

The Consumer Voice in Europe

Konsumentverket

Competition and Consumer
Protection Commission

DG JUST, European Commission

CPC Network
c/o European Commission

By email

Ref.: BEUC-X-2022-064/UPA/rs

7 June 2022

Subject: One year has passed and TikTok continues to infringe EU consumer rights.

Dear members of the CPC network,

In response to the alert that BEUC and 18 of our member organisations submitted in February 2021¹, which identified a wide range of infringements of European consumers' rights and non-compliance with EU law, the European Commission and the CPC-network started a dialogue with TikTok on 28 May 2021 co-led by the Swedish Consumer Agency and the Irish Competition and Consumer Protection Commission.² We strongly welcomed the decision of the CPC-network to start investigations into TikTok's policies and practices.

During almost a year and half, consumer organisations across Europe have been waiting for the results of the alert. We recently learned from media reports that TikTok announced several changes in its Terms of Service³ and Virtual Items Policy⁴ with effect from 16 June 2022. We only may assume that these changes are directly related to the ongoing dialogue with you as the biannual report of the CPC network states that "CPC authorities requested TikTok to make improvements in relation to its business operation related to advertising practices and labelling of commercial content (paid adverts and influencers), personalisation and targeted marketing aimed at a young audience, and its internal policies on the virtual items available for users on the platform to express appreciation of video content published by other users".⁵

.../...

¹ www.beuc.eu/publications/beuc-files-complaint-against-tiktok-multiple-eu-consumer-law-breaches/html

² https://ec.europa.eu/commission/presscorner/detail/en/mex_21_2744, (last consulted on 24/05/2022).

³ www.tiktok.com/legal/terms-of-service?lang=en (last consulted 7 June 2022).

⁴ www.tiktok.com/legal/virtual-items, (last consulted on 07/06/2022).

⁵ SWD(2022) 108 final, 8 April 2022.

It appears that TikTok has already started to request its users to accept its new terms. Although we welcome this step forward, our new analysis demonstrates that the company continues to put at risk millions of its users, in particular the young ones who represent the core of TikTok's audience.

According to Article 27(3) of the CPC Regulation, the entity issuing the external alert must ensure that the information provided is correct, up-to-date, and accurate. In this context, **we would like to stress that several serious problems that we highlighted in our initial alert are still present and unfortunately unresolved to date.**

Article 9(8) of the CPC Regulation provides that the competent authorities may consult consumer organisations and other stakeholders on the effectiveness of the commitments proposed by the trader. As the entity submitting the alert, **we would like to proactively propose our preliminary views on the changes announced by TikTok, hoping that this will contribute to assist you in your dialogue with TikTok** (see our analysis in the Annex to this letter). **We would also welcome the opportunity to meet with the European Commission and the CPC authorities coordinating this action to further explain our concerns.**

The CPC dialogue with TikTok has been lasting for more than a year already. **We urge the European Commission and the CPC-network to bring the discussions with TikTok to a satisfactory end, tackling all the consumer law issues which were reported.** Where necessary, we call on the CPC authorities to start enforcement actions.

Yours sincerely,

Ursula Pachi
Deputy Director General

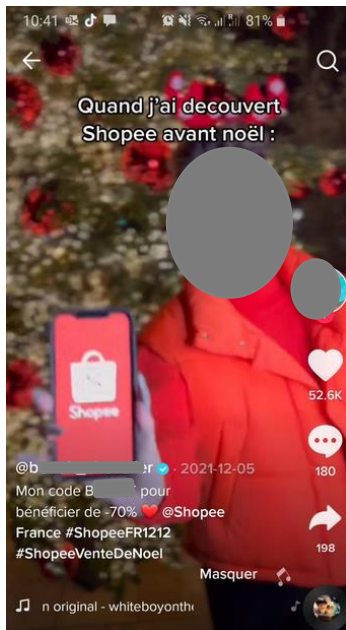
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1. Issues so far not addressed by TikTok

