.g. advertising revenues, sponsored likes, etc.). Social media service providers also have an obligation to provide information on the main characteristics of the goods or services to consumers. Any term that excludes the operator’s liability as to this mandatory rule is likely to be in breach of EU Consumer Law. In addition, the implementation of terms enabling social media operators to avoid the identification of commercial communications as such may also be apprehended as a practice falling into the scope of the Unfair Commercial Practices Directive.”

Finally, and for comparison purposes, in its guidelines on video sharing platform under the the Directive 2010/13/EU on Audiovisual Media Services<sup>91</sup>, the European Commission also pointed out how platforms may indirectly benefit from sponsorships agreements between influencers and advertisers. It noted that “while the video-sharing platform services may not participate directly in these [sponsorship] agreements [between brands and uploaders], they indirectly benefit

from the popularity of those creators and the number of views they attract (...)” and “the fact that the platform tracks users’ interaction with audiovisual content available on the service for various marketing/commercial purposes, such as targeted behavioural advertising or data-sharing agreements, should also be considered as a means of indirect monetisation.”

Consequently, TikTok’s behaviour is contrary to professional diligence as it allows and enables advertisers to pursue and to profit from hidden advertising practices, which constitutes a breach of the UCPD.

#### Breaches of:

- Article 5(2) UCPD
- Article 7 UCPD
- Points 11 and 22 UCPD Annex
- Article 6 e-commerce directive

## 2. TikTok’s failure to take sufficient measures to limit children’s exposure to advertising

**Legal basis:** Under Article 5(2) of the UCPD, a commercial practice must be considered as unfair if it is contrary to the requirements of professional diligence and materially distort (or is likely to materially distort) the economic behavior of consumers. Under Article 7 of the UCPD, traders must clearly highlight the commercial intent behind their commercial practices. Furthermore, according to point 28 of the Annex of the UCPD, direct exhortation to children must be regarded as a banned commercial practice. The vulnerability of children to advertising practices under EU Law has also been confirmed by the CJEU in its De Agostini decision.<sup>92</sup>

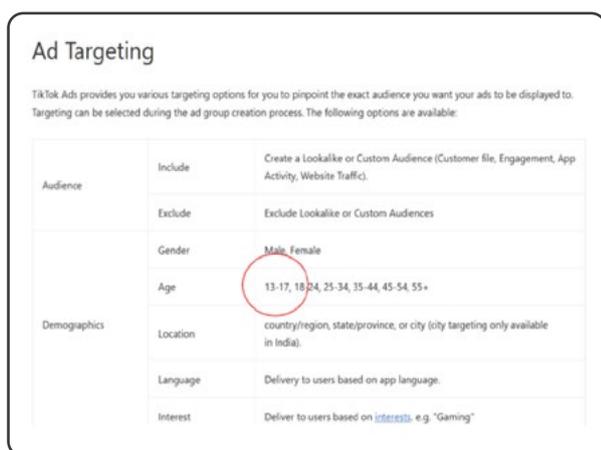
<sup>89</sup> <https://en.agcm.it/en/media/press-releases/2009/7/alias-1288> (accessed in December 2020).

<sup>90</sup> Common position of national authorities within the CPC-Network concerning the protection of consumers on social networks.

<sup>91</sup> European Commission’s Guidelines on the practical application of the essential functionality criterion of the definition of a ‘video-sharing platform service’ under the Audiovisual Media Services Directive, 7 July 2020, 2020/C 223/02.

<sup>92</sup> CJEU, case C-34/95 of 9 July 1997 (ECLI:EU:C:1997:344).

**Application to TikTok’s practices:** TikTok’s advertising practices to children are problematic. On the one hand, TikTok claims that adverts specifically targeting children are not allowed.<sup>93</sup> TikTok also claims to operate a pre-approval process to check the content of adverts.<sup>94</sup> However, on the other hand, TikTok knows that many users under 18 are active on its platform. Entertaining branded filters and other hashtag challenges are likely to be particularly appealing for children and teenagers users. Finally, it also seems that TikTok has been proposing an option for businesses to target users aged between 13 and 17, which is in direct contradiction to its alleged policy not to allow advertising to children (see the screenshot below, also available on TikTok Business pages,<sup>95</sup> last accessed in February 2021).



