

Annex 3: Infringements of Article 13

Unless otherwise indicated, this Annex adopts the terms defined in the Penalty Notice.

Article 13(1)(a) - the identity and the contact details of the controller and, where applicable, of the controller's representative

1. The Commissioner has decided, in the light of TikTok's Written Representations, that there was no infringement in respect of Article 13(1)(a).

Article 13(1)(b) - the contact details of the data protection officer, where applicable

(i) The Commissioner's provisional view in the NoI

2. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(1)(b) b failing to provide the contact details of TikTok's Data Protection Officer ("**DPO**") applicable to the UK.
3. Article 37(1)(b) provides that a controller or processor shall designate a data protection officer in any case where *'the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale'*. TikTok meets these criteria.
4. Article 37(2) provides that *'a group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment'*.
5. In circumstances where Article 37(1) is engaged, Article 13(1)(b) requires that the contact details of a controller's DPO are provided to data subjects. This was not done in any of the Privacy Policies, as set out at §0 above.

(ii) TikTok's representations

6. TikTok submitted that there is no requirement under Article 13(1)(b) for a DPO to be explicitly named in the privacy policy nor that a personal email is given. TikTok quotes the EDPB's guidance on DPOs as stating "*Article 37(7) does not require that the published contact details should include the name of the DPO*".
7. TikTok submitted that the purpose of Article 13(1)(b) is to help data subjects to effectively exercise their rights under the UK GDPR, and that whilst TikTok did not provide specific contact details for a DPO, the email address provided (privacy@tiktok.com) gave individuals an appropriate point of contact for all data protection and privacy related issues. TikTok submitted that emails sent to the provided address were handled by the individual(s) within TikTok who had responsibility for data protection compliance.
8. Accordingly, TikTok does not accept that it has infringed Article 13(1)(b).

(iii) The Commissioner's final decision

9. The Commissioner's view is not that TikTok has infringed Article 13(1)(b) due to its failure to reference a named individual or personal email in its Privacy Policies. Rather, TikTok has infringed Article 13(1)(b) due to its failure to make clear, at any point in its Privacy Policies, that contact with TikTok via the provided email addresses constituted a data subject's route to a DPO. Indeed, none of the Privacy Policies even referenced a DPO. As consequence, none of the Privacy Policies provided data subjects with information that amounted to "*the contact details of the data protection officer*" as required by Article 13(1)(b).
10. As for the *EDPB's Guidelines on Data Protection Officers ('DPOs')*,¹ as last revised and adopted on 5 April 2017, the relevant paragraphs quoted by TikTok fully state (emphasis added):

*"The contact details of the DPO should include **information allowing data subjects and the supervisory authorities to reach the DPO in an easy***

¹ [wp243_rev_01_en_D8C7A64C-9064-B4B5-543CB5093ACA4937_44100.pdf](#)

data and to balance our legitimate interest in processing and your objection to this processing;

- *The right to object to processing your personal data for direct marketing purposes; and*
- *The right to lodge complaints before the competent data protection regulator.*

Before we can respond to a request to exercise one or more of the rights listed above, you may be required to verify your identity or your account details. Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com'.

27. In relation to cookies, the following is stated:

'We use cookies and other similar technologies (e.g. pixels etc.) ("Cookies") to enhance your experience using the Platform. Cookies are used to collect information, including personal data, from you. Cookies are small files which, when placed on your device, enable us to provide certain features and functionality. To learn more about cookies please see our Cookies Policy.'

The infringements

28. As illustrated by the above excerpts, none of the Privacy Policies articulated, adequately or at all, the legal bases on which TikTok sought to rely for the processing of its users' personal data (in breach of Article 13(1)(c)). In particular:

- a. All of the Privacy Policies made reference to some general categories of processing grounds, namely legitimate interests, necessity for the performance of a contract, and consent. However, the aforementioned categories were not cited in a way that would allow a data subject to recognise them as distinct legal bases, nor in a manner that would allow a data subject to clearly identify the specific processing activities to which each legal basis is said to apply. For example, a data subject could not discern from the information

