

Meeting with [REDACTED]
CAB Room, 29 March 2022, 15:00

MEETING WITH [REDACTED],
[REDACTED] **at ByteDance/TikTok**

Scene setter

Category	Percentage
U.S. should take action	68%
U.S. should not take action	28%
U.S. should take action but not at the expense of the economy	4%
U.S. should not take action but not at the expense of the economy	0%

Lines to take

Data Protection

- We understand you're in contact with the Irish DPC as your GDPR lead supervisory authority. Regarding your interactions with the other DPAs:
 - We welcome that TikTok has updated its data protection information and are making continued efforts to communicate with its users about the processing personal data in an understandable way, in reaction to a fine issued by the Dutch data protection authority in July 2021.
 - We welcome that you engaged with the Italian data protection authority about the way how TikTok verifies the age of its users.
- We would welcome your views on what TikTok can do to further improve the privacy and data protection of children on its platform and information on what it has done since our last meeting in September last year.

Data flows (general)

- The Commission remains firmly committed to facilitating trusted data transfers.
- I am thinking for instance of the adequacy negotiations we recently concluded with the UK and South Korea – two years after creating with Japan the world's largest area of free and safe data flows.
- We are currently having similar talks with a number of partners, in particular in Asia and Latin America.
- This commitment to international data flows is also reflected in our approach to trade negotiations. We are systematically including in the digital trade chapter of all our trade agreements a straightforward prohibition of data localisation requirements. This is what we did for instance in the Trade and Cooperation agreement we concluded at the very end of last year with the UK.
- In other words, we want to make clear that genuine data protection, on the one hand, and digital protectionism, on the other hand, are two very different things.

Standard contractual clauses

- In June last year we adopted modernised standard contractual clauses, which are the most used tool for international data transfers from Europe.

- These have been updated and adapted to modern business realities. They also take into account the requirements of the Court of Justice of the EU's case law, including the Schrems II judgment, and operationalise the clarifications offered by the Court.
- Through their standardisation and pre-approval, these clauses provide companies, especially SMEs, a practical tool to assist them in complying with the GDPR.
- Of course, these Clauses have to be used in accordance with the case-law of the Court of Justice of the EU, including its Schrems II judgment, and the guidance of the EDPB.
- That is why we worked closely with the Board to ensure consistency between our respective workstreams. This is reflected in the final guidance of the EDPB that was also adopted in June, which is better aligned with the approach of the standard contractual clauses (compared to previous EDPB drafts).
- To further facilitate the use of the SCCS, we are developing a Q&A addressing implementation issues, providing further clarifications etc. This will be a dynamic, online source of information that will be regularly updated.
- We are doing this in close cooperation with stakeholders as we want this to be as practical as possible tool – based on “real life” situations.

Negotiations on a successor arrangement to the Privacy Shield

- The EU and the US have reached an agreement in principle for a new Trans-Atlantic Data Privacy Framework.
- To comply with the requirements set by the Court of Justice in the Schrems II judgment, the future arrangement will provide for:
- A set of rules granting Europeans whose personal data are transferred to the US binding safeguards limiting access to data by American intelligence authorities to what is necessary and proportionate to protect national security.
- The establishment of a two-tier redress system to investigate and resolve complaints from Europeans regarding access to their data by US national security authorities.
- These new safeguards and redress mechanism will complement the strong obligations that will apply to companies processing data transferred from the EU.
- The two sides will now finalize the details of this agreement in principle and translate it into legal texts. In particular, the U.S. commitments will be included in an

Executive Order that will form the basis of the Commission's assessment in its future adequacy decision.

- On the EU side, the adoption process for an adequacy finding involves obtaining an opinion from the European Data Protection Board (EDPB) and the green light from a committee composed of representatives of the EU Member States. Moreover, the European Parliament has a right of scrutiny over adequacy decisions. Once this procedure will have been completed, the Commission will be able to adopt the adequacy decision.

Consumer protection - CPC action on TikTok

- TikTok captivates attention of global, particularly young, audience with great success. I congratulate you on being an entertainment platform with most new downloads in 2021.
- With popularity, however, comes social responsibility!
- Thank you for the latest reply in which TikTok offers stronger commitments on the issues raised by the CPC network during the dialogue.
- I appreciate that TikTok is cooperating constructively with the Commission's services and the (CPC) network.
- I am happy to learn that you will conduct a series of user testing to determine the most adequate and prominent label for all commercial content on your platform, including when displayed by influencers.
- I equally appreciate TikTok taking measures on cross-cutting issues. For instance, by ensuring that it is as easy to opt out from personalisation of ads as to opt in.
- It is important to ensure that all TikTok users, in particular the most vulnerable, are aware of their choices and that they are informed about their consequences in adequate language and transparent manner.
- Since many of your users are children, I would like to learn more about the AI-driven age assurance mechanism you are currently developing and additional technical measures by which you ensure a lasting impact, that only older children will use TikTok.
- CPC authorities are looking closely at the commitments proposed by TikTok. Rest assured that the Commission and the CPC network will inform you on the final deliberations of the CPC network before we publicly communicate on our dialogue.