Despite TikTok’s claim not to target (or allow the targeting of) children, media have reported that the platform is “quickly becoming a marketing destination for toy companies with the help of influencers and original content”.<sup>96</sup> In October 2020, the Hungarian Competition Authority decided to open an investigation as it (among other things) suspects that TikTok “may have failed to act with the expected professional diligence in order to moderate the exposure of children and minors

to advertising during the use of the TikTok platform and service”.<sup>97</sup>

Consequently, TikTok’s behaviour is contrary to professional diligence. Its practices promote the direct exhortation of children to purchase products advertised on its website and mislead consumers about the commercial nature of its content.

**Breaches of:**

- Articles 5(2) UCPD
- Article 7 UCPD and
- Point 28 UCPD Annex

**3. TikTok’s failure to undertake due diligence to prevent young users’ exposure to inappropriate content.**

**Legal basis:** under Article 5(2) of the UCPD, a commercial practice must be considered as unfair when (inter alia) it is contrary to the requirements of professional diligence. Article 2(h) of the UCPD specifies that “professional diligence” refers to the “standard of special skill and care which a trader may reasonably be expected to exercise towards consumers, commensurate with honest market practice and/or the general principle of good faith in the trader’s field of activity”. In addition, Article 28b of the Audiovisual Media Services Directive (AVMSD) provides that Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to “protect minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development”.<sup>98</sup> In the past, EU audiovisual regulators agreed that TikTok could be considered as a video-sharing platform under the revised AVMSD directive.<sup>99</sup>

<sup>93</sup> <https://ads.tiktok.com/help/article?aid=9550> (accessed in January 2021).

<sup>94</sup> <https://ads.tiktok.com/help/article?aid=9552> (accessed in January 2021).

<sup>95</sup> <https://ads.tiktok.com/help/article?aid=9600> (accessed in February 2021).

<sup>96</sup> [www.businessinsider.com/tiktok-quickly-becoming-marketing-destination-for-toy-companies-2020-12?r=US&IR=T](http://www.businessinsider.com/tiktok-quickly-becoming-marketing-destination-for-toy-companies-2020-12?r=US&IR=T) (accessed in January 2021).

<sup>97</sup> [www.gvh.hu/en/press\\_room/press\\_releases/press-releases-2020/the-competition-authority-has-initiated-a-proceeding-against-tiktok](https://www.gvh.hu/en/press_room/press_releases/press-releases-2020/the-competition-authority-has-initiated-a-proceeding-against-tiktok) (accessed in January 2021).

<sup>98</sup> Art.28b of the Audiovisual Services Media Directive

<sup>99</sup> [https://erga-online.eu/wp-content/uploads/2019/08/2019-04-09\\_Minutes-SG3-TF2-1-6.pdf](https://erga-online.eu/wp-content/uploads/2019/08/2019-04-09_Minutes-SG3-TF2-1-6.pdf) (accessed in January 2021).

Application to TikTok’s practices: TikTok’s proclaimed mission is to “inspire creativity and bring joy” and “to capture and present the world’s creativity, knowledge, and precious life moments”.<sup>100</sup> In its Community Guidelines, TikTok further claims that they “strive to create a platform that feels welcoming and safe. We do not allow nudity, pornography, or sexually explicit content on our platform”.<sup>101</sup>

The reality, however, is much more disturbing. In January 2021, a 10-year-old girl died after taking part in a so-called “black-out challenge”, which consists of placing a belt around one’s neck and holding one’s breath while recording with a mobile phone. As a consequence of this tragedy, the Italian Data Protection Authority imposed a temporary

ban for users whose ages are unverifiable.<sup>102</sup> In 2020, in the US, several children and young teenagers were reported to have suffered from serious injuries after taking part in a so-called “skull-breaker challenge”.<sup>103</sup>

In order to know more about the types of videos displayed to children and teenagers, French journalists carried out a small experiment.<sup>104</sup> They registered as a 13-year-old user without indicating any gender or areas of interest to avoid influencing TikTok’s algorithm. After only a few minutes, most videos featured sexually-explicit or sexualised content (see screenshots taken from the documentary<sup>105</sup> and dated January 2021).