70. In relation to Privacy Policies 1 and 2, TikTok submitted that it was reasonable to expect that a data subject reading the relevant Privacy Policy would be able to ascertain what data would be shared with whom and for what purpose. TikTok asserted that, for example, Privacy Policies 1 and 2 set out that data is shared with "*law enforcement agencies*" to "*detect, prevent and otherwise address security, fraud and technical issues*". Further, TikTok asserted that, taking the example it cites in the Representations under Article 13(1)(c), it is likely that the sort of data that this would involve could include "*messages*" which Section 1 states are scanned "*to prevent potential crimes*".
71. In relation to Privacy Policies 2 and 3, TikTok does not agree with the Commissioner at paragraph 38(b) and (c) of the NoI that it failed to make reference to any specific entities. TikTok asserted that the link in Privacy Policies 2 and 3 directed the user to more detailed information on recipients, including specific entities.
72. In relation to Privacy Policy 3, TikTok asserted that it is reasonable to expect that a data subject reading that Policy would have been able to ascertain what data would be shared with whom and for what purpose. TikTok asserted that, for example, Privacy Policy 3 set out that data such as transaction IDs were shared with payment providers for the purpose "*to identify you and credit your account with the correct value in coins*". TikTok also asserted that the Policy set out that "*device IDs*" were shared with measurement companies for the purpose of linking users' activity on the platform with their activity on other websites so they could be served targeted ads. TikTok submitted that setting out this information in relation to each recipient category enabled the user to understand what data is shared, with who and for what purpose.
73. Accordingly, TikTok does not accept that it has infringed Article 13(1)(e).

(iii) The Commissioner's final decision

74. The Commissioner accepts that in all of the Privacy Policies, TikTok provided a high-level description of the way in which it shared its users' personal data.

The Commissioner also accepts that, in Privacy Policy 1, TikTok's analytics provider (Google, Inc.) and advertising tool in use at the time (Facebook, Inc.) were named and that those same companies were named within the Cookie Policies to which Privacy Policies 2 and 3 linked.

75. However, the Commissioner notes that the table provided in the Annex of the EDPB's Guidelines on Transparency under Regulation 2016/679,³ adopted on 29 November 2017 (and further revised and adopted on 11 April 2018), states in relation to Article 13(1)(e) that (emphasis added):

"...Therefore, other data controllers, joint controllers and processors to whom data is transferred or disclosed are covered by the term "recipient" and information on such recipients should be provided in addition to information on third party recipients.

The actual (named) recipients of the personal data, or the categories of recipients, must be provided. *In accordance with the principle of fairness, controllers must provide information on the recipients that is most meaningful for data subjects.*

In practice, this will generally be the named recipients, so that data subjects know exactly who has their personal data. If controllers opt to provide the categories of recipients, the information should be as specific as possible by indicating the type of recipient (i.e. by reference to the activities it carries out), the industry, sector and sub-sector and the location of the recipients'.

76. The Commissioner's view is that, in the circumstances, TikTok was required to provide either all of the named recipients of users' personal data in order to comply with Article 13(1)(e) or at least sufficient detail on the categories of recipients so that data subjects were able to know exactly who held their personal data.

³ <https://ec.europa.eu/newsroom/article29/items/622227>.

Area ("EEA"). Further information regarding the transfer of data outside of the EEA is available. Please contact us at privacy@tiktok.com if you have any questions.'

Privacy Policy 3

88. In relation to transfers of personal data to a third country or international organisation, the following is stated:

'The personal data that we collect from you will be transferred to, and stored at, a destination outside of the European Economic Area ("EEA").

Where we transfer your personal data to countries outside the EEA, we do so under the Commission's model contracts for the transfer of personal data to third countries (i.e. standard contractual clauses) pursuant to 2004/915/EC or 2010/87/EU (as appropriate). For a copy of these Standard Contractual Clauses, please contact us at privacy@tiktok.com'.

The infringements

89. The evidence demonstrates that TikTok shared users' data with third countries or international organisations. For example:
- a. Privacy Policy 1 and Privacy Policy 2 stated that users' personal data "may will" be transferred, and stored, outside of the EEA. Privacy Policy 3 states that users' personal data "will" be transferred, and stored, outside of the EEA.
 - b. TikTok has publicly stated the view that no UK user data processing is undertaken in China.⁴ However, at the point at which TikTok Inc was the data controller, TikTok advised the Commissioner, by letter dated 27 April 2020, that (emphasis added):

⁴ <https://committees.parliament.uk/oralevidence/906/pdf/>

Economic Area ("EEA"), specifically to the United States of America, Singapore, Japan or to China".

