

Ms. Andrea Jelinek  
Chairwoman  
European Data Protection Board

The Consumer Voice in Europe

*By email*

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23 February 2023

**Subject: Holding TikTok accountable – a reality check**

Dear Dr. Jelinek,

We are writing on behalf of BEUC, The European Consumer Organisation, to draw your attention to the continued lack of protection of consumers, particularly children, on the video-sharing platform TikTok.

Two years ago, together with 18 of our member organisations, we [alerted](#) three EU enforcement networks - the [CPC](#)-Network, the European Data Protection Board ([EDPB](#)) and the European Regulators Group for Audiovisual Media Services ([ERGA](#)) – and the European Commission about TikTok potentially infringing consumer protection, data protection and audio-visual media services legislation. Our [research](#) found ample evidence about TikTok's wide-ranged non-compliance with EU law, including unfair treatment of European consumers, exploitation of personal data (also from children) without a valid legal basis, and the exposure of minors to harmful content.

We have investigated the commercial practices of TikTok in particular because of its one billion plus [global audience](#), a significant part of which are **children and young adults** (almost 30% of its users are under 18 – its second largest [age group](#)), which puts specific responsibilities on the platform.

**Two years later**, many of the issues we raised have only been partially addressed or not tackled at all. We have published a [new report](#) about the findings of our enforcement activities and the important lessons to be drawn from our action.

**Our findings provide a reality check of the lack of effectiveness of enforcement structures and existing protection in key EU laws.**

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TikTok's case is very problematic in itself but also symptomatic of wider concerns and systemic gaps in the existing enforcement mechanisms and in some cases in the legal framework at the EU level.

We are aware of the inquiries opened against TikTok which are in the hands of the Irish DPC and of the actions previously taken at national level by the Dutch and Italian Supervisory Authorities. However, in practice what we see is that effective enforcement measures to sanction GDPR infringements and force TikTok to change its practices are once again taking too long and their scope tends to be limited. We also eagerly await the EDPB guidelines on children's data.

In the **Annex** to this letter, we make recommendations for further action needed to ensure that all consumers, young and older ones, benefit from a high level of protection and are empowered to embrace the benefits and opportunities that digitalisation can provide.

There is still plenty of work ahead of us, in particular to ensure our children are not exposed to damaging content, constant surveillance and commercial exploitation online. We must start by properly enforcing the laws we have to better protect them, but it must not stop there.

We look forward to continuing to engage with you and supervisory authorities on these various topics and help strengthen data subjects' protection in the EU.

Yours sincerely,

Ursula Pachtl  
Deputy Director General

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## **ANNEX**

### **LESSONS FROM OUR TIK TOK ENFORCEMENT CASE – BEUC’S REQUESTS FOR IMPROVING EU LAW AND ENFORCING IT MORE EFFECTIVELY**

#### **1) *The CPC Network and its External Alert mechanism should be strengthened in the context of the upcoming revision of the CPC Regulation.***

Following BEUC’s alert to the CPC-Network, the Network and the European Commission opened a “dialogue” with TikTok on **consumer protection law infringements**. In this context, TikTok proposed several commitments to address some of the issues highlighted in the alert, which the CPC-Network accepted. As a result of this dialogue, the European Commission and the CPC-Network publicly [announced](#) in June 2022 that “the series of concerns [had] now been addressed and TikTok committed to change its practices”. However, as we [highlighted](#) back then to the European Commission and the lead CPC authorities, those commitments remained insufficient as they mainly focused on improving *transparency* for consumers and did not address other problematic points that BEUC had raised. In addition, such a statement was in our view premature as it was made without having assessed the fulfilment nor the effectiveness of the agreed commitments. This was *de facto* acknowledged by the European Commission when it [announced](#) that the CPC-Network still needed to assess TikTok’s compliance where concerns remain, “such as whether there is sufficient clarity around children’s understanding of the commercial aspects of TikTok’s practices [...], the outcome of the testing of labels, as well as their implementation, and the adequacy of the display of the estimated unit price per coin in local currency when sending a gift.”

Last December, we again provided evidence to the European Commission and the lead CPC authorities that the platform still had not fulfilled several of its obligations under the agreed commitments.

Our experience with the CPC External Alert on TikTok – together with the other alerts we submitted to the CPC-Network – has revealed various **shortcomings which require a reform of the CPC Regulation** in general, and of its External Alert mechanism in particular. We believe *inter alia* that the deterrent effect of the CPC-Network should be strengthened and that the European Commission should be given a more prominent role in the future for addressing widespread infringements with an EU dimension. Moreover, effective and swift collaboration between EU enforcement networks should take place to put an end to cross-cutting infringements which touch upon different areas of law, like the ones committed by TikTok. You can find more detailed information on our recommendations to reform the CPC Regulation [here](#).

#### **2) *The lack of effective GDPR enforcement remains a huge concern and calls for a wider debate about the future of enforcement in the EU.***

Back in 2021, we submitted two reports to all data protection authorities [via the European Data Protection Board](#) pointing to evidence that TikTok did not fully comply with the GDPR. In September 2021, the Irish Data Protection Commission (DPC) opened [two inquiries](#) against TikTok and we were [informed by the EDPB](#) that TikTok stopped some further changes in relation to personalised advertising in view of DPAs’ actions. However, these inquiries and informal conversations between TikTok and the DPC do not seem to cover all the issues highlighted in our action.

