

TIKTOK'S "ADDICTIVE DESIGN" PROVISIONALLY FOUND TO BE A BREACH OF THE DSA: WHERE IS THE LINE BETWEEN ENGAGEMENT AND ADDICTION?

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The European Commission's 6 February 2026 announcement - provisionally finding that TikTok's 'addictive design' breaches the Digital Services Act ("DSA") - has already attracted significant attention. Now the dust has settled, we ask some key questions raised by that decision – which go to the core of the DSA.

The [preliminary findings](#) mark the latest in a series of DSA enforcement steps by the Commission and arrive amid growing regulatory concern around the impact of persuasive design techniques on users. In many ways, they represent one of the most significant Commission findings in digital markets in recent years. And they raise a series of important questions. How can platforms comply with the DSA while pursuing their legitimate commercial objectives of attracting and engaging users? Is it legitimate for the Commission to force a platform to redesign itself, where the first effect could be to shatter its value to content creators and advertisers? What does the Commission need to prove to do that? And has it done so here?

WHAT HAS THE COMMISSION (PROVISIONALLY) FOUND?

In the first (provisional) infringement finding that strikes at key aspects of a platform's design, the Commission's preliminary view is that TikTok has breached the DSA by failing to adequately assess how its design features could contribute to compulsive use and negatively affect the physical and mental wellbeing of its users. According to the Commission's press release:

- TikTok's features, including infinite scroll, autoplay, push notifications and its highly personalised recommender system, may foster compulsive use by continually "rewarding" users with fresh content and shifting their brains into "autopilot mode".
- TikTok has breached the DSA by not adequately assessing how these addictive features could harm the physical and mental wellbeing of its users, including minors and vulnerable adults. The Commission has also suggested that TikTok disregarded important indicators of compulsive use, such as the amount of time minors spend on the platform at night and the frequency with which users open the app.
- TikTok also failed to put effective mitigations in place. The Commission has suggested that while TikTok does offer screen time limits and parental controls, these tools may not be effective. Screen time management tools were found to be "easy to dismiss", and parental controls were noted as requiring additional time and skills from parents. Instead, the Commission has stated that TikTok would need to fundamentally change the design of its service to comply with its DSA obligations.

The Commission has stated that its preliminary views are based on an in-depth investigation that included an analysis of TikTok’s risk assessments reports, internal data and documents, TikTok’s responses to multiple requests for information, a review of the extensive scientific research on this topic, and interviews with experts in multiple fields, including behavioural addiction.

WHAT DOES THE DSA SAY (OR NOT) ABOUT ADDICTIVE DESIGN?

The DSA does not explicitly prohibit ‘addictive design’. Nor does it define it.

Instead, the Commission’s preliminary findings are based on Articles 34 and 35 of the DSA, which apply to the largest platforms which the Commission has designated as “Very Large Online Platforms” (or “VLOPs”):

- Article 34 imposes an obligation on VLOPs to identify, analyse and assess any systemic risks stemming from the design, functioning and use of their services. Such systemic risks include, amongst others, any actual or foreseeable negative effects in relation to the protection of public health, and any serious negative consequences to the person’s physical and mental wellbeing.
- Article 35 requires VLOPs to put in place reasonable, proportionate and effective mitigation measures tailored to the specific systemic risks identified under Article 34. Such measures may include adapting the design, features or functioning of the service, including online interfaces, and adapting algorithmic systems, including recommender systems.

As a legislative scheme, Articles 34 and 35 rely on self-incrimination. They say: tell us why your platform is dangerous, what you are doing about it, and then we (the Commission) will decide if you have done enough. This is an unusual concept for organisations like TikTok (and almost all other VLOPs), requiring them to identify how their platforms are bad for users – where their primary commercial incentive is to drive user engagement (and therefore successful outcomes for advertisers and content creators).