- b. Privacy Policy 2 clearly set out that TikTok may transfer *"the personal data we collect from you"* (which, having provided the data, the user would be aware of) *"outside of your country and the European Economic Area ("EEA")"*. Further, TikTok asserted that the data subject was also informed that *"further information regarding the transfer of data outside the EEA is available"*, and was invited to email TikTok on a specified address for further details. TikTok submitted that, therefore, the data subject also had the opportunity to obtain information on (i) the categories of data, (ii) the jurisdictions and (iii) any corresponding safeguards via email.

- c. Privacy Policy 3 clearly set out that *"the personal data that we collect from you will be transferred to, and stored at, a destination outside of the European Economic Area"*.

99. Further, TikTok does not accept that the Privacy Policies failed to provide information on appropriate safeguards and did not give the user an opportunity to obtain a copy of such safeguards. TikTok asserted that the Policies set out that any transfers outside the EEA are done *"under the Commissions' model contracts"* and provided the means to obtain a copy: *"For a copy of these Standard Contractual Clauses, please contact us at privacy@tiktok.com"*. TikTok asserted that the model contracts included a number of contractual safeguards for data transferred abroad and that the data subject could have inspected these by requesting a copy. TikTok asserted that providing further detail on the applicable safeguard was unnecessary in those circumstances, particularly given the obligation under Article 12 to be *"concise"*.

100. Accordingly, TikTok does not accept that it has infringed Article 13(1)(f).

(iii) The Commissioner's final decision

101. For the avoidance of doubt, the Commissioner's statement in paragraph 107 of the NoI did not amount to an indication that Privacy Policy 1 does in fact comply with Article 13(1)(f). Rather, the Commissioner was pointing out the fact that, in contrast to Privacy Policies 2 and 3, Privacy Policy 1 expressly names certain countries. The Commissioner has updated the wording in the Penalty Notice to reflect this.

102. The Commissioner's view is that, in order for the information provided on transfers under Article 13(1)(f) to be meaningful, third countries to which data is transferred should generally be named. This is in order to allow data subjects to make informed choices about whether to provide their data to TikTok for processing. The table provided in the Annex of the EDPB's Guidelines on Transparency under Regulation 2016/679 states that (emphasis added):

*"...In accordance with the principle of fairness, the information provided on transfers to third countries should be as meaningful as possible to data subjects; **this will generally mean that the third countries be named.**"*

103. The Commissioner considers that the naming of third countries was necessary and particularly important on the specific facts of TikTok's situation in relation to Privacy Policies 2 and 3 because TikTok previously put forward a publicly stated view⁵ that intimated that UK user data processing was not taking place in China, despite now having advised the Commissioner to the contrary.

104. The Commissioner does not consider that references to model contracts and standard contractual clauses were sufficient to provide a data subject with the requisite information on the existence or absence of an adequacy decision, and/or appropriate and suitable safeguards in place for such transfers (and/or the means by which to obtain a copy of this information or

⁵ <https://committees.parliament.uk/oralevidence/906/pdf/>.

where it has been made available). I mere reference to model contracts is not easily intelligible as a means of providing such information, and any non-specialist would have been unlikely to understand its potential implications. In particular, from the mere reference to model contracts, the Commissioner considers that users aged 13-17 would not have been in a position to understand the potential consequences of providing personal data to TikTok, which may then be shared with entities in third countries, including China.

105. Finally, the Commissioner does not accept TikTok's contention that the need to be concise under Article 12 requires that some of the information required under Article 13(1)(f) need not be provided. Article 12 imposes obligations on a controller in addition to those imposed by Article 13(1)(c); it does not in any way curtail or qualify those obligations.

106. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(1)(f) in all of the Privacy Policies.

Article 13(2)(a) - the period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period

(i) The Commissioner's provisional view in the NoI

107. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(2)(a) by failing to provide (i) sufficient information about the length of time data will be retained and (ii) clear and meaningful criteria that will be used to determine such a period.

Relevant excerpts from the Privacy Policies

Privacy Policy 1

108. Under the section entitled: '*How long do we keep hold of your information?*', the following is stated:

'We retain your information for as long as it is necessary to fulfil (1) our contractual obligations and rights in relation to the information involved, (2) our legal obligation(s) under applicable law(s) and regulations to retain

data for a certain period of time, taking into account statute of limitations under applicable law(s); (3) our legitimate business purposes; (4) and to conduct a defence in relation to disputes or potential disputes. More information.