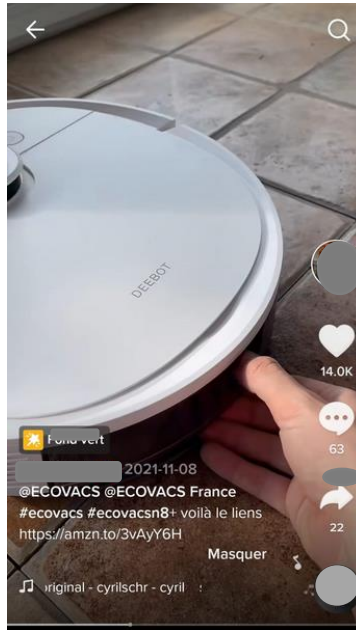
1.1. TikTok does not take sufficient measures to prevent hidden advertising practices on its platform.

In February 2021, BEUC’s external alert highlighted many examples of hidden advertising practices (in particular by social influencers). As part of its dialogue with TikTok, the CPC authorities have requested TikTok to make improvements in relation to its business operation related to advertising practices and labelling of commercial content (paid adverts and influencers).⁶ Yet our investigation still found multiple examples of hidden advertising practices for cosmetics, fast food, robotics, shopping platforms and others by several social influencers counting several million followers.



Social influencer (+/- 9M followers) making advertisement for the brand "Shopee" and displaying a promotion code (70% discount).

*Date of video: 05/12/2021
Date of screenshot: May 2022*



Social influencer (6.7 followers) making advertisement for the brand "Ecovacs" with a link to an Amazon's weblink.

*Date of video: 08/11/2021
Date of screenshot: May 2022*



Social influencer (with +/- 9M followers) making advertisements for the brand Shein and displaying a promotion code (15% discount).

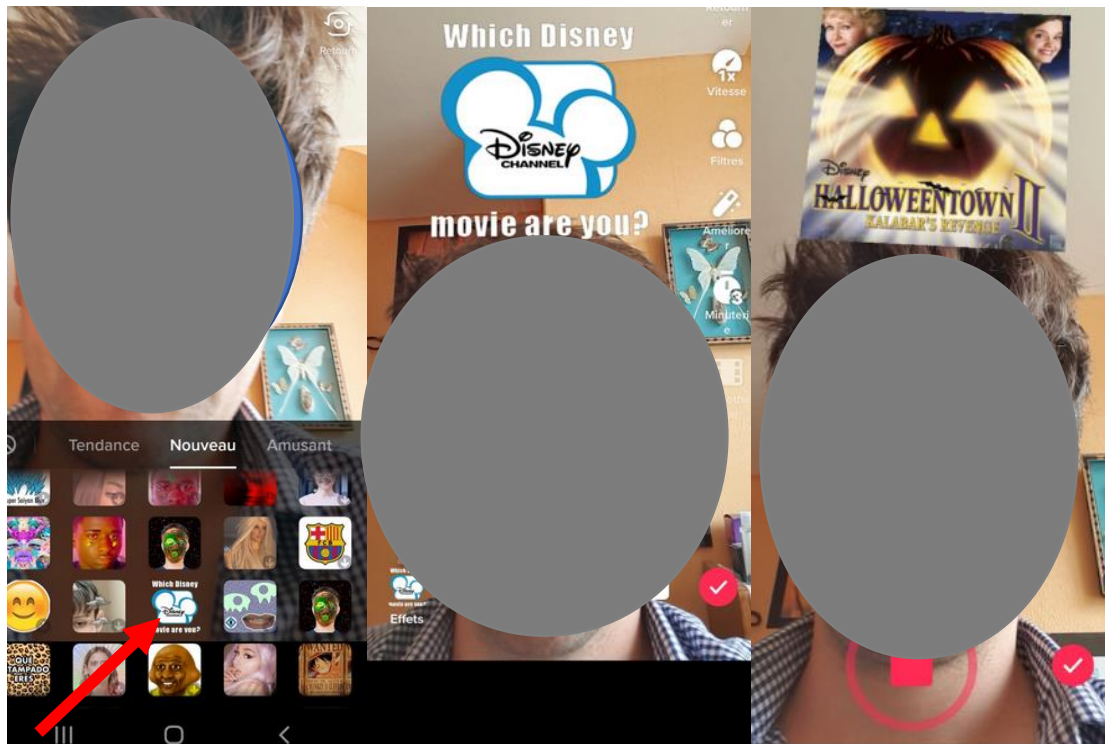
*Date of video: 24 May 2021
Date of screenshot: May 2022*

Therefore, TikTok’s practices continue to be contrary to professional diligence and still allow advertisers to pursue and to profit from hidden advertising practices.

