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Articles 15 & 17 of the Directive on Copyright in the Digital Single Market

Comparative National Implementation Report

EXECUTIVE SUMMARY

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The full study is available for download at: https://informationlabs.org/copyright

Executive Summary

On 17 April 2021, the EU's Directive on Copyright in the Digital Single Market (DCDSM)[1] was adopted. This included the highly controversial Articles 15 and 17 on the new related right for press publishers ("press publishers' right" or PPR) and the new liability scheme for copyright infringement on online platforms ("online content-sharing services providers" or OCSSPs) respectively. On 7 July 2021, the deadline passed for the transposition of the directive into the national law of the 27 EU Member States.[2] Nevertheless, the implementation process is still ongoing in over half of the Member States.[3] This legal report examines the national implementation of the DCDSM in 11 Member States: Austria, Denmark, Estonia, France, Germany, Hungary, Ireland, Italy, Malta, the Netherlands and Spain. These countries represent those that had completed their implementations of Articles 15 and 17 DCDSM when this legal research project started in February 2022.[4]

For the most part, Articles 15 and 17 DCDSM are instruments of total[5] harmonisation.[6] The one obvious exception relates to exceptions and limitations, whose minimum harmonisation nature is pulled in from the Information Society Directive (ISD).[7] Most of the terms used in the two provisions should therefore be understood as autonomous notions of EU law.[8] That being said, as the objective of the Directive is harmonisation rather than unification, some "room for manoeuvre" is left for implementing Member States, as long as the "result to be achieved" is met.[9] In particular, national authorities enjoy freedom as to the choice of implementing methods, i.e., the techniques used to transpose the content of the directive into the chosen instrument: how the "result" aimed at by the Directive "achieved" in a given Member State. Broadly speaking, implementing legislatures are faced with two main choices in this regard: between literal transposition and elaboration on the rules set out in the directive and between minimalist and non-minimalist transposition.[10]

[1] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (2019) OJ L 130/92 (DCDSM).
[2] See Article 29 DCDSM.
[3] See COMMUNIA, "DSM Directive Implementation Tracker", available at: https://www.notion.so/DSM-Directive-Implementation-Tracker-361cfae48e814440b353b32692bba879.
[4] Croatia also implemented the DCSDM by this deadline, however, while a national expert for Croatia was engaged for this study, they were unable to complete the questionnaire on the Croatian national implementation. Three further Member States, Lithuania, Luxembourg and Romania, have since implemented the Directive – see CREATe, "Copyright in the Digital Single Market Directive Implementation – An EU Copyright Reform Resource", available at: https://www.create.ac.uk/cdsm-implementation-resource-page/ and Communia, "Eurovision DSM Contest", available at: https://eurovision.communia-association.org/. As these transpositions occurred after the start of the work on this research project, it was not possible to consider them in this study.
[5] See A Ramalho, "The competence and rationale of EU copyright harmonization" in E Rosati, The Routledge Handbook of EU Copyright Law (Routledge 2021) 3; R Král, "On the choice of methods of transposition of EU Directives" (2016) 41(2) E.L. Rev. 220; S Weatherill, "The Fundamental Question of Minimum or Maximum Harmonisation" in S Garben and I Govaere (eds), *The Internal Market 2.0* (Hart 2020), available at: https://ssrn.com/abstract=3660372 and M Klamert, "What We Talk About When We Talk About Harmonisation" (2015) 17 Cambridge Yearbook of European Legal Studies 360.
[6] A Metzger and M Senftleben, "Selected Aspects of Implementing Article 17 of the Directive on Copyright in the Digital Single Market into National Law – Comment of the European Copyright Society", available at: https://europeancopyrightsociety.org/, published in (2020) 11 JIPITEC 115.
[7] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society [2001] OJ L167/10 (ISD).
[8] A Metzger and M Senftleben, "Selected Aspects of Implementing Article 17 of the Directive on Copyright in the Digital Single Market into National Law – Comment of the European Copyright Society", available at: https://europeancopyrightsociety.org/, published in (2020) 11 JIPITEC 115.
[9] See Article 288 point 3, Treaty on the Functioning of the European Union (TFEU).
[10] R Král, "On the choice of methods of transposition of EU Directives" (2016) 41(2) E.L. Rev. 220.