109. The 'More information' link takes users to a section entitled 'How long we keep your personal data' which states:

'We use the following criteria to determine the period for which we will keep your personal data:

- our contractual obligations and rights in relation to the information involved;*
- legal obligation(s) under applicable law(s) to retain data for a certain period of time;*
- and disputes or potential disputes.*

After you have terminated your use of our Services, we can store your information in an aggregated and anonymised format. Notwithstanding the foregoing, we can also retain any personal data as reasonably necessary to comply with our legal obligations, allow us to resolve and litigate dispute and to enforce our agreements.'

Privacy Policy 2

110. Under the section entitled: 'How long do we keep hold of your information?', the following is stated:

'We retain your information for as long as it is necessary to fulfil (1) our contractual obligations and rights in relation to the information involved, (2) our legal obligation(s) under applicable law(s) and regulations to retain data for a certain period of time, taking into account statute of limitations under applicable law(s); (3) our legitimate business purposes;(4) and to conduct a defence in relation to disputes or potential disputes.'

111. Under the section entitled: *'How long we keep your personal data'*, the following is further stated:

'We use the following criteria to determine the period for which we will keep your personal data:

- *our contractual obligations and rights in relation to the information involved;*
- *legal obligation(s) under applicable law(s) to retain data for a certain period of time; and*
- *disputes or potential disputes.*

After you have terminated your use of our Services, we can store your information in an aggregated and anonymised format. Notwithstanding the foregoing, we can also retain any personal data as reasonably necessary to comply with our legal obligations, allow us to resolve and litigate disputes, and to enforce our agreements.'

Privacy Policy 3

112. Under the section entitled: *'How long do we keep hold of your information?'*, the following is stated:

'We retain your information for as long as it is necessary to provide you with the service so that we can fulfil our contractual obligations and rights in relation to the information involved. Where we do not need your information in order to provide the service to you, we retain it only as long as we have a legitimate business purpose in keeping such data or where we are subject to a legal obligation to retain the data. We will also retain your data if necessary for the establishment, exercise or defence of legal claims. For more information, [click here](#).'

113. The *'click here'* link takes users to a section entitled *'How long we keep your personal data'* which states:

'We retain your information for as long as it is necessary to provide you with the service so that we can fulfil our contractual obligations and rights in relation to the information involved. Where we do not need your information in order to provide the service to you, we retain it only for so long as we have a legitimate business purpose in keeping such data. However, there are occasions where we are likely to keep this data for longer in accordance with our legal obligations or where it is necessary for the establishment, exercise or defence of legal claims. After you have terminated your use of our Platform, we store your information in an aggregated and anonymised format.'

The infringements

114. As illustrated by the above excerpts, all of the Privacy Policies (which contain essentially the same content in this respect) are in breach of Article 13(2)(a):

- a. None of the Privacy Policies stated the period for which users' personal data will be stored. It is unclear why it was not possible to provide a clear period.
- b. The cited criteria that TikTok used to determine the period are meaningless in terms of enabling a data subject to understand for how long the data will be kept. The language used across the Privacy Policies is broad and general and does not provide sufficient detail to understand, for example, how "*our contractual obligations and rights in relation to the information involved*" impact on retention periods or indeed what those contractual obligations and rights are. The meaning and significance of each criterion is not clear, and there no practical examples are provided as to how each of the above criteria would impact on the period of retention. No explanation is given as to what is meant by an "*aggregated and anonymised format*". Further, the link to another part of the policy which essentially provides the same information is confusing.

(ii) TikTok's representations

115. TikTok notes that the requirements of Article 13(2) apply differently to those of Article 13(1) because the information specified in Article 13(2)(a) to (f) need only be provided where necessary to ensure fair and transparent processing. TikTok quotes a passage from *Data Protection Law and Practice* (fifth edition) on page 646: "*This appears to mean that it is not essential in every case*". TikTok asserted that to interpret the requirements of Article 13(2) otherwise and as applying in every situation would make no sense as there would be no difference between Article 13(1) and (2). TikTok submitted that, as a consequence, it is incumbent on the Commissioner first to establish, for each element of Article 13(2) it relies upon, that such information needs to be provided in the particular circumstances of each Privacy Policy to ensure fair and transparent processing. In light of this, TikTok does not agree with the Commissioner's view that the Privacy Policies were in breach of Article 13(2)(a).
116. TikTok asserted that the requirement to provide "*the period for which personal data will be stored*" in privacy policies is dependent on it being "*possible*" to provide this accurately. TikTok submitted that, in this case, it was not possible to provide a specific retention period as this depended on a number of factors including whether a user had a current account, was active on the platform, whether they were the subject of a legal dispute, etc.. TikTok therefore asserted that it was clearer for the Privacy Policies to provide the criteria used by TikTok to determine the data retention period.
117. Further, TikTok submitted that the Privacy Policies clearly set out the four criteria used to determine the relevant retention period for personal data: (i) contractual obligations, (ii) legal obligations, (iii) legitimate business purposes and (iv) disputes or potential disputes (or "*legal claims*" in Privacy Policy 3). TikTok asserted that, for example, a data subject was able to infer from the first of these criteria that as long as there was an ongoing contractual relationship with TikTok that their data would be retained in order to fulfil that contract.

