

SAN MARINO DATA PROTECTION AUTHORITY



Ref. 00000175/2024

Register of Measures

Payment order no. 01/2024

No. 08 of 04 July 2024



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(Payment order pursuant to Law no. 171 of 21 December 2018)

TIKTOK PTE Limited, in the person of its legal representative pro tempore, with registered office at 1 Raffles Quay #26-10, South Tower, 048583 Singapore.

HAVING REGARD TO Law no. 171 of 21 December 2018 on the protection of natural persons with regard to the processing of personal data;

HAVING REGARD TO the documents on file;

HAVING REGARD TO

- Article 3, paragraph 2 of Law no. 171/2018, which provides that *"This Law shall apply to the processing of personal data of data subjects who are in the Republic of San Marino by a controller or a processor not established in the Republic of San Marino, where the processing activities are related to: a) the offering of goods or services to such data subjects in the Republic of San Marino, irrespective of whether connected to a payment; or b) the monitoring of the behaviour of such data subjects in so far as their behaviour takes place within the Republic of San Marino"*;
- Article 7 of Law no. 171/2018, which provides that: *"1. Where processing is based on consent, in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old. Where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child. 2. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology. 3. Any information and communication, where processing is addressed to a child, should be given by the controller in such a clear and plain language that the child can easily understand"*;
- Article 27, paragraph 1 of Law no. 171/2018, which requires the controller, both at the time of the determination of the means for processing and at the time of the processing itself, to implement "appropriate technical and organisational measures" which are designed to enforce data-protection principles in order to meet the requirements of this Law and protect the rights of data subjects.



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- Paragraph 4 of Article 73 of Law no. 171/2018, according to which: *“the procedure referred to in paragraphs 2 and 3 shall not apply to particularly serious violations on account of the degree of responsibility of the controller and/or of the categories of data concerned, and for which there is a real danger of repetition, also taking into account the following elements: a) the duration of the violation; b) the size of the person that has committed the violation; c) cases where the repetition of the violation has already occurred; d) the number of data subjects affected by the violation and the type of data having been violated, as well as the possible repercussions, including potential repercussions, on other data subjects or, in general, on the national reputation with regard to the ability to protect personal data”.*

WHEREAS

The Data Protection Authority, through measure no. 1/bis of 18 February 2021, decided to initiate ex officio investigations against the company TikTok PTE Limited Singapore, as fully identified above, in its capacity as data controller, based on the information on file. It also requested information and documents from said company regarding the existence of control measures aimed at verifying the age of users who intend to log in and sign up for an account on the social platform in question.

In particular, within the scope of its own investigation powers, the Data Protection Authority requested the data controller: to provide any information necessary for the performance of the investigations (Article 59, paragraph 1, letter a) of Law no. 171/2018), as well as information and documents relating to the methods of processing and protection of personal data (Article 59, paragraph 1, letters b-c of the same Law):

- This measure was sent to the data controller, TikTok PTE Limited Singapore, by registered letter no. 004050740SM, sent on 16 March 2021 and delivered on 25 March 2021, according to the return receipt on file;
- TikTok Pte Limited Singapore has not responded to the request for information and documents contained in measure no. 1/bis of 18 February 2021;
- By measures no. 95/2021 of 17 September 2021 and no. 172/2023 of 12 October 2023, this Data Protection Authority delegated, in accordance with Article 61 of Law no. 171/2018: 1) the Gendarmerie of the Republic of San Marino to carry out investigations with regard to the existence of control measures regarding the age of persons who intend to sign up for an account on the TikTok Platform, in order to allow the Data Protection Authority to verify that such measures fully comply with the requirements set forth in Law no. 171/2018; 2) the Operational and Judicial Police Unit of the Gendarmerie to verify compliance with the legislation in force regarding age limits that allow access to free content and/or to access and use content by signing up and possibly paying for content;
- The delegated investigations were carried out on 26 October 2021, 8 November 2021 and 28 November 2023, as detailed in the investigation reports of the Operational and Judicial Police Unit of 26 October 2021 (Ref. 00611/2021), of 8 November 2021 (Ref. .21/101/75-1) and of 28 November 2023 (Ref. 23G38/17-1);
- The investigation was carried out by creating three different accounts to simulate the sign up on the TikTok platform of users with the following characteristics: a user aged 14; a user aged 15 (by simulating the sign up of a user with the minimum age to autonomously sign up on the platform); a user aged 21;
- Within the scope of the investigation powers granted by Articles 59 and 60 of Law no. 171/2018, during the monitored period, information on the "Privacy Policy" were extracted from the website www.tiktok.com, updated in January 2021, on 4 August 2023 and 22 March 2024. Based on such information, the data controller in this case is the company Tik Tok PTE Limited, with its registered office in Singapore at 1 RAFFLES QUAY #26-10, SOUTH TOWER, SINGAPORE 048583, company code UEN 201719908M (see the extract from the State Chamber of Commerce called ACRA).



