

Mr. Giuseppe Abbamonte  
Director  
DG Connect  
European Commission

By email

The Consumer Voice in Europe

Ref.: BEUC-X-2021-095

26 October 2021

**Object: Consumer protection concerns over AVMSD implementation and enforcement against TikTok and other video-sharing platforms established in Ireland.**

Dear Mr Abbamonte,

I am writing to you to express BEUC's concerns regarding the lack of enforcement of the revised Audiovisual Media Services Directive (AVMSD)<sup>1</sup> *vis-à-vis* video-sharing platforms that are established in Ireland, and in particular TikTok, and to seek support from the European Commission in that respect.

In February 2021, BEUC submitted an alert to the EU Consumer Protection Cooperation Network (CPC network) against TikTok.<sup>2</sup> Together with our member organisations, we also reached out to ERGA to express our concerns about TikTok failing to comply with its obligations as a video-sharing platform under the revised AVMSD, and in particular its Article 28b.<sup>3</sup>

In a response to our letter dating 15 March 2021, ERGA highlighted that some ERGA members were conducting their own investigations and were expected to reach out to the competent Irish Authority on the basis of ERGA's internal cooperation mechanism. Following our alert, several of our member organisations also reached out to their national audiovisual regulators to inform them bilaterally about their concerns regarding TikTok. The Norwegian audiovisual regulator (*Medietilsynet*) was supportive of our action.<sup>4</sup> Some of our member organisations were told that the Irish audiovisual regulator (the Broadcast Authority of Ireland - BAI) is competent to deal with the matter as TikTok is established in Ireland.

However, as you know, at this stage Ireland has not transposed the revised AVMSD.<sup>5</sup> From a videocall with a representative of the Irish ERGA Board member, the BAI, we understand that the BAI considers itself not to be competent to enforce the AVMSD rules on video-sharing platforms because there is currently no legal basis for them to act under national law. The new "Media Commission", which is expected to replace the BAI and will be in

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<sup>1</sup> Directive (EU) 2018/1808 of 14 November 2018.

<sup>2</sup> [www.beuc.eu/publications/tik-tok-complaint-%E2%80%93-letter-cpc-and-european-commission](http://www.beuc.eu/publications/tik-tok-complaint-%E2%80%93-letter-cpc-and-european-commission) ;

<sup>3</sup> [www.beuc.eu/publications/beuc-x-2021-](http://www.beuc.eu/publications/beuc-x-2021-014_beuc_submitted_an_alert_to_consumer_protection_authorities_about_tiktok_with_relevance_for_erga.pdf)

[014\\_beuc\\_submitted\\_an\\_alert\\_to\\_consumer\\_protection\\_authorities\\_about\\_tiktok\\_with\\_relevance\\_for\\_erga.pdf](http://www.beuc.eu/publications/beuc-x-2021-014_beuc_submitted_an_alert_to_consumer_protection_authorities_about_tiktok_with_relevance_for_erga.pdf)

<sup>4</sup> [www.medietilsynet.no/nyheter/aktuelt/medietilsynet-onsker-gjennomgang-av-tiktoks-reklamepraksis-velkommen/](http://www.medietilsynet.no/nyheter/aktuelt/medietilsynet-onsker-gjennomgang-av-tiktoks-reklamepraksis-velkommen/) (17 February 2021).

<sup>5</sup> <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32018L1808>

charge of overseeing and enforcing the revised AVMSD, will not be operational in the short term.

**As a result, and as demonstrated by BEUC's research, children across the EU are currently exposed to inappropriate content on video-sharing platforms - under the watch of European regulators. The fact that the revised AVMSD, which was intended to address the risks of children being exposed to harmful content on video-sharing platforms, are not being applied to TikTok, or any other video-sharing platform with its main establishment in Ireland, is unacceptable. We are very concerned about this legal gap and lack of enforcement.**

The Irish Data Protection Authority is already in the spotlight for its lack of or slow enforcement of the General Data Protection Regulation (GDPR) when it acts as the lead authority in cross-border GDPR cases. The lack of implementation of the reviewed AVMSD and consequent lack of enforcement of its rules aimed at the protection of minors is another field of the Digital Single Market where an enforcement system based on the country-of-origin principle fails to protect the most vulnerable Europeans.

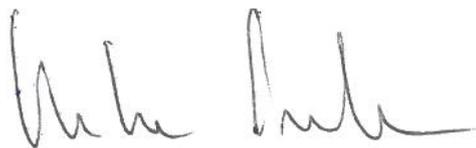
This lack of protection is particularly salient in cases like TikTok, a platform that millions of children use every day across the EU, or Facebook, also established in Ireland and right now under heavy scrutiny for its toxic effects on minors.<sup>6</sup>

We are aware that in November 2020, the European Commission launched several infringement procedures – including against Ireland - for not transposing the revised AVMSD,<sup>7</sup> which today are still ongoing.<sup>8</sup>

The European Commission has stated it will be particularly attentive to the effective enforcement of the new obligations for video-sharing platforms laid down in the revised AVMSD and also intends to closely monitor the performance of ERGA's Memorandum of Understanding.<sup>9</sup> We would like to inform you with this letter about the developments in the case that we brought to the attention of authorities. We have now asked ERGA and its members (please see the letter attached) to take measures to address this problem while the Irish regulator is not in a position to do so. On the basis of ERGA's Memorandum of Understanding<sup>10</sup>, authorities should cooperate closely on the application of Article 28b of the revised AVMSD to ensure that consumers, particularly minors, are effectively protected. The evidence uncovered by BEUC's report on TikTok<sup>11</sup> requires an urgent and effective EU-wide enforcement action.

We hope that the European Commission supports our call on ERGA to act and will do its utmost to ensure that this situation is rapidly solved.

Yours sincerely,



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<sup>6</sup> [www.theverge.com/2021/10/5/22710539/facebook-whistleblower-hearing-instagram-child-safety-congress](https://www.theverge.com/2021/10/5/22710539/facebook-whistleblower-hearing-instagram-child-safety-congress)

<sup>7</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_2165](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2165)

<sup>8</sup> [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_4612](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4612)

<sup>9</sup> COM(2020) 784 final, at p.20

<sup>10</sup> [https://erga-online.eu/wp-content/uploads/2020/12/ERGA\\_Memorandum\\_of\\_Understanding\\_adopted\\_03-12-2020\\_1.pdf](https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_1.pdf) (pp. 17-20).

<sup>11</sup> [www.beuc.eu/publications/beuc-x-2021-012\\_tiktok\\_without\\_filters.pdf](http://www.beuc.eu/publications/beuc-x-2021-012_tiktok_without_filters.pdf) (pp. 34-36).

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