In this context, this study assesses the compliance with the EU legal framework of the national implementations in the selected countries of Articles 15 and 17 DCDSM. In particular, it looks at how convergence or divergence with the wording of Articles 15 and 17 of the Directive impact two key aspects:

1. the establishment and functioning of the internal market in line with Article 114 Treaty on the Functioning of the European Union (TFEU) that founds the competence of the EU to act in the field of copyright and which underlies the DCDSM; and
2. the Charter of Fundamental Rights of the EU, as interpreted by the Court of Justice of the EU (CJEU).

To this end, the following research question was identified:

> "How compatible are the existing national implementations of Articles 15 and 17 CSDMD with the Digital Single Market objective of the Directive and with the EU law of fundamental rights?"

To address this question, a comparative legal methodology was adopted. In particular, the so-called "European Legal Method" was employed. This involves comparative analysis with a harmonising objective that is adjusted to the current legal structures of the EU.[11] In the research at hand, the methodology involved comparing the national implementations with the texts of Articles 15 and 17 CSDMD, identifying deviations and considering the implications of these in terms of the need to build an internal market and the law of fundamental rights.

The comparative analysis was based on desk research in the form of the analysis of a questionnaire shared with national experts in the 11 identified countries. The purpose of the questionnaires was to gather legal information for each implementing Member State. To this end, the questionnaire was organised around identified assessment criteria (AC). Two sets of AC were compiled: one for Article 15 DCDSM and one for Article 17 DCDSM. The AC focus on key words identified within the provisions.

Specifically, the following AC were identified:

Article 15 DCDSM	**Article 17 DCDSM**
1. Subject matter	1. Subject matter
2. Right-holders	2. Right-holders
3. Restricted acts	3. Exclusive rights
4. Targeted users	4. Targeted providers
5. Exceptions and limitations	5. Scope of protection
6. Licensing	6. Right-holder cooperation
7. Revenue sharing	7. General monitoring
8. Term of protection	8. Exceptions and limitations
9. Waiver	9. Licensing
10. Entry into force	10. Legitimate uses: ex ante safeguards
	11. Legitimate uses: ex post safeguards
	12. Sanctions
	13. Information obligations
	14. Waiver
	15. Entry into force

[11] For more on the European Legal Method, see: K Riesenhuber, *European Legal Methodology* (2nd ed., Intersentia 2021); U Neergaard and R Nielsen, *European Legal Method: In a Multi-level EU Legal Order* (Djøf Publishing 2012); M W Hesselink, "A European Legal Method? On European Private Law and Scientific Method" (2008) 15(1) European Law Journal 20 and A Ohly and J Pila (eds), *The Europeanization of Intellectual Property Law: Towards a European Legal Methodology* (Oxford University Press 2013). For more on comparative legal research, see: G Samuel, *An Introduction to Comparative Law and Method* (Hart Publishing 2014).

These AC comprise core "building blocks" encountered across intellectual property rights (e.g., "subject matter", "right-holders", "exclusive rights", "exceptions and limitations"), as well as particularities presented by Articles 15 and 17 DCDSM (e.g. "targeted users", "revenue sharing", "right-holder co-operation", "general monitoring").

Reporting by national experts was pursued in order to:

a) address inevitable linguistic limitations faced by the author of the comparative report in assessing national laws drafted in 10 different languages; and
b) ensure appropriate immersion in local legal *mentalité* and traditions, which may differ from country to country.

To that extent, the author of the comparative report represents the "external" perspective in assessing the national implementations, the "internal" perspective having been provided by the national experts.[12] At the same time, a dialogue between these perspectives was sought. To this end, following their completion by the national legal experts, the questionnaires were subject to comments and questions by the author of the comparative report, embedding understanding and leading to potential refinement of the responses.