⁶ [Biennial overview of key market trends and actions of the CPC network, 12 April 2022.](#)

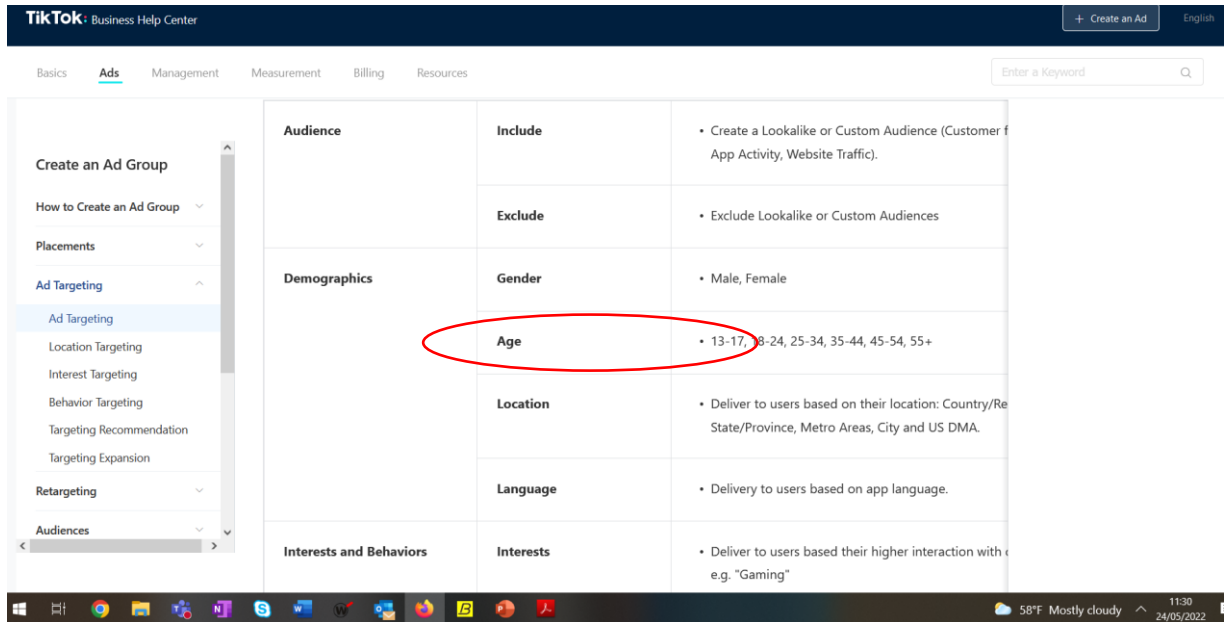
1.2. TikTok still fails to take sufficient measures to limit young users' exposure to advertising

In February 2021, BEUC's external alert already showed how TikTok's branded contents, branded filters and other branded hashtag challenges have contributed to turning users into advertisement billboards and let advertising become a game, which may be particularly appealing for young users. Our investigation found out that branded filters continue to be available for users when creating videos (see for example below the filter featuring Disney Channel).



Moreover, as we also highlighted in our complaint of February 2021, according to the screenshot below taken in May 2022 TikTok still appears to be proposing an option for businesses to target children on the platform aged between 13 and 17.⁷

⁷ <https://ads.tiktok.com/help/article?aid=9600> (last consulted 24/05/2022).



TikTok continues to fail to act with the expected professional diligence in order to moderate the exposure of children and minors to hidden commercial practices.