In this context it might be expected that the types of systemic risks relevant to Article 34 would be clearly articulated in the legislation or in guidance, so that VLOPs can carry out accurate risk assessments and take appropriate mitigations. That would be consistent with basic principles of legal certainty that apply across EU law. A regulated firm should know with reasonable certainty how to comply.

That, however, hasn’t happened. The only reference to ‘addictive design’ is not in Article 34 or 35, but in the recitals to the Act. The recitals, which have no formal legal force, refer to “the design of online interfaces which [...] may cause addictive behaviour”, and “online interface design that may stimulate behavioural addictions.¹ There is no other elaboration in the legislation, and no separate guidance.² The European Board for Digital Services (“EBDS”), which is required under Article 35(2) of the DSA to publish a report on best practices for VLOPs to mitigate systemic risks, also offers scant guidance – and says expressly that its findings should not be construed as guidance anyway.³

This stands in contrast to other flagship digital regulations where the underlying harms are more properly understood. For example, the Digital Markets Act (“DMA”) seeks to address a series of harms that have been the substance of numerous antitrust investigations in the past decade (into so-called “self-preferencing” behaviour, for example). It builds on a body of enforcement action under competition law and essentially targets the same firms. There are debates about the design and effectiveness of the DMA, and about how it is being enforced – but few could say that the harms it is intended to address are poorly understood.⁴ There has been no comparable body of consumer enforcement in the context of addictive design, so no indication of what kinds of app features, for example, may be illegal (or not).

¹ Recitals 81 and 83.

² Whilst the Commission has published guidance on Article 28 (which requires the platform to put measures in place to ensure a high level of privacy, safety and security for child users), which specifically states that online platform providers should ensure that minors are not exposed to practices that can lead to addictive behaviours, including persuasive design techniques (albeit even that this guidance does not further define such techniques), no such guidance exists on Articles 34 and 35, the articles that the Commission has focussed on in its announcement of these preliminary findings.

³ The 2025 report notes that best practices for mitigating systemic risks generally are still evolving, and so while future reports will focus on such evolving best practices, the 2025 version focuses only on practices that VLOPs have used or proposed without “singling any out as “best” or necessarily even “good” practices”. The EDPB acknowledges that the report is therefore incomplete. The report also stresses that it should not be construed as guidance, and that it is without prejudice to enforcement action.

⁴ Much the same can be said about the UK’s Digital Markets, Competition and Consumers Act (DMCCA).

Finally, this decision could be said to jump the gun on the Digital Fairness Act (“DFA”), which is on the Commission’s legislative agenda for the final quarter of 2026. This is billed as the Commission’s flagship law to regulate the ‘addictive design’ of digital products (as well as other online harms like dark patterns, unclear influencer marketing, exploitive personalisation, and unfair contract terms) – and in its passage through the EU legislature, all of these important debates around platform design could be properly tested with users and market participants. The focus of the DFA has been informed by the [Commission’s report on its Digital Fairness Fitness Check \(the “Digital Fitness Check Report”\)](#), published in October 2024. That Digital Fitness Check Report also stated that no existing specific provisions in EU legislation tackle the deployment of features “that are described as addictive design”, and that this leaves “legal uncertainty” (although the Digital Fitness Check Report did go on to note the Commission’s investigation into TikTok’s ‘addictive design’, without any acknowledgment that this is difficult to reconcile with these statements). Platforms are entitled to ask how they can be expected to build effective compliance approaches in this context.

WHY IS THIS A PROBLEM?

In these circumstances, the DSA poses an impossible question for VLOPs: when do high levels of user engagement trip into evidence of “addiction” under the DSA – so becoming illegal? So far, the answer to this question seems to be: where the Commission decides it does.