“Comment est-ce qu’on fait pour avoir une belle voiture dans la vie?”  
(translation: **How can you get such a nice car?**)



“Et bien on se prostitue !”  
(translation: **well...by prostitution!**)



“Moi je veux que les mecs se retournent sur mon petit cul”  
(translation: **“I want men to check out my small ass”**)

<sup>100</sup> [www.tiktok.com/about](https://www.tiktok.com/about) (accessed in January 2021).

<sup>101</sup> [www.tiktok.com/community-guidelines?lang=en#30](https://www.tiktok.com/community-guidelines?lang=en#30) (accessed in January 2021).

<sup>102</sup> [www.euractiv.com/section/politics/short\\_news/italian-dpa-imposes-tiktok-ban-for-users-unverifiable-by-age/](https://www.euractiv.com/section/politics/short_news/italian-dpa-imposes-tiktok-ban-for-users-unverifiable-by-age/) (accessed in January 2021).

<sup>103</sup> [www.washingtonpost.com/nation/2020/03/04/tiktok-challenge-skull-breaker/](https://www.washingtonpost.com/nation/2020/03/04/tiktok-challenge-skull-breaker/) (accessed January 2021).

<sup>104</sup> Complément d’enquête – Tous toqués de TikTok !, (2021- France 2).

<sup>105</sup> Complément d’enquête – Tous toqués de TikTok !, (2021- France 2).

BEUC replicated the same experiment in-house in January 2021. We registered on TikTok as a 13-year-old user but this time selected “daily life” as the area of interest. The fourth video which appeared after the registration (at 1’15) was a dance video featuring a woman showing her (scarcely covered) breasts and a banner “Qu’avez-vous regardé en premier chez moi?” (translation: What part of my body did you look at first?). Video number eight (at 2’) displayed a girl coming out of the shower and announcing that she will now show her breast implants in order to make her boyfriend react. Video number 13 (at 3’) was a song and a dance with explicit sexual content. Video number 15 (at 3’35) featured an old lady insulting in French and then in Arabic after a man said hello to her in Arabic.

Ultimately, these two experiments clearly show that TikTok algorithms expose children and teenagers to potentially illegal and degrading content, which is not in line with TikTok’s own Community Guidelines. TikTok therefore fails to act diligently and is in breach of Article 5 of the UCPD and Article 28b of the AVMSD.

**Breaches of:**

- Article 5(2) UCPD Article 28 b) AVMSD

## ➤ Annex: Legal grounds of BEUC CPC external alert

BEUC is an entity eligible to submit external alerts to the EU CPC network.<sup>106</sup> According to the CPC regulation,<sup>107</sup> the alert must be grounded on EU legislations listed in the Annex of the CPC regulation.

The following legal grounds serve as basis for BEUC external alert.

### LEGAL BASIS

#### TikTok's unfair Terms of Service

CONTENTIOUS CLAUSES	LEGAL BASIS
<p><u><a href="#">Point 2.1 - Unfair in TikTok's terms of services (list of terms does not intend to be exhaustive):</a></u></p> <ul style="list-style-type: none"> <li>• The general presentation of TikTok policies is ambiguous and unclear.</li> <li>• The TikTok terms disregard the fact that the platform is used by many children and teenagers users. Their format should be adapted to fit the audience.</li> <li>• In several EU Member States TikTok only provides its policies in English which makes them hardly intelligible for many consumers, in particular children and teenagers who may not be able to read English.</li> </ul>	<p><u><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></u></p> <ul style="list-style-type: none"> <li>• Article 3(1) UCTD</li> <li>• Article 5 UCTD</li> </ul> <p><u><a href="#">Unfair Commercial Practices Directive 2005/29/EC:</a></u></p> <ul style="list-style-type: none"> <li>• Article 7(2) UCPD</li> </ul>

<sup>106</sup> Commission decision 2020/369 of 4 March 2020 conferring the power to issue an external alert on entities representing consumers and traders' interests at a Union level.

<sup>107</sup> Art. 27 of the EU Regulation 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws.