It should be emphasised that the comparative report is based on the information provided in the national reports. Independent research into the national implementations was not conducted by the author of the comparative report.

As analysis showed, the adoption of the Directive has not led to resolution in the difficult areas of press publishers rights and platform liability. Among the examined implementing Member States, multiple instances of problematic implementation – i.e., implementation that is (potentially) incompatible with either the Directive itself or with fundamental rights – can be identified. In particular, in relation to Article 15 DCDSM, issues emerge in relation to the following Assessment Criteria:

- AC 1 (subject matter);
- AC 2 (right-holders);
- AC 3 (restricted acts);
- AC 4 (targeted users);
- AC 6 (licensing) and;
- AC 7 (revenue sharing).

In relation to Article 17 DCDSM, potential issues emerge with regard to:

- AC 1 (subject matter);
- AC 2 (right-holders);
- AC 3 (exclusive rights);
- AC 4 (targeted providers);
- AC 5 (scope of protection);
- AC 7 (general monitoring);
- AC 8 (exceptions and limitations);
- AC 9 (licensing) and;
- AC 12 (sanctions).

[12] G Samuel, *An Introduction to Comparative Law and Method* (Hart Publishing 2014) 60-63.

In addition, a majority of Member States failed to meet the transposition deadline in relation to both Articles. From among the 11 examined Member States, the only to emerge with no implementation irregularities is the Netherlands. It is unsurprising that, as a general rule, where implementations presented problems in terms of the internal market, they also presented problems in terms of fundamental rights.[13] This follows from the fact that deviations from the wordings of Articles 15 and 17 DCDSM will amount to a deviation from the balance between fundamental rights deemed fair by the European legislator.[14]

Close examination of the emergent compatibility issues reveals that they come in a variety of forms. Almost all Member States have engaged in some level of elaboration – even if just to adjust the terms used by the Directive to the local legal regime (e.g., when the Netherlands adjusts the language of communication to the public and making available to the public to the local concept of *"openbaarmaking"*).

In some instances, the national implementation adds elements that do not exist in the text of the Directive (excessively maximalist transposition). For example, the Spanish definition of the "online content-sharing service providers" (OCSSPs) targeted by Article 17 DCDSM requires that OCSSPs store and give access to protected content *either* in large amounts *or* that they have a large audience in Spain – as opposed to the DCDSM, which requires only that OCSSPs store and give access to "a large amount" of protected subject matter. Occasionally, such additions are based on the recitals of the Directive – which, however, do not have self-standing normative power, so that, where they contradict the operative text of the Directive or other relevant rules of EU law, their implementation is counterindicated. For example, Austria, France, Germany and Malta all transpose into national law Recital 62 DCDSM to hold that the immunity Article 17(4) DCDSM does not apply to providers whose (main) purpose is to engage in or to facilitate piracy.

In other cases, national implementations omit elements that are included in the text of the Directive (excessively minimalist transposition). For example, France fails to exclude "private or non-commercial uses of press publications by individual users" from the reach of the national implementation of Article 15 DCDSM, Denmark and Hungary do not implement the carve-outs in the definition of OCSSPs and Denmark does not transpose the prohibition on general monitoring obligations of Article 17(8) DCDSM. This can also result from misunderstandings on the part of the national legislator – as appears to be the case with e.g., the Irish conflation of the "sufficiently substantiated notices" and "relevant and necessary information" mentioned in Article 17(4) DCDSM (though note that a differentiated interpretation of "sufficiently substantiated notice" in practice could save this implementation) or the Estonian omission of protections for public domain content in Article 15 DCDSM).

