



TikTok Position Paper, Digital Services Act March 2021

Introduction to TikTok

TikTok is the world's leading destination for short-form mobile video. Videos uploaded on our entertainment platform are typically between 15 and 60 seconds long, and everyone uses those seconds differently - to land a joke, to debut a song, to share a recipe and, of course, to dance. Particularly during the COVID-19 pandemic, TikTok has been harnessed by our users as a forum for positivity.

TikTok is a challenger company that intends to learn from past industry experiences. Despite being two years old, we have been fortunate and humbled to see such high growth and interest in our platform and we have more than 100m monthly active users in Europe¹ - which makes us a **'Very Large Online Platform'** as defined in the Digital Services Act (DSA). We are some way behind other more established platforms in terms of resources and infrastructure, however, we take our responsibilities towards our users very seriously and it is in this context that we also approach the DSA debate.

As part of our company expansion, we established our **EMEA Trust and Safety Hub** in Dublin at the start of 2020.² This team in Ireland ensures that our overall approach to content moderation is aligned with European laws, culture and context, and we work closely with regional regulators, policymakers, government and law enforcement agencies in pursuit of the highest standard of user safety possible.

¹ <https://newsroom.tiktok.com/en-gb/marking-the-100-m-user-milestone-in-europe>

² <https://newsroom.tiktok.com/en-gb/tiktok-establishes-new-emea-trust-and-safety-hub-in-dublin>

Our Approach to Trust, Transparency and Accountability

At TikTok, we believe that transparency and accountability are essential cornerstones of enabling trust with our users – and in particular, we are committed to transparency in how we operate, moderate and recommend content. Against this background, we have opened a **Transparency and Accountability Centre**³ for policy makers and experts to see first-hand how we're working to build a safe and secure platform for our growing community. This builds on work that we are already doing to increase visibility into how our platform operates, including publishing regular **Transparency Reports**⁴ and sharing more about how we recommend content.⁵ Essentially, we believe that all companies should be in a position to explain their algorithms and moderation policies to regulators.

We also recently announced the set up of a **European Safety Advisory Council**⁶ which brings together leaders from academia and civil society from all around Europe. Each member brings a different perspective on the challenges that we face as a platform, and members will provide subject matter expertise as they advise us on our content moderation policies and practices. Not only will they support us in developing forward-looking policies that address the challenges we face today, they will also help us to identify emerging issues that affect TikTok and our community in the future. In this way, we will be supported in our efforts to continually assess risk on our platform and take appropriate mitigation measures.

General Comments

TikTok believes that the DSA proposal is a very good baseline framework and we are encouraged to see that transparency is seen by policy makers as a means to ensure accountability towards users and regulators. The ambition to have a horizontal, flexible framework which is coherent with other legal instruments in the area of online content and which acts as an important harmonisation mechanism for other national efforts, is to be applauded. Moreover, the DSA has the potential to be a modern and exemplary approach to the regulation of digital services, from which other regions may draw some inspiration.

We are pleased to see that many of the **foundational principles of the eCommerce Directive** have been maintained, such as the general intermediary liability framework outline and the no-general-monitoring principle, as well as the Country of Origin basis. This well-understood

³ <https://www.tiktok.com/transparency?lang=en>

⁴ <https://newsroom.tiktok.com/en-ie/tiktok-h-2-2020-transparency-report>

⁵ <https://newsroom.tiktok.com/en-ie/how-we-recommend-videos>

⁶ <https://newsroom.tiktok.com/en-be/meet-tiktoks-european-safety-advisory-council>

framework has facilitated innovation over the years and has enabled challenger companies such as TikTok to enter into the marketplace.

We also support **a focus on illegal content** within the proposal, as this is where we can find most legal certainty. Overall, we believe that the Commission has proposed a sophisticated means to deal with harmful content through self and co-regulatory agreements such as the Code of Practice on Disinformation, of which TikTok is a signatory. We will look forward to working with policy makers to better define the co-regulatory backstop referenced in the DSA.

