

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

Dear Chairman, Dear Mr Schmid,

I am writing to you again¹ to express BEUC's concerns regarding the lack of enforcement of the revised Audiovisual Media Services Directive (AVMSD)² *vis-à-vis* video-sharing platforms that are established in Ireland, and in particular TikTok.

In February 2021, we reached out to you about the alert that BEUC submitted to the EU Consumer Protection Cooperation Network (CPC network) against TikTok.³ Together with our member organisations, we expressed concerns about TikTok failing to comply with its obligations as a video-sharing platform under the revised AVMSD, and in particular its Article 28b.⁴

In your response dating 15 March 2021, you 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.⁵ 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, at this stage Ireland has not transposed the revised AVMSD.⁶ In November 2020, the European Commission launched several infringement procedures – including against Ireland - for not transposing the revised AVMSD,⁷ which today are still ongoing.⁸ From a videocall with a representative of the Irish Board member of ERGA, 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

¹ www.beuc.eu/publications/beuc-x-2021-014_beuc_submitted_an_alert_to_consumer_protection_authorities_about_tiktok_with_relevance_for_erga.pdf

² Directive (EU) 2018/1808 of 14 November 2018.

³ www.beuc.eu/publications/tik-tok-complaint-%E2%80%93-letter-cpc-and-european-commission ;

⁴ www.beuc.eu/publications/beuc-x-2021-014_beuc_submitted_an_alert_to_consumer_protection_authorities_about_tiktok_with_relevance_for_erga.pdf

⁵ www.medietilsynet.no/nyheter/aktuelt/medietilsynet-onsker-gjennomgang-av-tiktoks-reklamepraksis-velkommen/ (17 February 2021).

⁶ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32018L1808>

⁷ https://ec.europa.eu/commission/presscorner/detail/en/IP_20_2165

⁸ https://ec.europa.eu/commission/presscorner/detail/en/IP_21_4612

law. The new "Media Commission", which is expected to replace the BAI and will be in 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.⁹

We therefore ask ERGA and its members to take measures to address this problem while the Irish regulator is not in a position to do so. Authorities should cooperate closely on the application of Article 28b of the revised AVMSD on the basis of ERGA's Memorandum of Understanding¹⁰ to ensure that consumers, particularly minors, are effectively protected. The evidence uncovered by BEUC's report on TikTok¹¹ requires an urgent and effective EU-wide enforcement action.

For your information, we have also shared our concerns with DG Connect at the European Commission.

I look forward to your reply.

Yours sincerely,

Ursula Pachl
Deputy Director General

⁹ www.theverge.com/2021/10/5/22710539/facebook-whistleblower-hearing-instagram-child-safety-congress

¹⁰ https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_1.pdf (pp. 17-20).

¹¹ www.beuc.eu/publications/beuc-x-2021-012_tiktok_without_filters.pdf (pp. 34-36).