Both additions and omissions may result in the expansion of the scope of the new rules (excessively maximalist transposition or gold-plating) or in their contraction (excessively minimalist transposition). For example, Denmark and Hungary's omission of the carve-out from the definition of OCSSPs results in an expansion of the scope of the new liability scheme of Article 17 DCDSM, as does Spain's addition of a condition of a large audience in Spain. Conversely, Austria and Germany's addition of a condition of competition with other providers to the definition of OCSSPs restricts the reach of the Article 17 DCDSM regime, while Denmark's omission of a parody exception restricts the guarantees offered to users.

[13] The exception is AC 12 on Article 17 DCDSM. As noted above, while Member States appear free under Article 17 to make decisions on sanctions (this clearly having been decided by the EU legislator to be unproblematic in terms of the single market), significant fundamental rights effects are foreseeable.

[14] The alternative would be to accept that Articles 15 and 17 DCDSM themselves offend the fair balance between fundamental rights. With regard to Article 17 this option has been rejected by the CJEU in *Poland*. With regard to Article 15, this study also assumes that the EU legislator has struck the right balance. To hold otherwise would be inappropriate for a study intended to assess national implementations, rather than the EU provision.

In some cases, national law interprets autonomous notions of EU law incorrectly. This can be the result of legacy interpretations (this is the case, for instance, with the narrow French and Spanish interpretations of the quotation exception) or of new constructs (as has occurred with the French and Italian interpretation of "very short extracts" in Article 15 DCDSM as extracts that are not capable of replacing the press publication). Occasionally, variations in terminology across different language versions also emerge (see e.g., the Austrian, Italian and Spanish renditions of "best efforts" in Article 17(4) DCDSM as "every effort", "greatest efforts" and "biggest efforts" respectively).

Sometimes, seemingly small changes can have significant effects. This is the case with the French replacement of "online uses" of press publications in Article 15 DCDSM with uses "in digital format" and the German extension of the revenue-sharing introduced by Article 15 DCDSM beyond authors to other right-holders. In other cases, the change is obvious and was subject to intense debate in the relevant Member State. This is the case for the Italian rules on the licensing of Article 15 DCDSM, which are potentially incompatible with the preventive nature of exclusive rights.

Particularly interesting are those cases of non-compliant implementation that result from national attempts to fit the provisions of the Directive into the logic of national law. This, for example, leads Estonia to fail to account properly for the interaction between existing national law and the provisions implementing Article 15's protections for right-holders of content included in press publications. A number of Member States (Austria, Estonia, France, Germany, Hungary, Italy and Spain) extend their implementations of Article 17 to all related rights. Such "homing tendencies"[15] (and mistakes in pursuing them) by Member States are to be expected, however the result is detrimental to the internal consistency of both national and EU law (a "double shattering" of the law, as it has been termed).[16]

Occasionally, the intersection between the DCDSM and national law will not be clear. Uncertainty can flow from both national law and the DCDSM. An example of both is provided by the Spanish provision stating that the national implementation of Article 17 DCDSM does not exclude alternative courses of action against OCSSPs. Whether this will conflict with the Directive or not will depend on the details of Spanish law and on whether the Directive harmonises all liability of OCSSPs for their users' infringing uploads or only their liability for communication to the public resulting from their users' infringing uploads. Similarly, Ireland appears to include of the reproduction right in the exclusive rights covered by Article 17 DCDSM – this is contrary to a teleological interpretation of the Directive, despite not being clearly excluded by its wording.

Issues may also arise in relation to compliant implementations. The most prominent are those that concern the implementation of the special liability regime of Article 17(4) DCDSM. As the report details, a distinction can be drawn here between the literal and elaborative ("traditional" and "balanced", as they have been termed respectively)[17] approaches to implementation. While both of these emerge as compliant – both copying and elaboration are, after all, acceptable transposition techniques – the divergence they introduce undercuts the Directive's ostensible objective of creating a Digital Single Market and the "full harmonisation" approach it takes to this end. It also results in uneven protection for fundamental rights across the EU. The same observation can be made with regard to compliant implementations of multiple other elements of both Article 15 and 17 DCDSM: a compliant national implementation of vague and novel terminology, such as "very short extracts" or "large amounts", does