118. TikTok rejects the Commissioner's view expressed in paragraph 58(b) of Annex 3 to the NoI that the lack of practical examples of how the retention period is applied contributes to an Article 13(2)(a) breach. TikTok assert that there is no requirement in the UK GDPR to provide this level of detail.

119. Accordingly, TikTok does not accept that it has infringed Article 13(2)(a).

(iii) The Commissioner's final decision

120. The Commissioner's view is that provision of the information specified in Article 13(2)(a) was necessary to ensure fair and transparent processing of users' personal data by TikTok, because it would have enabled users to understand the scope of their rights in respect of that data. TikTok was therefore required to provide that information. Recital 60 to the UK GDPR states: "*The controller should provide the data subject with any further information necessary to ensure fair and transparent processing taking into account the specific circumstances and context in the which the personal data are processed*".

121. The Commissioner therefore considers that TikTok was required to provide its users with a clear period for which their personal data would be stored (and notes that TikTok has advanced no good reason as to why it was not able to do so).

122. Further, TikTok's cited criteria used to determine the aforementioned period across the Privacy Policies remain broad, general and not meaningful in terms of enabling a user to understand how long TikTok would hold his or her data. The Commissioner notes that the table provided in the Annex of the EDPB's Guidelines on Transparency under Regulation 2016/679 states that (emphasis added):

"The storage period (or criteria to determine it) may be dictated by factors such as statutory requirements or industry guidelines but should be phrased in a way that allows the data subject to assess, on the basis of his or her own situation, what the retention period will be for specific data/ purposes.

It is not sufficient for the data controller to generically state that personal data will be kept as long as necessary for the legitimate purposes of the processing.

Where relevant, the different storage periods should be stipulated for different categories of personal data and/or different processing purposes, including where appropriate, archiving periods”.

123. The Commissioner notes that TikTok has not provided an explanation as to what is meant by an “aggregated and anonymised format”.

124. Having considered TikTok’s Representations, the Commissioner maintains his view that TikTok infringed Article 13(2)(a) in all of the Privacy Policies.

Article 13(2)(b) - the existence of the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or to object to processing as well as the right to data portability

(i) The Commissioner’s provisional view in the NoI

125. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(2)(b) by failing to provide sufficient detail to allow data subjects to fully and properly exercise their rights.

Relevant excerpts from Privacy Policies

Privacy Policy 1

126. Under the section entitled: ‘*Your Rights*’, the following is stated:

‘In certain circumstances you have the right to access the personal data that we hold about you and to correct, update, or request deletion your personal

data. Prior to the fulfilment of your request concerning your personal data, we will ask you to verify your identity before we can act upon your request.

You have the following rights:

- The right to require free of charge (i) confirmation of whether we process your personal data and (ii) access to a copy of the personal data retained;*
- The right to request proper rectification, removal or restriction of your personal data;*
- Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);*
- Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal or to any other existing legal justification of the processing activity in question*
- The right not to be subject to any automatic individual decisions which produces legal effects on you or similarly significantly affects you; and*
- The right to take legal actions in relation to any breach of your rights regarding the processing of the personal data, as well as to lodge complaints before the competent data protection regulators.*

As far as we process your personal data on the basis of our legitimate interests, you can object to processing at any time. You can find a detailed description of our processing activities and the legal basis in the sections above.

If you object to such processing, we ask you to state the grounds of objection in order for us to examine the processing of your personal data and decide whether to adjust the processing accordingly.

Please note that the processing of your personal data will involve direct marketing activities as described above. If you do not want to have your account on our Platform processed for direct marketing activities, you can object to any data processing free of charge at any time via e-mail privacy@tiktok.com

Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com

Privacy Policy 2

127. Under the section entitled: '*Your Rights*', the following is stated:

'In certain circumstances you have the right to access the personal data that we hold about you and to correct, update, or request deletion your personal data. Prior to the fulfilment of your request concerning your personal data, we will ask you to verify your identity before we can act upon your request.