2. Issues *partially* addressed by TikTok

2.1. Amended Terms of Service and Virtual Items Policy

BEUC takes note of TikTok’s upcoming changes in its “Terms of Service”⁸ and “Virtual Items” policy⁹. From **our preliminary assessment** set out below, TikTok has not corrected all the consumer law issues highlighted in our external alert.

Amended Terms of Service		
<p>BEUC concerns about the presentation of TikTok’s policies:</p> <p>The general presentation of TikTok’s Terms of Service and other policies was ambiguous and unclear for TikTok’s audience, in particular the young ones.</p>	<p>Changes made by TikTok:</p> <p>TikTok updates its “Terms of Service” and “Virtual Items” policy to simplify them and make them more user friendly.</p>	<p>Our assessment:</p> <p>The new presentation of the upcoming general “terms of services” and the new “coins” and “rewards” policies are improved: it is more user friendly and easily readable. 👍</p>

⁸ <https://www.tiktok.com/legal/terms-of-service-eea?lang=en>, (last consulted on 07/06/2022).

⁹ <https://www.tiktok.com/legal/virtual-items>, (last consulted on 07/06/2022).

		<p>BEUC notes the introduction of an “<i>in short</i>” paragraph of TikTok’s “Terms of services” summarising the different terms in simple language more adapted to the targeted audience of TikTok. 👍</p> <p>However</p> <p>The “<i>in short</i>” section will only be implemented in the general terms of use section. However, in our report, we highlighted that all the TikTok policies were unclear and/or misleading towards consumers, especially the young. Such a “<i>in short</i>” section should be available in all TikTok policies and documentation (privacy policy, virtual items policy, community guidelines etc.). Otherwise, the lack of clarity and transparency will remain. 👎</p>
<p>Concerns about the limited number of languages available for TikTok policies:</p> <p>TikTok’s “Terms of Use” and “Virtual Items” policy were available only in certain EU languages which makes them unintelligible to many consumers, particularly children and teenagers who may not be able to read English. A similar observation can be made concerning other TikTok policy documents.</p>	<p>Changes made by TikTok:</p> <p>TikTok will translate its terms of services, coins and rewards policies into eight (8) additional European languages.</p>	<p>Our assessment:</p> <p>The addition of 8 new languages is welcome. 👍</p> <p>However, the changes are only partially satisfactory. Despite the additional language versions available, the terms of services will still not be available in the national languages of all</p>

		<p>EU Member States and will remain unintelligible for Slovenians for instance. 🗨️</p> <p>All TikTok documentation must be available in a national language of each EU Member State, which is a <i>sine qua non</i> condition for consumers to understand the consequences of accepting TikTok's policies.</p>
<p>Concerns about the content ownership and license for intellectual property rights term:</p> <p>TikTok's terms on content ownership and license for intellectual property rights is too broad and grants TikTok an irrevocable, non-exclusive, royalty-free, fully transferable, perpetual, and worldwide license to use and modify users' content.</p>	<p>Changes made by TikTok:</p> <p>TikTok will introduce a "non-exclusive", "royalty-free", "transferable", "sub-licensable", "worldwide" licence.</p> <p>Consumers will have the possibility to restrict how other users interact with and use their content in their "Platform settings". TikTok emphasises that consumers should "familiarise [themselves] with these settings before [they] post content on the Platform".</p>	<p>Our assessment:</p> <p>BEUC notes that the clause is no longer "perpetual" and "irrevocable" as consumers will be able to manage their "platform settings". 👍</p> <p>However, we consider that the clause is still too broad and unfair as it still grants for a disproportionate licence to the platform. 🗨️</p> <p>Furthermore, despite the new possibility for consumers to change their platform "settings", <u>it remains unclear how this possibility will be implemented by TikTok.</u> In our view this should be clarified.</p> <p>To us, it should be clear that the ability for consumers to restrict how other users interact with and use their content should be <u>the most</u></p>