This is a problem for – at least – three reasons:

- First, it makes compliance for platforms extremely challenging. Legislation by enforcement is antithetical to legal certainty – and platforms are entitled to be confused by a finding that seems to say that app features as commonplace as infinite scroll and autoplay are now illegal in Europe.
- Second, it suggests that there are only limited constraining principles in how the Commission enforces the DSA in cases like this. We will have to see the Commission’s full reasoning for this finding in due course – but the fact that the Commission has pursued this case on such sparse legislative grounds is striking. And the severity of the Commission’s provisional directions (that TikTok “needs to change the basic design of its service”) is remarkable. In the context of Articles 34 and 35, it is a major leap from a finding that TikTok’s mitigations are ineffective to a decision that orders a wholesale redesign of the app. It converts the Commission’s role from regulator to active market participant, picking and choosing features it likes and doesn’t.
- Third, this is clearly an environment ripe for disproportionate interventions. Often these are revealed by their outcomes, and two outcomes are foreseeable if the Commission’s final decision requires a fundamental redesign of TikTok. First, by actively dissuading user engagement, it could shatter TikTok’s value to content creators and advertisers (two of the three sides of the platform). Second, it could skew broader competition in TikTok’s markets – with unexpected winners (including platforms who continue to use the same features that the Commission has found to be illegal in TikTok’s case). Few could have predicted that the DSA would be used to pick winners (or rather, losers) in these markets.

Much will depend on the Commission’s final decision, which will need to be robust against these issues: will the Commission show that these specific features cause harm (instead of correlating with harm)? Where is the line between high user engagement and “addiction”, and what evidence delineates the two? Were other, less intrusive means available to mitigate the problem?

Other past and ongoing investigations into TikTok's DSA compliance

TikTok has previously come under scrutiny by the Commission for the suspected “addictive effect” of its “TikTok Lite” rewards programme, which allows users to earn points while performing certain “tasks” on TikTok - such as watching videos, liking content, following creators, inviting friends to join TikTok, etc. TikTok committed to permanently withdrawing the programme from the EU following the launch of an investigation by the Commission focused on concerns that it had been launched without “prior diligent assessment of the risks it entails, in particular those related to the addictive effect of the platforms, and without taking effective risk mitigating measures.”

UK's Online Safety Act

In the UK, ‘addictive design’ of online platforms is also now firmly in the crosshairs. The government has recently announced that an upcoming consultation on children’s digital wellbeing will consider “the full range of risks children face online”, and measures to strengthen the existing Online Safety Act (which, currently, does not specifically police ‘addictive design’) will be considered. The potential measures the government is contemplating include restricting specific functionalities that keep children “hooked to their screen”, such as infinite scroll or autoplay, and setting a minimum age limit for use of social media. New legal powers are also due to be implemented to enable the government to take, in its words, “immediate action” to implement measures arising out of the consultation “rather than waiting years for new primary legislation every time technology evolves”.

WHAT NEXT?

The Commission’s findings remain preliminary and do not prejudice the final outcome. When the Commission issues its final decision, it may then publish further details of its reasoning publicly – that will be of high interest to many other platforms, given the potential impact of these findings on the fundamental design of their services and business models. In particular, the case will be watched closely by [Temu](#) and [Shein](#), which are currently under investigation by the Commission for “addictive design”, and by Meta, given that the Commission is [investigating](#) whether features on Facebook and Instagram “may stimulate behavioural addictions in children”.

TikTok now has the right to review the investigation file and respond in writing, and a spokesperson for the company has reportedly stated that it will challenge the Commission’s findings through every means available. We can expect the process, and the final decision, to take some time - a matter of months rather than weeks. The Commission’s announcement in December 2025 that it had decided X was in breach of a number of DSA obligations (and would be fined) came 17 months after its related preliminary findings. Other VLOPs would be well advised to monitor this case closely and consider reviewing their own risk assessments and mitigation measures in light of these developments, especially to ensure that they are ready to explain how ‘indicators of compulsive use’ have been assessed, and to demonstrate the effectiveness of mitigation measures taken. We will be following developments closely and will cover any updates on our blog, [The Lens](#).

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