[15] M van Eechoud *et al*, *Harmonizing European Copyright Law: The Challenges of Better Lawmaking* (Wolters Kluwer 2009), p. 301.
[16] H Koziol, "Comparative Conclusions" in H Koziol, *Basic Questions of Tort Law from a Comparative Perspective* (Jan Sramek Verlag 2015) 690.
[17] M Leistner, "The Implementation of Art. 17 DSM-Directive in Germany – A Primer with Some Comparative Remarks", 20 December 2021, forthcoming in GRUR Int. 2022, available at: https://ssrn.com/abstract=3989726 or http://dx.doi.org/10.2139/ssrn.3989726.

not mean that the risk of fragmentation has been eliminated.[18] Much depends on application in practice, meaning that continued vigilance is important. In the meantime, referrals to the CJEU are likely to start accumulating.[19]

This is disappointing, but not surprising.[20] Commentators have long observed that the addition of new territorial rights to the European *acquis* can undermine rather than support the establishment of an Internal Market.[21] Inevitably, this effect is more pronounced when the new EU provisions are – as Articles 15 and 17 DCDSM have been widely accused of being – badly drafted.[22] The intricate and obscure structures and contentious subject matter of these articles, as well as their heavy use of undefined terminology and occasional misalignment between the recitals and operative texts, do not facilitate either smooth national implementation or homogenous interpretation and application. As the European Commission has acknowledged,

> "[b]etter law-making helps better application and implementation […] If legislation is clear and accessible, it can be implemented effectively, citizens and economic actors can more easily understand their rights and obligations and the judiciary can enforce them."[23]

In pursuit of compromise, this principle was set aside during the intense discussions on Articles 15 and 17 in the run-up to the adoption of the DCDSM. The disharmonising results cannot be laid solely at the door of implementing national legislatures. They are equally the product of the EU legislator: an excellent national transposition of bad EU law will result in bad national law. To rectify them, the CJEU will no doubt have much DCDSM-focused work ahead of it. Inauspiciously, in *Poland*, that institution also shied away from a close engagement with the real issues. Hopefully, future judgments will dare to provide clarity.

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[18] Novel terminology always presents a risk of short-term disharmonisation and legal uncertainty, see M van Eechoud et al, *Harmonizing European Copyright Law: The Challenges of Better Lawmaking* (Wolters Kluwer 2009), p. 299.

[19] See R Barratta, "Complexity of EU law in the domestic implementing process" (2014) 2(3) The Theory and Practice of Legislation 293, noting that "if a normative text fails to fulfil the principle according to which *leges ab omnibus intelligi debent*, it is destined, in due course, to become a source of virtually endless references for preliminary rulings".

[20] M Leistner, "The Implementation of Art. 17 DSM-Directive in Germany – A Primer with Some Comparative Remarks", 20 December 2021, forthcoming in GRUR Int. 2022, available at: https://ssrn.com/abstract=3989726 or http://dx.doi.org/10.2139/ssrn.3989726; S Dusollier, "The 2019 Directive on Copyright in the Digital Single Market: Some Progress, a Few Bad Choices, and an Overall Failed Ambition" (2020) 57(4) Common Market Law Review, 979 and S Scalzini, "The New Related Right for Press Publishers – What Way Forward?" in E Rosati, The Routledge Handbook of EU Copyright Law (Routledge 2021) 101.

[21] M van Eechoud et al, *Harmonizing European Copyright Law: The Challenges of Better Lawmaking* (Wolters Kluwer 2009), p. 299.

[22] In discussing the quality of the EU copyright harmonisation project, van Eechoud et al quote Cornish et al.: "Haste and political pressure from interest groups do not make for good counsel when it comes to regulating complex and sensitive fields like that of sanctions and procedural measures for IP protection." See W Cornish et al., "Procedures and Remedies for Enforcing IPRs: The European Commission's Proposed Directive" (2003) 25 EIPR 447 in M van Eechoud et al, *Harmonizing European Copyright Law: The Challenges of Better Lawmaking* (Wolters Kluwer 2009), p. 28.