		<p>protective "by design", meaning that the platform settings should be pre-configured as not authorizing other users to interact with and use their content. This will allow users to choose voluntarily, on an "opt-in" basis to grant the licence, or not. 🗨️</p> <p>Furthermore, licences granted by users to TikTok will be "sub-licensable", meaning that TikTok can licence users' content to others, e.g., to service providers that "help us to provide the Platform or to <u>trusted third parties</u> that have entered into agreements with us to operate, develop and provide the Platform". These formulations are still too vague and still do not allow TikTok users to understand with whom the licenses are made to make a fully informed choice. 🗨️</p> <p>Finally, it is positive that the term allowing TikTok, its affiliates, agents, services providers, partners and other connected third parties a royalty-free license to use users' names, images, voices, and likeness to identify them as the source of any of their User Content has been removed. 👍</p>
<p>BEUC concerns about TikTok's limitations of liability and unilateral</p>	<p>Changes made by TikTok:</p>	<p>Our assessment:</p>

<p>disproportionate powers:</p> <p>TikTok granted itself numerous unilateral powers to (among other things) remove user content, suspend or end consumers' accounts, or to remove features from the platform.</p> <p>TikTok's "Liability" and "Exclusion of warranties" terms were too broad, complex, and dispatched between numerous sections of the terms of services making them incomprehensible for consumers.</p>	<p>TikTok clarified the circumstances under which it may withdraw users' content, suspend or terminate users' accounts or impose limits or restrictions on the access of certain features of the platform and the process they will follow to do so (inform consumers without undue delay about the withdrawal and the reason for such action). In case of closure of consumers account, they will be notified to allow them to download there in app-data. Users will have the possibility to appeal TikTok's decisions.</p> <p>TikTok in its new "<i>section 7 - Changes to these Terms or the Platform</i>" of its updated terms of services also indicates that it will also give "[users] <i>reasonable advance notice, in a transparent manner, of significant changes which will impact [them] and the date that they will come into force</i>".</p>	<p>We note the clarifications made by TikTok about the reasons to end consumers' accounts, and/or to suspend access to certain features, to withdraw consumers content and the new possibility for consumers to appeal such decisions. We also welcome the new clarification about a possible exclusion of liability (exhaustive list). 👍</p> <p>BEUC notes the introduction of the consumers prior closure notification and the possibility to download their data. 👍</p> <p>BEUC notes the introduction of "prior notice" before changes in TikTok terms of services, and before changes or/and discontinuation of features or suspension and withdrawal of content. 👍</p> <p>We note the new mention of the legal guarantee for "the platform" under the new Digital Content Directive. 👍</p> <p>However, while we welcome this prior notice to consumers of changes in terms of services of the platform, we understand from the new wording that this prenotification will only apply to "<i>significant changes</i>" to the Terms of services that</p>
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		<p>"will impact" consumers. We consider consumers should receive a prior notice before <u>all</u> modifications of the contractual relationship, as required by the CPC-network in its common position on social networks¹⁰.</p> <p>Furthermore, as drafted the clause tends to still give important unilateral powers to TikTok when it comes to determining what significant changes are, and therefore to inform or not consumers about the changes to the terms of services. 🗨️</p>
<p>BEUC concerns about the real audience of TikTok.</p> <p>Despite TikTok's statement in its terms of services that the minimum age to register on the platform is 13 years, our in-house testing and research revealed that numerous children under this age are present on the platform.</p>	<p>Changes made by TikTok:</p> <p>TikTok now indicates in its new terms of service that users can only use the Platform if they are 13 years of age or older and that it will "monitor" for underage use and will terminate identified accounts if it reasonably suspects that they are underage. Consumers will benefit from a right to appeal such decision.</p>	<p>Our assessment:</p> <p>In principle, BEUC welcomes TikTok willingness to monitor accounts from underaged users and to remove them when necessary. 👍</p> <p>However, it remains unclear from the new wording how this "monitoring" will be done, whether it will be "proactive" or whether the platform will only intervene as a consequence of other users' alerts. 🗨️</p> <p>Hence, how this monitoring by the platform will be done should be clarified and disclosed to users.</p>

¹⁰ Common Position of national authorities within the CPC-Network concerning the protection of consumers on social networks.

