Implementation of the DSM-Directive – mission accomplished?

Regional survey of Central and Eastern Europe

Austria
Bulgaria
Croatia
Czech Republic
Hungary
Poland
Romania
Slovakia
Slovenia
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Controversial IP directive provides new protections for right holders

The DSM Directive is one of the most controversial pieces of copyright legislation in the EU. It took 2.5 years from the publication of the Commission’s proposal in 2016 and extensive discussions with and lobbying by right holders, user organisations and platforms until the final text was adopted in 2019.

The most controversial / key provisions of the DSM Directive include:

- **Art 17:** This provision received wide media coverage under the non-technical term “upload filters”. It introduced new obligations for online content-sharing service providers, making them directly liable for user posts which infringe copyrights, unless the they have made “best efforts” to obtain permission from and acted diligently to take down infringing content flagged by right holders – and to prevent future uploads thereof.

- **Art 15:** This provision also received wide media coverage under the non-technical, and incorrect term often used: “link tax”. The media focus was partly a result of the fact that national initiatives of Member States to implement such a provision themselves have not been very successful in the past. Art 15 provides for a new ancillary right for press publishers established in a Member State.

- **Art 18-22:** These provisions aim at providing a high level of protection for content creators, including, for example, a claim for an additional remuneration if the initial payment agreed on was disproportionately low when compared to the revenue generated by the exploitation of the work, the option for revocation of licenses if those works are not exploited and a claim for information on how one’s works are exploited.

Contentious provisions have slowed implementation

The deadline for the implementation of the DSM Directive was 7 June 2021.

Considering the controversial discussions at the EU level, it is not surprising that also on national levels there has been substantial lobbying in regard to the specific implementation of the provisions. In addition, a guidance document from the Commission on the most controversial provision, Art 17, was only released in June 2021, and Poland has challenged certain obligations under this provision at the CJEU (proceedings are pending). Finally, the EU Member States being confronted with the COVID-pandemic were also slowing the implementation procedure.

It is therefore not surprising that many Member States have failed to implement the DSM-Directive in time. In the following table we provide an overview on the status of implementation in Central and Eastern Europe, where most countries have not implemented the directive yet.
Implementation of the DSM Directive by 7 June 2021 deadline

<table>
<thead>
<tr>
<th>Country</th>
<th>Current status of implementation</th>
<th>Has the 7 June 2021 deadline been achieved?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>Pre-drafts have been sent out by the Ministry of Justice.</td>
<td>No. Transposition in (early) autumn 2021 is likely.</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>Public consultations have been conducted, and a working group has been convened to deliver the draft bill.</td>
<td>No. The implementation of the DSM Directive will not be achieved before the end of 2021.</td>
</tr>
<tr>
<td>Croatia</td>
<td>The second reading of the bill implementing the Directive is pending in the parliament.</td>
<td>No.</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>The draft bill passed the comments procedure and currently awaits listing on the government’s agenda.</td>
<td>No.</td>
</tr>
<tr>
<td>Hungary</td>
<td>The relevant act carrying the amendments came into effect on 1 June 2021.</td>
<td>Yes.</td>
</tr>
<tr>
<td>Poland</td>
<td>In July 2020, the Ministry of Culture initiated public consultations on implementation.</td>
<td>No.</td>
</tr>
<tr>
<td>Romania</td>
<td>A draft bill has been prepared.</td>
<td>No.</td>
</tr>
<tr>
<td>Slovakia</td>
<td>The legislative process is in the preliminary stage.</td>
<td>No. Transposition in summer/autumn 2021 is likely.</td>
</tr>
<tr>
<td>Slovenia</td>
<td>The draft bills are in public consultation, which will last until 28 June 2021.</td>
<td>No.</td>
</tr>
</tbody>
</table>
Implementation of the DSM Directive by 7 June 2021 deadline

Austria

current status
Pre-drafts have been sent out by the Ministry of Justice to stakeholders in the last year, but have not been published.

draft bill
No official draft bill has been published on the parliament website or sent out to the stakeholders. When such an official draft is published, it will usually be open for comments for six weeks.

These comments will then be considered, and an official bill will be presented to be voted on in the parliament.

deadline achieved?
No. A transposition in (early) autumn 2021 is likely.

Bulgaria

current status
Public consultations in view of the implementation of the DSM Directive were initiated in June 2020 by the Ministry of Culture. More than 20 submissions were presented by different actors, such as telecoms, artist unions, Google and Facebook.

In March 2021, the Ministry of Culture involved the Bulgarian Patent Office and organised a working group comprised of representatives of different institutions and organisations to deliver the first draft of the bill.

draft bill
A draft bill has not yet been published.

deadline achieved?
No. The implementation of the DSM Directive will not be achieved before the end of 2021.
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Croatia

current status
The bill implementing the DSM Directive ("Zakon o autorskom pravu i srodnim pravima") has passed its first reading in the parliament and the second one is pending.

draft bill
The draft text from the first reading is available (download here), however it is now in revision for the second reading, and the revision process is not disclosed to the public.

deadline achieved?
No.

Czech Republic

current status
The draft bill was proposed by the Ministry of Culture in November 2020, passed the comments procedure and currently awaits listing on the government’s agenda.

draft bill
The draft bill is available online on the governmental portal for document sharing (download here) and currently is to be discussed by the government, however, no exact date has been set for this discussion.

deadline achieved?
No.
**Implementation of the DSM Directive by 7 June 2021 deadline**

**Hungary**

**current status**
The final proposal of Act XXXVII of 2021 amending the currently effective Act LXXVI of 1999 on Copyright in order to implement the DSM Directive was presented and subsequently passed by the Hungarian parliament on 28 April 2021 (see the updated Copyright Act [here](#)). The relevant act carrying the amendments came into effect on 1 June 2021.

**draft bill**
Yes.

**deadline achieved?**
Yes.

**Poland**

**current status**
The Polish government has officially stated that it is against the current version of the DSM Directive. In July 2020, the Ministry of Culture initiated public consultations on the Directive’s implementation. Several organisations, including the Polish Audiovisual Producers Chamber of Commerce in Warsaw, have submitted their positions.

**draft bill**
As of 7 June 2021, no draft bill, nor any amending act was finalised or published. Not even guidelines for implementation have been published.

**deadline achieved?**
No.
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Romania

current status
A draft bill implementing the DSM Directive has been prepared by the joint working group of the Ministry of Culture and of the Romanian Copyright Office (the “Draft Law”). The Draft Law is an amendment to Law 8/1996 on copyright and related rights.

draft bill
Yes. The Draft Law has been published by the General Secretariat of the Government on its website and is subject to amendments/approval by the two chambers of the Romanian parliament. According to publicly available information, the Draft Law has not yet been registered on the agenda of the Romanian parliament.

deadline achieved?
No.

Slovakia

current status
The legislative process is in the preliminary stage.

draft bill
No official draft bill has been published on the parliament website or sent out to the stakeholders.

deadline achieved?
No. A transposition in summer/autumn 2021 is likely.
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Slovenia

current status
The transposition of the DSM Directive is still pending. The DSM Directive will be implemented with amendment of (i) the Copyright and Related Rights Act and (ii) the Act on Collective Copyright Management.

draft bill
The draft bills were prepared by the Ministry of Commerce and were published on 24 May 2021. They can be accessed here. The draft bills are in public consultation, which will last until 28 June 2021.

deadline achieved?
No.
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