<p><u><a href="#">Point 2.2 – Unfair term on content ownership and license for intellectual property rights</a></u></p> <ul style="list-style-type: none"> <li>• Tik-Tok grants itself an irrevocable, non-exclusive, royalty-free, fully transferable, perpetual and worldwide license to use and modify users' content.</li> </ul>	<p><u><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></u></p> <ul style="list-style-type: none"> <li>• Article 3(1) UCTD.</li> </ul> <p><u><a href="#">National copyright law (where applicable).</a></u></p> <ul style="list-style-type: none"> <li>• In several EU Member States TikTok only provides its policies in English which makes them hardly intelligible for many consumers, in particular children and teenagers who may not be able to read English.</li> </ul>
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### TikTok's unfair and abusive "Virtual Items Policy"

CONTENTIOUS CLAUSES	LEGAL BASIS
<p><u><a href="#">Point 3.2 - What's wrong with TikTok's virtual items policy? – TikTok Virtual Policy is available in only a limited number of EU languages.</a></u></p> <ul style="list-style-type: none"> <li>• TikTok's Virtual Items Policy is available in a few European languages. This means that users who are located in a country where their local language is not available cannot access TikTok's Virtual Items Policy in their own language. Consequently, they are unclear and unintelligible for consumers, particular the young audience of TikTok.</li> </ul>	<p><u><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></u></p> <ul style="list-style-type: none"> <li>• Article 3(1) UCTD</li> <li>• Article 5 UCTD</li> </ul> <p><u><a href="#">Unfair Commercial Practices Directive 2005/29/EC:</a></u></p> <ul style="list-style-type: none"> <li>• Article 7(2) UCPD</li> </ul>
<p><u><a href="#">Point 3.2 - What's wrong with TikTok's virtual items policy? – Clear pre-contractual information is missing.</a></u></p> <ul style="list-style-type: none"> <li>• When users send "virtual gifts" to content providers, the value of the gift that is sent is only displayed in TikTok "coins" with no additional correspondence in real currency (euro or other applicable currencies). This practice amounts to an omission of precontractual information and is a misleading omission. Furthermore, the term "gift" is misleading as it can by no means be seen as a donation but as a contract where TikTok retains an important share at the end of the process.</li> </ul>	<p><u><a href="#">Consumer Rights Directive 2011/83/EU:</a></u></p> <ul style="list-style-type: none"> <li>• Article 6(1)(e) CRD</li> </ul> <p><u><a href="#">Unfair Commercial Practices Directive 2005/29/EC:</a></u></p> <ul style="list-style-type: none"> <li>• Article 7(4)(c) UCPD</li> </ul>

## TikTok’s unfair and abusive “Virtual Items Policy”

CONTENTIOUS CLAUSES	LEGAL BASIS
<p><a href="#">Point 3.2 - What’s wrong with TikTok’s virtual items policy?</a> – An effective age verification mechanism to prevent abuse during the purchase of virtual coins is lacking.</p> <ul style="list-style-type: none"> <li>• TikTok users are not adequately informed about the payment arrangements, which is a lack of professional diligence, and are debited through default settings without consumers’ explicit consent. Furthermore, TikTok users are not clearly informed about the price of the virtual gift sent to content providers. This amounts to a lack of pre-contractual information and is a misleading omission.</li> <li>• TikTok is aware of that many children and teenagers are registered on the platform and are likely to buy coins and use virtual items. However, despite that vulnerable consumers need particular protection, the platform fails to take the necessary protective measures to prevent abuse and to monitor payments.</li> </ul>	<p><a href="#">Consumer Rights Directive 2011/83/EU:</a></p> <ul style="list-style-type: none"> <li>• Article 6(1)(e) CRD</li> <li>• Article 6(1)(g) CRD</li> </ul> <p><a href="#">Unfair Commercial Practices Directive 2005/29/EC:</a></p> <ul style="list-style-type: none"> <li>• Article 5 UCPD</li> <li>• Article 7(2) UCPD</li> <li>• Article 7 (4)(d) UCPD</li> </ul>
<p><a href="#">Point 3.2 - What’s wrong with TikTok’s virtual items policy?</a> – The information about the right of withdrawal is unclear.</p> <ul style="list-style-type: none"> <li>• The wording that TikTok uses in its virtual item policy to present the absence of the right of withdrawal is ambiguous and unclear.</li> </ul>	<p><a href="#">Consumer Rights Directive 2011/83/EU:</a></p> <ul style="list-style-type: none"> <li>• Article 6(1)(k) CRD</li> </ul>
<p><a href="#">Point 3.2 - What’s wrong with TikTok’s virtual items policy?</a> – Several terms in TikTok virtual items policy are unfair.</p> <ul style="list-style-type: none"> <li>• TikTok keeps full and unilateral control over users’ coins for a wide range of reasons the company may consider “valid”.</li> </ul>	<p><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></p> <ul style="list-style-type: none"> <li>• Article 3(3) UCTD</li> <li>• Points (b), (j) (k) and (q) of the UCTD Annex</li> </ul>