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CONSIDERING

that the above-mentioned investigative activities and checks carried out showed, with reference to the TIKTOK platform, that:

- The personal data provided by users during the signing up process on the TIKTOK PTE Limited platform are not subject to any form of verification and therefore the truthfulness of the information provided by users is not verified by the data controller;
- The system is not able to verify the age of users or whether users are in an age group compatible with the use of the services offered;
- No adequate control measures were found to prevent under-age users from accessing the platform;
- The freely accessible content is not subject to any verification of the age of the persons accessing the platform;
- Access to the TIKTOK platform is also possible by means other than signing up for TIKTOK, and even in this case no verification of the age of the persons accessing it is carried out;
- It has been established that access to the platform is also possible through an account provided by other operators, such as GOOGLE, FACEBOOK, APPLE and TWITTER, in which case TIKTOK must rely on the truthfulness of the data provided to third parties, since no system has been identified for the transmission of the personal data provided by users to the aforementioned operators when signing up. Likewise, critical issues arise when logging in and signing up via a code sent to an email or mobile phone number for authentication purposes, where TIKTOK does not have access to the mobile user's personal data or sign-up data when activating a personal email account selected from the operators available on the network.

CONSIDERING

- That the investigations carried out have made it possible to establish that the data controller does not adopt adequate means to verify the age of persons signing up and logging into the platform, nor does it appear to have adopted adequate means to verify and detect any false declarations made by users upon signing up and logging into the platform. Therefore, the data controller does not appear to have taken steps to adequately verify that consent is given or authorised by users over the age of 16 or, in the case of users under the age of 16, by the holders of parental authority over such minors;
- That the lack of a system for verifying the age of users when signing up makes it easy for them, even if they are very young, to access any content on the platform, with potentially very serious consequences and risks. Furthermore, in the absence of valid consent, personal data of young people are made available to third parties. At the same time, minors have free access to the personal data of other minors and are free to find content on the platform to which access by minors is prohibited by law.

CONSIDERING



- That Tik Tok PTE Ltd, which is owned by Bytedance Ltd (Cayman), has a turnover of approximately \$60 billion (2021), \$80 billion (2022) and \$120 billion (2023) (ACRA data);
- That in the Republic of San Marino, the number of data subjects potentially exposed to unlawful processing by Tik Tok PTE Ltd is 4,886 minors under the age of 16 (data from the Statistics Office of the Republic of San Marino - March 2024);
- That the percentage of minors using social networks could reach 80-90% by 2023, according to the 14th Atlas of Childhood;




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All the above having been considered and said, the Data Protection Authority, in its meeting of 4 July 2024, which was attended by Umberto Rapetto, President, Elia Santi, Vice President and Secretary taking the minutes, and Lawyer Patrizia Gigante, Member,

ACCUSES

  **TIKTOK PTE Limited, in the person of its legal representative pro tempore, with registered office at 1 Raffles Quay #26-10, South Tower, Singapore 048583**

- 1) Of violating Article 7, paragraph 1 of Law no. 171 of 21 December 2018, for having unlawfully processed the personal data of minors under the age of 16, in relation to the direct offer of information society services to minors, without the consent given or authorised by the holders of parental authority over such minors;
 - 2) Of violating Article 7, paragraph 2 of Law no. 171 of 21 December 2018, for failing to take all reasonable steps to verify, in the light of available technology, that consent has been given or authorised by the holders of parental authority over the minors;
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ORDERS

Pursuant to Article 59, paragraph 2, letter d) of Law no. 171/2018, the company Tik Tok PTE Ltd, in its capacity as data controller,

- To bring the processing operations into conformity with the provisions of San Marino law, in particular by suspending any activity constituting the alleged violation and by endeavouring to verify, in the case of persons under the age of 16 (sixteen), that consent has been given or authorised by the holders of parental authority over such minors, taking into account the technologies available;
- Consequently, to provide feedback highlighting the corrective techniques adopted to effectively address the critical issues that are the subject of the alleged violation.



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ORDERS

the payment of the administrative fine of EUR 3,500,000.00 (three million five hundred thousand/00), for the violation of Article 7, paragraphs 1 and 2, of Law no. 171 of 21 December 2018, punished by Article 72, paragraph 1, of Law no. 171 of 21 December 2018, within 30 (thirty) days from the date of notification, taking into account the maximum amount equal to 2% of the total annual turnover of the corporate Group.