- DG JUST services remain at your disposal for any questions. Thank you for the good cooperation with the Commission so far!

1. FLASH REPORT MEETING WITH [REDACTED] [REDACTED] - TIKTOK - 20 SEPTEMBER 2021 - FLASH REPORT

COM: Isabelle Perignon, Lucrezia Busa, [REDACTED]

TikTok: [REDACTED]
[REDACTED]

The discussion covered: (i) the on-going action /investigation of the CPC network to address the company's practices related to children and hidden advertising; (ii) current commitments to fight hate speech; (iii) on-going investigations in the data protection area.

The company

[REDACTED] explained that TikTok's Chinese parent company has been active for 10 years in smartphone and mobile computing technology. In 2016 it launched the first video application in China and then as of 2017 gradually released the international version which became TikTok, now receiving a lot of positive attention from users around the globe.

TikTok does not see itself as a "social media" but rather as an "entertainment" platform. Social media users would nowadays log on e.g. to Facebook to liaise with relative and friends and then watch videos on TikTok like they do with Netflix. TikTok has been active only for 3 to 4 years in EU but it has been growing very rapidly. Its number of employees is increasing in BE, France, Ireland, Italy and Spain. Ireland is the main hub (headquarters) for data protection, trust and safety and this is where the company is planning to migrate all data once the infrastructure is ready.

CPC Coordinated Action

TikTok's legal team is very pleased by the results achieved until now and it is taking this process very seriously. They appreciate the constructive cooperation and find the role of the Commission in coordinating CPC authorities very helpful in ensuring consistency of the outcome. It is particularly important for TikTok to be able to solve all problems in a "one stop shop" given that they had been targeted by various investigations and information requests across the EU. Some solutions have already been found and the company is planning to apply the changes to their practices demanded by DG JUST/ CPC Network at global level. This is particularly interesting as it would elevate EU standards as a global benchmark.

COM also expressed appreciation for the constructive cooperation with TikTok in the CPC action. It also recalled that final commitments are expected by the end of September and that DG JUST's team is available for any technical clarification which is still needed. There are positive expectation that children and other users will be able to enjoy the platform safely if the remaining issues are solved.

Hate Speech

TikTok stressed that they are taking the fight against hate speech very seriously and they are happy with the results achieved (in terms of content removed). They also appreciate the support from DG JUST in this process.

COM stressed that the results of the monitoring exercise (concerning the effectiveness of the notice and action mechanism of the code of conduct) will soon be published and the results point in the right direction. Now there is a need to brainstorm about how to improve the code of conduct. Discussions have begun with the platforms involved, including TikTok. Co-regulation could be a possible model with a close cooperation between the industry and the Commission.

TikTok signalled a few areas for improvement /extension of the code of conduct:

- It should not be restricted to large players (subscribed also by smaller platforms, NGOs and discussion fora);
- A repository dealing with examples, case studies, jurisprudence should be made available etc.
- Other analogues areas (e.g. child injury areas and vulnerabilities) where the entities responsible for legal obligation need to coordinate could inspire what can be done in law enforcement for hate speech.

TikTok welcomes the study on transparency/statistics by independent third parties and stressed that their corporate policy could not be clearer on their firm commitment to fight hate speech. While they do not tolerate hate speech – the see subtle messages which are more difficult to detect as the challenge in this area. For this reason they have set up an European Safety Advisory Council which will advise on content moderation policy to keep up to date in new trends and ways things evolve. In this connection, they are happy to work with COM and push other companies to do the same.

COM said that these points could be explored in the coming months and found the idea of the repository of case studies interesting.

Data Protection

COM asked for an update from TikTok on how they are managing the investigations by the Irish and the Italian DPAs.

TikTok explained that the current Irish investigation reconfirms the grounds of other investigations (privacy by design for children and data transfer) in the NL, FR, DK and IT. Only recently, in December last year, the company's EU establishment (in Ireland) for data protection purposes was confirmed. For many of the issues at stake extensive responses had already been provided e.g. to authorities in FR. TikTok is also very engaged with Italian Authorities and made extensive commitments to them. However, they believe the IT DPA should pass their investigation on to the Irish Data Protection Commission.

The company claims that their approach aligns with EU data sovereignty. They are working hard with the Irish DPA to solve issues relating to children, in particular age verification e.g. AI mechanism to detect whether users are older than 13. In this connection, TikTok observed that the demographic of their users is changing. While in the beginning it was predominantly young people, now there is a growing group of older users.

COM underlined that it is important to cooperate with DPAs, provide the data and solve the outstanding problems as soon as possible.