You have the following rights:

- The right to require free of charge (i) confirmation of whether we process your personal data and (ii) access to a copy of the personal data retained;*
- The right to request proper rectification, removal or restriction of your personal data;*
- Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);*
- Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal or to*

any other existing legal justification of the processing activity in question;

- The right not to be subject to any automatic individual decisions which produces legal effects on you or similarly significantly affects you; and*
- The right to take legal actions in relation to any breach of your rights regarding the processing of the personal data, as well as to lodge complaints before the competent data protection regulators.*

As far as we process your personal data on the basis of our legitimate interests, you can object to processing at any time. You can find a detailed description of our processing activities and the legal basis in the sections above. If you object to such processing, we ask you to state the grounds of your objection in order for us to examine the processing of your personal data and decide whether to adjust the processing accordingly.

Please note that the processing of your personal data will involve direct marketing activities as described above. If you do not want to have your activity on our Platform processed for direct marketing activities, you can object to any data processing free of charge at any time via e-mail privacy@tiktok.com

Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com.

Privacy Policy 3

128. Under the section entitled: '*Your Rights*', the following is stated:

'You have the following rights:

- The right to request free of charge (i) confirmation of whether we process your personal data and (ii) access to a copy of the personal data retained;*
- The right to request proper rectification or removal of your personal data or restriction of the processing of your personal data;*

- *Where processing of your personal data is either based on your consent or necessary for the performance of a contract with you and processing is carried out by automated means, the right to receive the personal data concerning you in a structured, commonly used and machine-readable format or to have your personal data transmitted directly to another company, where technically feasible (data portability);*
- *Where the processing of your personal data is based on your consent, the right to withdraw your consent at any time without impact to data processing activities that have taken place before such withdrawal;*
- *The right not to be subject to any automatic individual decisions, including profiling, which produces legal effects on you or similarly significantly affects you unless we have your consent, this is authorised by Union or Member State law or this is necessary for the performance of a contract;*
- *The right to object to processing if we are processing your personal data on the basis of our legitimate interest unless we can demonstrate compelling legitimate grounds which may override your right. If you object to such processing, we ask you to state the grounds of your objection in order for us to examine the processing of your personal data and to balance our legitimate interest in processing and your objection to this processing;*
- *The right to object to processing your personal data for direct marketing purposes; and*
- *The right to lodge complaints before the competent data protection regulator.*

Before we can respond to a request to exercise one or more of the rights listed above, you may be required to verify your identity or your account details. Please send an e-mail to us if you would like to exercise any of your rights privacy@tiktok.com.

The infringements

129. As illustrated by the above excerpts, none of the Privacy Policies provided sufficient detail to allow data subjects to exercise fully and properly their rights (in contravention of Article 13(2)(b)). In particular:

- a. All of the Privacy Policies set out the rights of TikTok's users in general terms. However, there was a lack of sufficient information about the lawful bases on which TikTok sought to rely in respect of each of its specific processing activities, as set out at paragraph 13 above in respect of the contraventions of Article 13(1)(c). This had the effect, in practice, of undermining the data subjects' ability to exercise those rights.
- b. For example, while all of the Privacy Policies referenced the right to withdraw consent at any time, data subjects were not informed of the specific category/categories of personal data that TikTok was processing, or the purposes and legal basis (e.g. consent) for each category and instance of processing. As such, TikTok users could not readily determine where the right to withdraw consent might apply (i.e. in respect of which processing of which data), and thus e.g. what rights they had to object to such processing.

130. Due to the lack of clarity as to which legal basis applied to which aspect of the processing, the Commissioner is of the view that data subjects' rights in this regard were not clearly communicated, in contravention of Article 13(2)(b).

(ii) TikTok's representations

131. TikTok submitted that Section 6 of Privacy Policies 1 and 2 complies with Article 13(2)(b) in that it clearly sets out "*in the data rights set out in that Article*" including:

- a. "*the right to require free of charge [...] access to a copy of the personal data retained*";

- b. *"the right to request proper rectification, removal or restriction of your personal data";*
- c. The right to receive data in *"in a structured, commonly used and machine-readable format";* and
- d. The right to *"object to processing at any time"* both in relation to legitimate interests and in relation to direct marketing.