<p><a href="#">Point 3.2 - What's wrong with TikTok's virtual items policy? – Several terms in TikTok virtual items policy are unfair .</a></p> <ul style="list-style-type: none"> <li>TikTok keeps an “absolute right to manage, regulate, control, modify and/or eliminate” the exchange rate between coins and gift as it sees fit in their sole discretion, in any general or specific case, and has no liability to the user.</li> </ul>	<p><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></p> <ul style="list-style-type: none"> <li>Article 3(3) UCTD</li> <li>Points (b), (j) (k) and (q) of the UCTD Annex</li> </ul>
<p><a href="#">Point 3.2 - What's wrong with TikTok's virtual items policy? – Several terms in TikTok virtual items policy are unfair:</a></p> <ul style="list-style-type: none"> <li>When users send virtual “gifts” to content providers, the gifts are converted into “diamonds” at a rate of conversion to be determined by TikTok from time to time at its absolute and sole discretion.</li> </ul>	<p><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></p> <ul style="list-style-type: none"> <li>Article 3(3) UCTD,</li> <li>Point (l) of the UCTD Annex,</li> </ul> <p><a href="#">Unfair Commercial Practices Directive 2005/29/EC:</a></p> <ul style="list-style-type: none"> <li>Article 7 UCPD,</li> </ul> <p><a href="#">Consumer Rights Directive 2011/83/EU:</a></p> <ul style="list-style-type: none"> <li>Article 6(1)(e) CRD.</li> </ul>
<p><a href="#">Point 3.2 - What's wrong with TikTok's virtual items policy? – Several terms in TikTok virtual items policy are unfair:</a></p> <ul style="list-style-type: none"> <li>TikTok keeps full and unilateral control over users' coins for a wide range of reasons the company may consider “valid”.</li> </ul>	<p><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></p> <ul style="list-style-type: none"> <li>Article 3(3) UCTD</li> <li>Points (b) (i) (j) (k) and (q) of the UCTD Annex</li> </ul>
<p><a href="#">Point 3.2 - What's wrong with TikTok's virtual items policy? – Several terms in TikTok virtual items policy are unfair:</a></p> <ul style="list-style-type: none"> <li>TikTok grants itself a unilateral right to cancel the operation of the Diamond incentive at any time, for a wide range of reasons and without automatically informing users.</li> </ul>	<p><a href="#">Unfair Contract Terms Directive 93/13/EEC:</a></p> <ul style="list-style-type: none"> <li>Article 3(3) UCTD</li> <li>Points (b) (i) (j) (k) and (q) of the UCTD Annex</li> </ul>

