

Dr. Andrea Jelinek
Chairwoman
European Data Protection Board

By email

The Consumer Voice in Europe

Ref.: BEUC-X-2022-078

7 July 2022

Subject: Swift and deterring action needed against TikTok's privacy violations

Dear Dr. Jelinek,

BEUC would like to express serious concerns about TikTok's change of legal basis to process personal data for surveillance advertising. TikTok recently revealed that as of 13 July 2022 the company will start resorting to legitimate interests instead of consent.¹

We consider this new policy to be in potential breach of Articles 5, 6 and 7 of the GDPR and also Article 5 of the ePrivacy Directive. The EDPB has repeatedly stated in its guidelines that legitimate interest would be very difficult to justify for "intrusive profiling and tracking practices for marketing or advertising purposes"². Even if legitimate interest were to be considered as an acceptable legal basis, BEUC has serious doubts TikTok could meet the three criteria outlined under CJEU case c-40/17 *Fashion ID*.

We also highly doubt that the way TikTok plans to allow consumers to exercise their right to object would be compatible with Article 21 of the GDPR. The information provided by TikTok infers that consumers would need several clicks and face additional obstacles to be able to successfully object to surveillance advertising³. It also remains to be seen how the new "personalised ads permission prompt" which TikTok has committed⁴ to deploy⁵ will be designed, and how it will affect data subjects' right to object.

Furthermore, TikTok is not planning to stop profiling or deploying personalised ads towards children, clearly disregarding the special protection for children required under the GDPR⁶. Moreover, the EDPB Guidelines 8/2020 on the targeting of social media users⁷ and the recently published "5 key principles of fair advertising to children"⁸, which were developed by consumer and data protection authorities⁹, clearly state that children should not be profiled for advertisement purposes.

¹ <https://www.tiktok.com/legal/changes-to-personalised-advertising-in-the-eea?lang=en> (last accessed on 1 July 2022).

² Cf. EDPB Guidelines 8/2020 on the targeting of social media users, para. 56, https://edpb.europa.eu/system/files/2021-04/edpb_guidelines_082020_on_the_targeting_of_social_media_users_en.pdf

³ <https://www.tiktok.com/legal/right-to-object?lang=en> (last accessed on 1 July 2022).

⁴ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3823

⁵ https://ec.europa.eu/info/sites/default/files/2022.06.15_tiktok_updated_commitments.pdf

⁶ Notably under Articles 8 and 25 read in conjunction with recital 38 of the GDPR.

⁷ See, for example, para. 16.

⁸ https://ec.europa.eu/info/live-work-travel-eu/consumer-rights-and-complaints/enforcement-consumer-protection/cooperation-between-consumer-and-data-protection-authorities_en

⁹ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_3823

TikTok's announcements merit deep scrutiny and a rapid response across the Union to ensure the swift, coherent and consistent application and enforcement of the law. These worrying developments add to the concerns and potential violations of EU data protection legislation highlighted by BEUC's action against TikTok last year^{10 11}. Millions of people use TikTok in the EU, notably young consumers below 18. The company's revenue keeps increasing¹² while its respect of people's rights, notably their fundamental rights to privacy and data protection, is decreasing.

In light of the above, BEUC would like to call for swift action from supervisory authorities to ensure TikTok complies with the GDPR and the e-Privacy Directive and that the company is meaningfully deterred from further eroding consumers' legal protections in the EU. We consider that the issues highlighted in this letter are matters of strategic importance and general application of data protection rules. Therefore, in line with the Vienna Declaration on enforcement cooperation¹³ and Article 64(2) of the GDPR, and in addition to the necessary DPA enforcement measures against the company¹⁴, the EDPB should consider adopting a consistency Opinion.

We would appreciate if you could forward our concerns to all supervisory authorities, notably the Irish Data Protection Commission, and report any feedback or information you may be able to share with us at your earliest convenience.

I thank you in advance for your time and consideration. BEUC stands ready to cooperate with the supervisory authorities on any matter where we might be of help.

Yours sincerely,

Ursula Pachi
Deputy Director General

¹⁰ https://www.beuc.eu/publications/beuc-x-2021-015_eu_consumer_law_complaint_against_tiktok_-_gdpr_compliance_issues.pdf

¹¹ <https://www.beuc.eu/tiktok#documents>

¹² <https://www.businessofapps.com/data/tik-tok-statistics/>

¹³ https://edpb.europa.eu/system/files/2022-04/edpb_statement_20220428_on_enforcement_cooperation_en.pdf

¹⁴ In this regard, we would like to echo the recommendations put forward by Access Now on 5 July 2022:

https://www.accessnow.org/cms/assets/uploads/2022/07/Access_Now_TikTok_EDPB_Personalised_Ads.pdf