		<p>Furthermore, we urge the Commission and the CPC-Network to monitor the implementation of such commitments. In February 2021, we highlighted that the platform despite being aware that many underaged users were present on the platform, did not take any proactive measures to ensure that the underage users' accounts are swiftly deleted.</p>
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New "Coins" and "Rewards" Policies


BEUC concerns about the "virtual items" policy:	Changes made by TikTok:	Our assessment:
<p>TikTok granted itself numerous unilateral powers to remove features from the platform ("coins", "diamond incentives" etc.)</p>	<p>The new TikTok "coins policy" specifies that the platform may decide to stop offering "Coins" or "Virtual Items" to certain categories of users, or in certain countries or regions, or "we may decide to stop offering Coins or Virtual Items entirely." If TikTok does so, they will give users "reasonable advance notice". In this notice, TikTok will let users know how long they will have to use the coins in their account.</p> <p>The new "rewards" policy also specifies the TikTok may alter or change a Program at any time for legal, regulatory or business reasons and will provide users with reasonable advance</p>	<p>We welcome the new "reasonable advance notice" before stopping virtual items incentives. 👍</p> <p>However, when the decision to remove a feature of the platform comes from TikTok (and not from consumers), consumers should be granted the right to ask for a monetary refund for the unused "coins" and not be forced to use/spend them. 🗨️</p>

	<p>notice before any such changes come into effect. TikTok specifies that within this notice period, users will be able to continue to use the Program under the current terms.</p>	
<p>BEUC concerns about the lack of pre contractual information about the price of “virtual gifts”:</p> <p>Currently, when users send “<i>virtual gifts</i>” to content providers, the value of the gift that is sent is only displayed in TikTok “coins” with no additional equivalent in real currency (euros or other applicable national currencies) amounting to a lack of precontractual information (i.e., the price).</p>	<p>Changes made by TikTok:</p> <p>To our understanding, TikTok still does not address the issue.</p>	<p>Our assessment:</p> <p>The lack of pre-contractual information regarding the real price (converted in real money) of the “virtual gifts” is not solved by the platform. 🗨️</p> <p>This means that when users send “virtual gifts” to content providers, the value of the gift that is sent will still only be displayed in TikTok “coins” with no additional correspondence in real currency (euros or other applicable national currencies).</p>
<p>BEUC concerns about the lack of an effective authorisation mechanism to prevent abuse during the purchase of “virtual coins”:</p> <p>In our external alert we provided several examples of consumers who were pushed by influencers to spend a lot of money in virtual coins (TikTok accounts were in most cases linked to the pre-</p>	<p>Changes made by TikTok:</p> <p>With the new “Coins Policy”, TikTok users will be able to “track [their] spending on Coins, and how [they] use them to access Virtual Items” and to look at the history of spendings on coins, on</p>	<p>Our assessment:</p> <p>BEUC notes the new possibility for users to track their spending on TikTok and the explanation of the different procedures to do so. 👍</p> <p>However, we remain concerned about the lack of an effective authorisation mechanism to prevent abuse during</p>

<p>filled banking details of one of the parents).</p> <p>We argued that 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.</p>	<p>the platform, in local currencies.</p>	<p>the purchase of “virtual coins”. TikTok, to our understanding, will not make any changes related to the buying process of virtual coins.</p> <p>The risks of abuses (e.g., influencers promising to share their phone numbers or to make “duets” in exchange for virtual gifts and pushing (young) TikTok users to spend money in virtual coins to send them virtual gifts) will remain present on the platform. 🗨️</p> <p>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 consent¹¹. Therefore, TikTok should design its payment settings in such a way that children cannot make any purchases without parental supervision, for example, by requiring a password for each purchase.</p>
<p>BEUC concerns about the unclarity of TikTok terms related to the existence (or not) of a right of withdrawal for consumers when buying “virtual” items:</p>	<p>Changes made by TikTok:</p>	<p>Our assessment:</p>

¹¹ https://ec.europa.eu/info/sites/info/files/common-position_of_national_authorities_within_cpc_2013_en_0.p