A notable enhancement to the European framework in protecting the ability to undertake **voluntary own-initiative investigations (Article 6)** is extremely welcome and provides much-needed legal clarity for platforms who wish to pursue good faith initiatives.

Suggested Improvements

Articles 8 and 9, which deal with **orders from authorities regarding action against illegal content and the provision of information**, would benefit from some expansion to clarify how cross-border scenarios should be handled. For example, how should the process work in the case of an order that is received for action or information on something that is illegal in the issuing Member State but which is not illegal in the service provider's country of establishment? Furthermore, these articles lack necessary information around how providers could challenge orders that are unsubstantiated, disproportionate, or unlawful.

We welcome the additional guidelines on **Notice and Action** contained within **Article 14**. We understand that some are calling for specific timelines for response/action, however, platforms often face very complex cases and in order to do a thorough evaluation and to avoid any overblocking - with potential consequences for users' fundamental rights - in order to meet timelines, it is crucial that there is no set time frame other than a commitment to no "undue delay". Furthermore, including a staydown provision would be problematic as there can be challenges involved with video imaging and small changes in formatting, as well as potential conflict with the no-general-monitoring principle in Article 7. Some suggested improvements in this section would include specification in Article 14.3 that 'actual knowledge' is only triggered when the notification requirements in Article 14.2 have been fulfilled and an individual has handled the notice. Furthermore, 'action' should take into account any service provider response on the notice, be that via action taken on the content or indeed a decision not to act against the content.

While TikTok is very supportive of the DSA's overall **emphasis on transparency**, it is important to ask at every stage whether we will achieve broader policy goals and objectives. TikTok is prepared to go to great lengths to provide data access and to publish details about its practices and decisions, however, we also have to bear in mind that there can be risks in the area of data protection and also some commercial sensitivity (trade secrets). Furthermore, too much information in the wrong hands may have unintended consequences. We know that there are nefarious actors who actively seek to game and defraud platforms' systems and as such, we would, in particular, urge extreme caution in the publication of case decisions and full statements of reasons on a publicly accessible Commission database, as proposed in **Article 15**. Moreover, the volume of information that will have to be sent by each platform and managed/hosted by the Commission is likely to be enormous.

Many of TikTok's services and features are offered in-app, to allow for a user-friendly and frictionless mobile experience. The advantage of operating in this way is that we can deliver information quickly and directly to users, enabling users to access important information on the go. In addition to this, TikTok account holders, and also those who do not have TikTok accounts, can very easily report any video⁷ which they believe violates our Community Guidelines⁸. It may be the case that the level of detail proposed for the statement of reasons (**Article 15**) is not feasible in-app, forcing a different mode of reporting and/or information delivery / display and perhaps the collection of additional personal details (such as email) in order to comply with the requirements, as well as a possible reduction in reporting because of added friction. It will also be important to bear this mobile experience in mind for the requirements on ad transparency/provision of meaningful information in **Article 24**, although TikTok is generally supportive of improved ad labelling. Overall, some level of system build will be required in order to support data retention and display requirements associated with **Articles 17** (complaints-handling / 6 month allowance) and **30** (ad repository). There will also be data protection considerations in **Article 17**.

We note that there are considerable **reporting requirements** on Very Large Online Platforms which will extend across the entire year: transparency reports (**Articles 13 and 23**), additional reporting requirements such as the number of active users in each Member State (**Article 23.2**), systemic risk assessment / risk mitigation (**Articles 26 and 27**) and an independent audit (**Article 28**). While TikTok does not oppose these initiatives per se, it would be useful to clarify the audience for each output (users? Digital Services Coordinators? European Commission?) and to take a problem/issue-specific approach. In some cases, such as reporting on the number of active users in each Member State, the information may be commercially sensitive, although it

⁷ <https://support.tiktok.com/en/safety-hc/report-a-problem>

⁸ <https://www.tiktok.com/community-guidelines?lang=en>

may depend on to whom/how this information should be supplied (currently undefined). Furthermore, some flexibility should be left to platforms to present their output as fitting to their unique data sets and service types. More broadly, it may be useful to consider extending the obligations around transparency reporting to trusted flaggers, competent authorities and out-of-court settlement bodies, so that a more holistic view of what is happening across the ecosystem can be taken.