132. Further, TikTok submitted that Section 6 of Privacy Policy 3 complies with Article 13(2)(b) in that it clearly sets out *"in the data rights set out in that Article"* including:

- a. *"the right to request free of charge [...] access to a copy of the personal data retained";*
- b. *"the right to request proper rectification or removal of your personal data or restriction of the processing of your personal data";*
- c. The right to receive data in *"in a structured, commonly used and machine-readable format";* and
- d. The right to *"object to processing "* both in relation to legitimate interests and in relation to direct marketing.

133. TikTok asserted that Section 6 of Privacy Policy 1 not only communicates the rights set out in Article 13(2)(b) but also explains when these rights are exercisable. TikTok submitted that it is clear the first two rights identified (i.e. the right of access and of rectification) apply irrespective of the legal basis relied upon. Further, TikTok submitted that the right of data portability is described in clear terms as applying when the legal basis relied upon is either consent or contractual necessity. TikTok also submitted that, equally, the right to object is exercisable only where reliance is placed on legitimate interest or there is direct marketing.

134. Further, for the reasons set out in its Representations in relation to Article 13(1)(c), TikTok asserted that the Privacy Policies were sufficiently clear regarding the data processed for each purpose and the legal basis relied upon. TikTok submitted that, accordingly, it is also clear which rights apply in respect of which data.
135. TikTok does not accept the Commissioner's view expressed in paragraph 63(b) of the NoI that data subjects were unable to properly exercise their rights, due to, for example, not being given a distinction between an absolute and a qualified right. TikTok submitted that the Privacy Policies identified qualified rights by specifying when particular processing must be based upon a specific legal basis for the right to apply.
136. Further, TikTok asserted that the fact that "*only an extremely small number of complaints*" were made by data subjects to supervisory authorities during the Relevant Period demonstrates that data subjects could easily find the information about how to exercise their rights to their satisfaction.
137. TikTok does not accept the Commissioner's view expressed in paragraph 63(b) of the NoI that the Privacy Policies did not allow users to determine where the right to withdraw consent may apply and this is a contributing factor to the Article 13(2)(b) breach. TikTok asserted that it does not agree with the premise of this criticism, but also asserted that an assessment of the right to withdraw consent is not relevant to Article 13(2)(b) but instead to 13(2)(c).
138. Accordingly, TikTok does not accept that it has infringed Article 13(2)(b).

(iii) The Commissioner's final decision

139. The Commissioner does not accept that it is clear from Section 6 of the Privacy Policies that the first two rights identified (i.e. the right of access and of rectification) apply irrespective of the legal basis relied upon.

140. In any event, the Commissioner reiterates his final decisions in respect of Article 13(1)(c) and 13(1)(d). The Commissioner does not accept TikTok's assertion that it would have been possible for a data subject to determine which categories of personal data would be processed under which legal basis. TikTok's failure to provide the requisite information had the effect, in practice, of undermining the data subjects' ability to exercise their rights as they could not readily determine where, for example, an absolute (as opposed to a qualified) right to object may apply. Against this backdrop, TikTok's descriptions in Section 6 of the Privacy Policies of (i) the right of data portability applying when the legal basis is either consent or contractual necessity and (ii) the right to object being exercisable where reliance is placed on legitimate interest or direct marketing would have been meaningless to users.
141. Further, the Commissioner considers that it does not follow from TikTok's assertion that "*only an extremely small number of complaints*" were made by data subjects to supervisory authorities during the Relevant Period, that data subjects could easily find the information about how to exercise their rights to their satisfaction. This is a *non sequitur*. Assuming that there were only receive a "*small number of complaints*", this could equally demonstrate that data subjects were unable to find the information about how to exercise their rights.
142. The right to withdraw consent is applicable to Article 13(2)(b), as knowledge of the existence of the right to withdraw consent (and to which processing it relates) is necessary to exercise the right to erasure in the circumstances envisaged by Article 17(1)(b). The is considered further in the context of Article 13(2)(c) below.
143. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(2)(b) in all of the Privacy Policies.

Article 13(2)(c) - where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw

consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal

(i) The Commissioner’s provisional view in the NoI

144. In all of the Privacy Policies (i.e. from August 2018 to 28 July 2020), TikTok infringed Article 13(2)(c) by failing to provide sufficient detail to allow data subjects to fully and properly exercise their rights to withdraw consent at any time.