We have now been waiting for a decision by the Irish DPC on these matters for two years.

This is another practical example of how the GDPR's reliance on the '**country of origin' principle** for cross-border cases is undermining the effectiveness of EU enforcement. It all comes down to the lead authority and, despite the cooperation obligations set by the GDPR, the other supervisory authorities and the EDPB remain secondary actors until the final part of the procedure.

We are hopeful that the measures agreed by the EDPB with its Vienna declaration last year to enhance cooperation will help improve the situation. We also welcome that the European Commission will propose harmonising at least some procedural aspects of the GDPR this year and that it has [committed](#) to keep a close eye on how large-scale cross-border cases develop. Yet, these actions will not solve all the issues we face regarding cross-border enforcement of the GDPR.

Other problems, such as how to effectively overcome inaction or misuse of discretionary powers by the lead authority in an investigation, require deeper reflections regarding the future of enforcement.

We recommend **a wide public debate about how to improve enforcement** in the EU, particularly in the digital world, to ensure its effectiveness. The EDPS started this discussion last year with a stakeholder conference, but it should be broadened to other fields and continued. We would be happy to suggest ideas and contribute to your initiatives on this topic.

### **3) Children must be better protected.**

Exposure of children to harmful content is one of the issues we highlighted in our report back in 2021. Today, there is still ample evidence showing that TikTok fails to take the necessary measures to protect young users. A [report](#) (see also [here](#)) published in *The Guardian* in November 2022 showed that TikTok was failing to crack down on accounts with misogynistic content featuring the influencer Andrew Tate, despite a previous pledge to do so. Another [article](#) showed the harmful effects these types of posts have on the daily behaviour of 11-year-old boys. In November, another [study](#) found that TikTok encourages harmful diet habits among teenagers and young adults, and [another one](#) about fake medical treatment to cure cancer or dangerous products for weight loss [circulated](#) on TikTok. In January 2023, an UK fitness influencer on TikTok [admitted](#) being a "toxic influencer" using deceitful practice.

Under Article 28b of the Audiovisual Media Services Directive (AVMSD), Member States are already today obliged to undertake measures to protect minors on video-sharing platforms like TikTok. According to the 'country of origin' principle under the AVMSD, it is the Irish authority which is competent to hold TikTok accountable. Yet, Ireland's late transposition of this law has effectively held hostage the application of its rules to all video sharing platforms headquartered in that country.

We already raised these issues with [the European Commission and ERGA](#) in October 2021. Despite the Commission's infringement procedure against Ireland, the AVMSD was only transposed in December 2022 and the new Media Commission is still not operational at the time of writing.

Meanwhile, there was nothing that other ERGA members could do to ensure TikTok complies with the law, clearly exposing the limitations of this network and the need to strengthen its powers when it comes to addressing pan-European infringements.

In the two years since we alerted ERGA and the Irish Broadcasting Authority about our findings of potential infringements, to our knowledge, no action has been taken by the respective authorities.

The Digital Services Act (DSA) will hopefully bring improvements to the protection of minors in the future. Once applicable, it will oblige platforms like TikTok to undertake "measures to ensure a high level of privacy, safety, and security" for minors. Platforms will not be able to display surveillance advertising to minors based on profiling using children's data (Art. 28 DSA). They would also have to improve their terms and conditions so a child can understand them (Art. 14(3) DSA). Very large players will be subject to additional obligations, such as to identify and mitigate risks towards minors (Art. 34(1)(d) and 35(1)(j) DSA).

We urge the Commission to develop guidelines on these aspects of the DSA as a priority and to ensure that all platforms under its watch, and we expect TikTok will be one of them, meet their obligations.

We also welcome that Consumer Protection authorities and a number of Data Protection authorities have worked together to establish [five key principles](#) on fair advertising to children, as well as that further actions are planned under the European strategy for a better Internet for kids.

Despite all these steps and that the risk of harm to children caused by digital services is now generally acknowledged, we still need a more uniform and decisive approach in EU law to protect minors from this harm. Existing EU legislation such as the General Data Protection Regulation, consumer law such as the Unfair Commercial Practices Directive, as well as the Audiovisual Media Services Directive contain very few specific provisions related to child protection. These are principle-based and not concrete enough to be effective in practice without lengthy and costly litigation.

**4) *The ongoing Digital Fairness Fitness check of EU Consumer Law must also specifically address the protection of children and young consumers.***

Concerns about the protection of children in the digital environment and the need for stronger protections are broad and reach beyond online platforms and the new rules in the DSA. Consumer law has a very clear and important role to play to address issues related to the commercial exploitation and the effects of commercial practices on children and young consumers.

The European Commission's fitness check on the consumer law acquis should therefore aim to introduce a horizontal regime to protect children. It must take into account the heightened risks of commercial exploitation that children are exposed to, the negative impact on children's development and mental health, as well as the harmful societal impact, of the predominant business models of digital services, such as TikTok, which are based on the continuous and invasive monitoring and exploitation of users' attention and engagement.

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