It is also worth pointing out that responsible platforms, such as TikTok, are continually assessing and addressing risk on their platforms. Evidence of this can be found in TikTok's online Newsroom where we regularly post updates to our policies and Community Guidelines⁹ and outline new measures that we are adopting in the area of content moderation¹⁰. In addition, platforms may be taking additional steps such as creating a Safety Advisory Council. In view of this, it could be worth considering offsetting a reporting requirement - or indeed the regularity of reporting - with another demonstrable accountability mechanism or practical evidence of internal systemic risk assessments. Alternatively, an audit requirement alert could perhaps be triggered if flags are showing up in a platform's Transparency Report. It is also important to recognise the important role and responsibility of the compliance officer (**Article 32**). In adding more flexible mechanisms such as this, policy objectives might be met in a more meaningful and targeted way.

Aside from these main issues, TikTok has a number of **other suggestions / requests for clarification**, as follows:

1. **Article 2(g)**. The reference to “**an [illegal] activity**” is confusing and should be removed as it potentially reaches beyond what would be understood as “illegal content”. By way of example, if a user uploads a video which shows a handbag being lifted/stolen in the background, a platform is not able to verify that this is indeed what is happening.
2. **Article 18**. It is unclear whether an **out-of-court dispute settlement process** is entirely warranted in addition to the availability of the court system and Alternative Dispute Resolution procedures. At a minimum, reference should be made to the possibility for parties to challenge the conclusion of a dispute settlement body in the event that a party disagrees with the outcome, in order to maintain full access to the justice system.
3. **Article 19**. Involve online platforms in the **Trusted Flagger** status award process. For example, TikTok has an onboarding process for its Trusted Flaggers and completion of this process would continue to be important to us. Overall, it is important that a balance is maintained in the Trusted Flagger system so that, for example, there is representation

⁹ Eg <https://newsroom.tiktok.com/en-ie/refreshing-policies-to-support-community-well-being>

¹⁰ Eg <https://newsroom.tiktok.com/en-gb/countering-hate-on-tiktok-gb>

both in terms of geography and issue type. And as mentioned above, transparency reporting for Trusted Flaggers would be worth considering.

4. **Article 21.** The scope of this article on **notifications of criminal offences** is far-reaching and it should also be made clear that there is no resulting constructive liability for situations that are not notified to law enforcement by a service provider. Reasonableness and proportionality should be considered, as well as any obligations for service providers under existing/incoming legislation (eg CSAM).
5. **Article 28.** Who is intended to fulfil the role of the **independent auditor**? Availability of experts in this field will be important in order to ensure that this obligation can be met.
6. **Article 31.2.** It is unclear how the status of **'vetted researcher'** is reached and who would undertake this role. More transparency in this area is needed, including on funding of researchers.
7. **Article 74.** A three month **'entry into force'** period is unrealistic given the substantial process, policy and system revisions that will need to be made by platforms. It is understood that this short period was set given the anticipated lengthy legislative debate, however, given the broad consensus on direction of travel, this may be shorter than expected. An 18-24 month implementation period would be more reasonable.

Conclusion

The DSA has all the elements of a modern and successful regulatory framework for digital services in the EU. Further refinement and added clarity in some areas will be welcome but overall, TikTok supports the aim of this proposal. We underline that any new requirements must be achievable, proportionate and provide real added-value, and we look forward to engaging in the legislative process and to providing any additional input that would be helpful for policy makers.