

Ref.: BEUC-L-2021-028/UPA/DMA/rs

16 February 2021

**Subject: EU consumer law complaint against TikTok – GDPR compliance issues.**

Dear Dr. Jelinek,

Today, BEUC and its member organisations launched an EU consumer law complaint against TikTok<sup>1</sup>. The Chinese video-sharing social media platform has rapidly become widely popular amongst consumers across Europe, particularly among children. We have investigated the company's practices and found various infringements of EU consumer and data protection laws which we would like to bring to your attention.

The consumer law infringements we uncovered, described in BEUC's report "TikTok Without Filters", range from unfair terms in TikTok's 'Terms of Service' to unfair and misleading commercial practices related to various issues such as the platform's in-app purchases, the lack of information for users about data processing practices<sup>2</sup> in its privacy policy and the company's failure to take diligent measures to protect minors, notably in relation to the exposure to hidden advertising and potentially harmful content. On the basis of these findings, BEUC has filed a complaint to the EU Network of national Consumers Authorities (Consumer Protection Cooperation Network - CPC).

From a data protection perspective, we have also found several issues and consider TikTok to be in breach of the GDPR. We commissioned two reports to untangle these issues. The first report focuses on a legal analysis of TikTok's Privacy Policy<sup>3</sup>, while the second one is a technical analysis of the data flows of TikTok's Android and iOS apps<sup>4</sup>. We are submitting these reports to the EDPB to be considered by the members of the **EDPB's TikTok Taskforce** in the context of their ongoing investigations into the company's practices.

Based on the reports, we would like to highlight the following issues:

- **A Privacy Policy in constant flux:** over the past two years, TikTok has repeatedly changed its privacy and data protection policies (and underlying practices). There have been at least three different versions of the EEA privacy policy, with significant differences between them. Most of the changes are not publicly documented. This makes it very hard to assess TikTok's GDPR compliance over time. It also makes it hard for consumers to fully understand how their data is processed and be able to meaningfully exercise their rights.

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<sup>1</sup> [https://www.beuc.eu/publications/beuc-pr-2021-006\\_beuc\\_files\\_complaint\\_against\\_tiktok\\_for\\_multiple\\_eu\\_consumer\\_law\\_breaches.pdf](https://www.beuc.eu/publications/beuc-pr-2021-006_beuc_files_complaint_against_tiktok_for_multiple_eu_consumer_law_breaches.pdf)

<sup>2</sup> See *TikTok Without Filters* (BEUC, 2021), Section 4.

<sup>3</sup> *Confusing by Design: A Data Protection Law Analysis of TikTok's Privacy Policy* (Dr. J. Ausloos & V. Verdoodt, 2021)

<sup>4</sup> *TikTok (Android and iOS) App Analysis Report* (AppCensus, 2021)