<p>The information about the right of withdrawal is unclear and insufficient.</p>	<p>TikTok will introduce a right of withdrawal for "virtual coins" and mentions explicitly the new legal guarantee for the "virtual coins".</p>	<p>We welcome the introduction of a right of withdrawal for consumers when buying "virtual coins" 👍</p>
<p>BEUC Concerns about new drafting of the "Coins policy"</p>	<p>Changes made by TikTok:</p> <p>TikTok indicates in its new "Coins policy" that it will always do its best to ensure that it credits users account with the correct number of Coins. It also specifies that if, for any reason, a mistake is made when crediting users accounts, TikTok will contact them and correct the mistake as soon as it can.</p>	<p>Our assessment:</p> <p>This clause is not drafted in a satisfactory manner as it does not provide TikTok users with the possibility to contact the platform in case of mistake.</p> <p>On the contrary, it seems that only TikTok will be able to contact the users when it realises that a mistake has been made. Similar wording is also present in the new "Reward policy" of TikTok (Section 4) 🗨️</p>
<p>BEUC concerns about TikTok unilateral powers for the "Diamonds" feature.</p> <p>We signalled in our alert the unilateral, disproportionate and absolute power that TikTok granted itself to manage, regulate, control, modify and/or eliminate the exchange rates at its own and sole discretion, with no liability to users and without automatically informing users.</p> <p>BEUC also pointed out that TikTok did not indicate how much it retains when users/content providers</p>	<p>Changes made by TikTok:</p> <p>Under its new "Rewards" policy, the monetary value that TikTok will give to Diamonds will be displayed to users before they initiate a Diamond Payment Process. The current Diamond to money conversion rates will be available on the Program-specific pages. TikTok specifies that it may change these rates upon reasonable advance notice.</p>	<p>Our assessment:</p> <p>We welcome the changes as they will allow for more transparency for consumers when the latter want to convert their diamonds into real money. 👍</p> <p>We also welcome that consumers will be informed about any upcoming changes to the conversion rate within a</p>

decide to convert their diamonds into cash.	TikTok will also provide for more transparency about the transaction fee that may be applied when it makes a Reward Payment to its users. A specific page is available to users. TikTok also mentions that all transaction fees will be displayed to users before they initiate the Diamond Payment Process.	reasonable notice before it becomes effective 
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2.2. TikTok's "Privacy Policy"

Our preliminary (non-exhaustive) assessment did not reveal any meaningful improvement concerning the protection of users' personal data.

First, TikTok did not make changes concerning the use of personal data for advertising purposes. TikTok still collects consent for advertising purposes **through a manipulative technique ("dark pattern")** named "*longer than necessary*" by the EDPB in its 2022 Guidelines on dark patterns in social media.¹² This dark pattern intends to nudge consumers to consent by making it more difficult to reject consent than to give it.

Second, as raised in our initial complaint, TikTok is heavily used by children under the age of 13 years. To protect children, the GDPR requires the data controller targeting children to make reasonable efforts to verify their age. Nonetheless, TikTok does not seem to have implemented the sufficient additional safeguards. Children may still sign up on the platform by indicating an older birth date.

Third, the latest update of TikTok's privacy policy from 5 October 2021¹³ brought some clarifications on the legal basis used by TikTok for processing personal data. However, in other sections of TikTok's privacy policy, the other non-compliant practices that we raised have not been addressed. For example, it seems that consumers still don't receive information on the identity of those with whom TikTok shares the data. The privacy policy does not name the actual recipients and merely refers to "partners", "advertising partners", "our corporate group" and "others". This appears not to be in line with the Article 29 Working Group's Guidelines on transparency.¹⁴ A very similar issues can be observed when it comes to retention periods: TikTok simply provides for general information on how the data is stored (e.g., for legal obligations or for legal claims). **As a result, TikTok is still violating privacy laws.**

END

¹² https://edpb.europa.eu/our-work-tools/documents/public-consultations/2022/guidelines-32022-dark-patterns-social-media_en

¹³ www.tiktok.com/legal/privacy-policy-eea?lang=nl , (last consulted on 07/06/2022).

¹⁴ Art. 29 Working Party, WP260 rev.01, 11 April 2018, Guidelines on transparency under Regulation 2016/679 - endorsed by the EDPB, p. 37 (Annex).