## TikTok’s misleading practices about the processing of users’ personal data

CONTENTIOUS CLAUSES	LEGAL BASIS
<p><a href="#">Point 4 - TikTok’s misleading practices about the collection and processing of its users’ personal data.</a></p> <ul style="list-style-type: none"> <li>TikTok’s provision of information on the collection and use of users’ data, which are part of the main characteristics of the service, is misleading and not understandable to the average consumer, in particular children and teenagers. TikTok does not clearly inform its users, especially minors, about what personal data is collected for what purposes under what lawful ground. This is problematic because it does not allow them to take an informed decision on whether to register on the app or not.</li> <li>TikTok’s Privacy Policy is available in only a few European languages. This means that users who live in a country where their local language is not available cannot have access to TikTok’s Privacy Policy in their own language. Consequently, they are unclear and unintelligible for consumers, particular the young audience of TikTok.</li> </ul>	<p><a href="#">Consumer Rights Directive 2011/83/EU:</a></p> <ul style="list-style-type: none"> <li>Article 6(1)(a) CRD.</li> </ul> <p><a href="#">Unfair Commercial Practices Directive 2005/29/EC:</a></p> <ul style="list-style-type: none"> <li>Article 5(3) UCPD</li> <li>Article 7 UCPD</li> </ul> <p><a href="#">Unfair Contract Terms Directive 93/13/EEC</a></p> <ul style="list-style-type: none"> <li>Article 5 UCTD</li> </ul>

## Unmasking TikTok’s failure to take diligent measures to protect young users against potentially harmful content

CONTENTIOUS CLAUSES	LEGAL BASIS
<p><a href="#">Point 5.1. Hidden advertising and TikTok’s responsibility - Proliferation of hidden advertising on the platform</a></p> <ul style="list-style-type: none"> <li>TikTok does not clearly inform its users that using branded filters or participating in hashtag challenges is likely to amount to advertising products, services or content and promoting brands. Therefore, despite TikTok’s claim, it is responsible for the hidden advertising practices taking place on its platform.</li> </ul>	<p><a href="#">Unfair Commercial Practices Directive 2005/29/EC:</a></p> <ul style="list-style-type: none"> <li>Article 5(2) UCPD,</li> <li>Article 7 UCPD</li> <li>Points 11 and 22 UCPD Annex</li> </ul> <p><a href="#">E-Commerce Directive 2000/31/EC:</a></p> <ul style="list-style-type: none"> <li>Article 6 ECD</li> </ul>

<p><u>Point 5.2. - TikTok's failure to take sufficient measures to limit children's exposure to advertising.</u></p> <ul style="list-style-type: none"> <li>TikTok's conduct regarding advertising to children is dubious. The app fails to act with the expected professional diligence in order to moderate the exposure of children and teenagers to advertising when using TikTok.</li> </ul>	<p><u>Unfair Commercial Practices Directive 2005/29/EC:</u></p> <ul style="list-style-type: none"> <li>Article 5(2) UCPD</li> <li>Article 7 UCPD</li> <li>Point 28 UCPD Annex</li> </ul>
<p><u>Point 5.3 - TikTok's failure to take diligent measures to prevent young users' exposure to inappropriate content.</u></p> <ul style="list-style-type: none"> <li>TikTok's algorithm exposes children and teenagers on a daily basis to potentially illegal or degrading content. TikTok fails to act diligently to prevent children and teenagers exposure to inappropriate content.</li> </ul>	<p><u>Unfair Commercial Practices Directive 2005/29/EC:</u></p> <ul style="list-style-type: none"> <li>Article 5(2) UCPD</li> </ul> <p><u>Audiovisual Media Services Directive (AVMSD) Directive (EU) 2018/1808</u></p> <ul style="list-style-type: none"> <li>Article 28 (b)</li> </ul>

## OTHER RELEVANT LEGAL BASIS

### TikTok's misleading commercial practices about the processing of users' personal data

CONTENTIOUS CLAUSES	LEGAL BASIS
<p><u>Point 4 - TikTok's misleading practices about the collection and processing of its users' personal data.</u></p> <ul style="list-style-type: none"> <li>TikTok fails to inform its users in a transparent way about the processing of their personal data. Such lack of transparency affects data subjects' ability to assess the respect and exercise of their rights.</li> <li>TikTok fails to sufficiently protect children when it comes to the processing of their personal data.</li> </ul>	<p><u>Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ('GDPR')</u></p> <ul style="list-style-type: none"> <li>Recital 38 GDPR</li> <li>Recital 71 GDPR</li> <li>Article 5 GDPR</li> <li>Article 6 GDPR</li> <li>Article 7 GDPR</li> <li>Article 8 GDPR</li> <li>Article 25 GDPR</li> </ul>



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