Relevant excerpts from the Privacy Policies

145. Relevant excerpts from the Privacy Policies are referenced above, with sentences beginning “*where processing of your personal data is based on your consent*”, in:

- a. Privacy Policy 1 at paragraph 60;
- b. Privacy Policy 2 at paragraph 61; and
- c. Privacy Policy 3 at paragraph 62.

The infringements

146. As set out above at paragraph 129 in respect of Article 13(2)(b), none of the Privacy Policies provided sufficient detail to allow data subjects to exercise fully and properly their rights, including the right to withdraw consent at any time.

(ii) TikTok’s representations

147. TikTok asserted that the Commissioner has assumed that TikTok’s “core service” was provided on the legal basis of consent. TikTok submitted that this was clearly not the case.

148. TikTok submitted that the Privacy Policies make clear (as it set out in Annex 3 to its Representations in connection with Article 13(1)(c)) that consent was

only relied upon for three specific and limited aspects of TikTok's processing: location data, the provision of personalised advertising and the use of cookies. TikTok asserted that each of these is clearly identified in Sections 1, 2 and 4 of the Privacy Policies. TikTok submitted that, equally, Section 3 was clear that TikTok's processing of personal data was primarily based on a combination of contractual necessity and legitimate interests, with the particular purposes being individually identified in each case. TikTok submitted that the Commissioner has misidentified when TikTok was relying on consent and asserted that this is not the result of any lack of clarity in the Privacy Policies.

149. TikTok asserted that Privacy Policy 1 was clear in informing users that they had a right to revoke their consent.

- a. First, TikTok submitted that Section 6 of Privacy Policy 1 informed the user of the right to withdraw consent at any time.
- b. Second, TikTok submitted that, in both the cookies section and the location data section, users were reminded of the ability to withdraw their consent. TikTok states that, for example, in relation to the processing of their location data, the user was informed: *"If you do not wish to share your location with us, you can switch off GPS functionality on your mobile device"*.

150. Further, TikTok asserted that Privacy Policy 2 was clear in informing users that they had a right to revoke their consent.

- a. First, TikTok submitted that Section 6 of Privacy Policy 2 informed the user of the right to withdraw consent at any time.
- b. Second, TikTok does not agree that Privacy Policy 2 provided no indication of where consent was relied on. TikTok asserted that, on the contrary, consent was relied on as the legal basis for a very limited set of scenarios including personalised advertising, location settings and cookies.

- c. Third, TikTok submitted that, in both the Cookies Policy and location data section, users were reminded of the ability to withdraw their consent. TikTok states that, for example, in relation to the processing of their location data, the user was informed: *"If you do not wish to share your location with us, you can switch off GPS functionality on your mobile device"*.

151. TikTok also asserted that Privacy Policy 3 was clear in informing users that they had a right to revoke their consent.

- a. First, TikTok submitted that Section 6 of Privacy Policy 2 informed the user of the right to withdraw consent at any time.
- b. Second, TikTok does not agree that Privacy Policy 2 provided no indication of where consent was relied on. TikTok asserted that, on the contrary, consent was relied on as the legal basis for a very limited set of scenarios including personalised advertising and location settings.
- c. Third, TikTok submitted that, in both the Cookies Policy and location data section, users were reminded of the ability to withdraw their consent. TikTok states that, for example, in relation to the processing of their location data, the user was informed: *"If you do not wish to share your location with us, you can switch off GPS functionality on your mobile device"*.

152. Accordingly, TikTok does not accept that it has infringed Article 13(2)(c).

(iii) The Commissioner's final decision

153. For the reasons set out in the Penalty Notice, the Commissioner did not just assume that TikTok was processing its users' data on the basis of consent.

154. While the Privacy Policies referenced the right to withdraw consent at any time, they did not inform data subjects of the specific category/categories of personal data that TikTok was processing, or the purposes and legal basis (e.g. consent) for each category and instance of processing. As such, TikTok users could not readily determine where the right to withdraw consent might apply (i.e. in respect of which processing of which data). Due to this lack of clarity, the Commissioner's view is that data subjects' rights in this regard were not clearly communicated, in contravention of Article 13(2)(c). Further, as noted above regarding Article 13(1)(c), the Privacy Policies provided conflicting information concerning which legal basis was being relied upon in relation to the processing of certain categories of data.

155. Having considered TikTok's Representations, the Commissioner maintains his view that TikTok infringed Article 13(2)(c) in all of the Privacy Policies.