- **Compliance with key data protection principles:** TikTok's Privacy Policy lists many personal data points, processing operations, processing purposes and lawful grounds for processing without always connecting them in a specific and clear manner. In addition, there seems to be overlaps between different processing purposes that rely on different grounds. It is very difficult to assess which data is processed, for what purpose and under which legal ground. We consider therefore that TikTok would fail to comply with key GDPR principles, such as the obligation to process data in a fair and transparent manner, the data minimisation and purpose limitation principles. This also negatively affects data subjects' ability to invoke their rights.
- **Lawfulness of processing and consent for personalised advertising:** vagueness and ambiguity are also reflected in the individuation of the legal bases on which TikTok relies on for various processing purposes. For example, TikTok's Privacy Policy explicitly states it relies on consent for processing personal data to provide personalised advertising. Yet, the Privacy Policy is unclear as to what exactly this consent relates to in particular. The actual commercial profiling underlying the ad personalisation appears not to fall under this processing purpose. Hence, contrary to what the data subject might think, it cannot be halted by withdrawing consent. Furthermore, the pop-up notice that prompts new users to accept the use of their data for personalised advertising would fail to meet the GDPR requirements for valid consent. Moreover, TikTok relies on the "performance of the contract" legal ground to personalise and tailor the content presented to users. Yet it fails to meet the requirements for this legal ground to be used.
- **Identifiers, profiling and tracking protection:** In addition to the issues outlined in the previous point on consent and personalised advertising, the technical analysis revealed the transmission of a wide range of first- and third-party identifiers used notably for analytics, profiling and advertising purposes. Regardless of the state of the users' account, their age<sup>5</sup>, or their preferences, multiple identifiers are used to track them soon after the TikTok app is operational. Furthermore, device settings do not seem to always protect and respect consumer choices, potentially misleading them as to the control they can exercise over the processing of their data. For example, the technical tests show:
  - On the Android TikTok app, various identifiers are transmitted alongside the Android Advertising ID (AAID) to servers owned by ByteDance (TikTok's parent company) and third parties, all without logging in to a TikTok account. The transmission of the AAID with other persistent identifiers is not only a violation of Google's own policies but can also enable those that receive the data to track the user even if s/he chooses to reset the AAID via the privacy settings of her/his device, rendering the privacy settings effectively useless. Also, if a consumer does not want to activate ad-personalisation, there are no technical means on Android to prevent the AAID from being accessed by the app, transmitted to third parties, and be used for tracking against the user's stated preferences<sup>6</sup>, lowering the efficacy of privacy settings' choices.
  - On the iOS app, technical tests showed a third-party identifier (from the marketing analytics company AppsFlyer) survived deleting the app from the smartphone and reinstalling it, resetting the Apple Identifier for Advertisers (IDFA), and turning on Limit Ad Tracking (LAT). The app was also found to transmit various identifiers to first and third parties right from the start without any user interaction.

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<sup>5</sup> The user's age for the technical testing was set to 15 years old.

<sup>6</sup> This is a problem that does not only relate to the TikTok app but also the way Android privacy controls are designed. See also the draft decision from the Norwegian Data Protection Authority against Grindr: <https://www.datatilsynet.no/en/news/2021/intention-to-issue--10-million-fine-to-grindr-llc2/>

- **Protections for children:** It is apparent that a large portion of TikTok's user base is comprised of children<sup>7</sup>, many even below 13. Yet TikTok fails to provide them with the special protection required by the GDPR<sup>8</sup>. For example, its Privacy Policy does not appear to distinguish children from adult users at all. It 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. Also, TikTok does not seem to deploy any mechanisms to obtain or verify parental consent whenever that would be required.

You can find all reports annexed to this letter. We hope that the information we are providing will be of help to the EDPB and the national supervisory authorities that are dealing with TikTok, and that further measures will be taken to ensure that the company complies with the GDPR and respects the rights of all its EU users.

In the era of surveillance capitalism, we need to ensure adequate protection of European citizens who find themselves constantly monitored and monetised in ways beyond their knowledge and control, trapped in a system designed to capture and influence their behaviour, without being able to fully understand the consequences. This becomes even more important if these products and services are used by children below 18.

Finally, please be informed that in addition to the alert submitted to the CPC network as said above, we also sent a letter to the European Regulators Group for Audiovisual Media Services (ERGA), with regards to Tik Tok's compliance with obligations under the Audiovisual Media Services Directive.<sup>9</sup>

We remain available for any question or comment you or the EDPB Task force on TikTok may have.

Yours sincerely,

Ursula Pachi  
Deputy Director General

#### Attachments:

- TikTok Without Filters (BEUC, 2021)
- Confusing by Design: A Data Protection Law Analysis of TikTok's Privacy Policy (Dr. J. Ausloos & Dr. V. Verdoodt, 2021)
- TikTok (Android and iOS) App Analysis Report (AppCensus, 2021)

C/c: Isabelle Vereecken, Head of EDPB Secretariat.

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<sup>7</sup> A 'child' under the GDPR is anyone below the age of 18 years, in line with EDPB guidance and the UN Convention on the Rights of the Child.

<sup>8</sup> This has also been recently highlighted by the Italian Data Protection Authority: <https://www.garanteprivacy.it/home/docweb/-/docweb-display/docweb/9508923>

<sup>9</sup> TikTok also qualifies as a "video-sharing platform" under Directive 2010/13/EU (the Audiovisual media services Directive as amended by Directive 2018/1808).