For the purpose of applying the sanction, this Authority assessed the following circumstances pursuant to Article 59, paragraph 2, letter i), read in conjunction with Article 73, paragraph 5 of Law no. 171/2018:

- With regard to Article 73, paragraph 5, letter a), it considers that the number of data subjects under the age of 16 who may have access to the TikTok platform and be exposed to unlawful processing of personal data is potentially 4,886, which is a very high number in relation to the total population of the Republic of San Marino, which is 33,932 inhabitants;
- With regard to Article 73, paragraph 5, letter b) (*wilful or negligent nature of the violation*), the results of the multiple verifications carried out in the period 2021-2024 show that the conduct of TikTok Pte Limited was characterised by carelessness, superficiality and lack of rigour. Therefore, the company's conduct was deliberately negligent, as it systematically failed to implement adequate systems to ensure effective verification of the age of minors;
- With regard to Article 73, paragraph 5, letter c) (*actions taken by the controller or processor to mitigate the damage suffered by data subjects*), this Authority has noted that TikTok Pte Limited has not provided any explanation as to whether any measures have been taken to mitigate the damage suffered by data subjects, nor has it provided any significant indication as to the planning of future solutions;
- With regard to Article 73, paragraph 5, letter d) (*degree of responsibility of the controller or processor taking into account technical and organisational measures implemented by them pursuant to Articles 27 and 33*), this Authority finds that failure to adopt a suitable solution and appropriate technical and organisational measures is the full and sole responsibility of the bodies of TikTok Pte Limited, as they had the technical and organisational means at their disposal;
- With regard to Article 73, paragraph 5, letter f) (*degree of cooperation with the Data Protection Authority, in order to remedy the violation and mitigate the possible adverse effects of the violation*), this Authority has taken note of the conduct of TikTok Pte Limited, which has not in any way complied with measure no. 1/bis of 18 February 2021. Through that measure, it was decided to open an investigation procedure against TikTok Pte Limited and clarifications were requested on the existence of control measures aimed at verifying the age of users who intend to sign up on the social platform in question, showing a total lack of cooperation;
- With regard to Article 73, paragraph 5, letter g) of Law no. 171/2018 (categories of personal data affected by the violation), the investigation showed that, given the amount of data in question, special categories of personal data relating to minors under the age of 16, i.e. 4,886 potential subjects, may also have been processed without valid consent;
- With regard to Article 73, paragraph 5, letter h) (*manner in which the violation became known to the Data Protection Authority, in particular whether, and if so to what extent, the controller or processor notified the violation*), this Authority started the investigation ex officio - in the absence of any notification of the violation by the data controller - following the news of the death of a child on the Italian territory in January 2021 in the context of a "challenge" among very young people using the TIKTOK platform;



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- With regard to Article 73, paragraph 5, letter i) (*measures referred to in Article 59, paragraph 2 against the controller or processor concerned in respect of the same subject-matter, compliance with such measures*), this Authority notes the very serious nature of the conduct held, given failure to comply with the request for information and documents issued in investigation measure no. 1bis/2021, to which TikTok Pte Limited did not respond in any way.

CONSIDERING

The exceptional seriousness of the violations in question, it is recognised that the conditions are met to exclude the application of the procedure provided for in paragraphs 2 and 3 of Article 73 of Law no. 171/2018, in accordance with paragraph 4 of the same Article, and also taking into account the following additional facts:

- The duration of the violation and the real risk of repetition, given that the violation continues despite the time that has elapsed since the opening of the investigation and the first verifications;*
- The size of TIK TOK Pte Ltd, which has a global presence with turnovers of around \$120 billion (2023);*
- The number of data subjects concerned - 4,886 San Marino children under the age of 16 - is very high in relation to the total population of the State;*
- The repercussions, even potential, on the national reputation of the Republic of San Marino as regards its ability to adequately protect the personal data of minors;*

INFORMS

Pursuant to Article 73, paragraph 6, of Law no. 171 of 21 December 2018 and Article 33 of Law no. 68 of 28 June 1989 and subsequent amendments and integrations, that the offender who has been imposed an administrative sanction by the bodies of the public administration **may opt for voluntary settlement by paying, within 20 days, half of the minimum or single fine provided for by law, equal to EUR 1,750,000.00 (one million seven hundred and fifty thousand /00).**

Under Article 34 of Law no. 68/1989, the administrative fine is doubled if payment is made more than six months after notification of the payment order, i.e. for an amount of EUR 7,000,000.00 (seven million/00).

If the offender fails to pay the fine within 6 (six) months, compulsory enforcement shall be carried out in accordance with the provisions of Law no. 70/2004 and subsequent amendments and integrations.



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Payment of this fine shall be made by wire transfer:

- IBAN SM 81 K03225 09800 000010006039
- Ecc.ma Camera Repubblica di San Marino
- Area Code 225
- Purpose 592
- Please note in the wire transfer the no. and the date of the measure

Pursuant to Article 70, paragraph 1 of Law no. 171/2018, an appeal against the sanctions issued by the Data Protection Authority may be lodged with the Administrative Judge within sixty days of notification.

The Authority shall be informed of the payment of the administrative fine by receiving a proof of payment to the headquarters of the Data Protection Authority.

San Marino 04 July 2024

San Marino Data Protection Authority

Courtesy copy with no legal value

This measure is sent to:

TIKTOK PTE LIMITED
1 RAFFLES QUAY
#26-10, SOUTH TOWER,
SINGAPORE 048583