[23] European Commission, "EU law: Better results through better application" (2017/C 18/02) OJ C 18/10. See also Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (2016) OJ L 123/1, according to which, the "three Institutions agree that Union legislation should be comprehensible and clear, allow citizens, administrations and businesses to easily understand their rights and obligations, include appropriate reporting, monitoring and evaluation requirements, avoid overregulation and administrative burdens, and be practical to implement."

Annex 4 – List of Incompatibilities

Article 15 - List and classification of most significant identified incompatibilities of national implementations with EU law

Note: Incompatibilities may be listed more than once, where different classifications apply. Classifications amount only to suggestions – alternative descriptions may apply. List includes cases of uncertain incompatibility.

ARTICLE 15 INCOMPATIBILITIES	
ADDITIONS	**DE** – extension of revenue sharing to the holders of related rights in content included in a press publication **ES** – definition of "very short extracts"
OMISSIONS	**AT** – omission of qualifier (c) in definition of press publications **DK** – omission of definition of press publications; no protection for public domain content **EE** – no protection for public domain content; minimalist protection for other right-holders and licensees **FR** – no protection for public domain content; omission of guarantee in favour of private or non-commercial uses by individuals **HU** – no protection for public domain content; minimalist/ no protection for other right-holders and licensees
INCOMPATIBLE GOLD PLATING (EXCESSIVELY MAXIMALIST TRANSPOSITION)	**AT** – omission of qualifier (c) in definition of press publications **DE** – extension of revenue sharing to the holders of related rights in content included in a press publication **DK** – no geographic limitation **EE** – no protection for public domain content; minimalist protection for other right-holders and licensees **FR** – definition of "very short extracts"; replacement of "online uses" with uses "in digital format"; definition of reproduction right; omission of guarantee in favour of private or non-commercial uses by individuals **HU** – no geographic limitation; minimalist/ no protection for other right-holders and licensees **IE** – broad exclusive rights **IT** – definition of "very short extracts"; broad definition of CTTP **MT** – no geographic limitation **ES** – definition of "very short extracts"
EXCESSIVELY MINIMALIST TRANSPOSITION	**IE** – protection only for publishers established in territory **ES** – requirement that press publications include subject matter other than literary works; protection only for publishers established in territory

ARTICLE 15 INCOMPATIBILITIES *(continued)*	
INCORRECT INTERPRETATION OF AUTONOMOUS CONCEPTS OF EU LAW	**AT** – omission of qualifier (c) in definition of press publications **FR** – definition of "very short extracts"; protection for news agencies (unclear compatibility) **IT** – definition of "very short extracts" **ES** – definition of "very short extracts"; requirement that press publications include subject matter other than literary works; protection for news agencies (unclear compatibility)
VARIATIONS IN TERMINOLOGY	**FR** – replacement of "online uses" with uses "in digital format"; replacement of ISSP with "online public communication services"
HOMING TENDENCIES	**EE** – no protection for public domain content; minimalist protection for other right-holders and licensees **FR** – definition of reproduction right **HU** – minimalist/ no protection for other right-holders and licensees) **IE** – broad exclusive rights **IT** – broad definition of CTTP

Article 17 - List and classification of most significant identified incompatibilities of national implementations with EU law

Note: Incompatibilities may be listed more than once, where different classifications apply. Classifications amount only to suggestions – alternative descriptions may apply. List includes cases of uncertain incompatibility.

ARTICLE 17 INCOMPATIBILITIES	
ADDITIONS	**AT** – addition of condition of competition with other providers to OCSSP definition; no immunity for piracy providers **DE** – interpretation of "best efforts" to obtain authorisation; addition of condition of competition with other providers to OCSSP definition; no immunity for piracy providers **FR** – extension to reproduction right; no immunity for piracy providers **IE** – potential extension to reproduction right **MT** – no immunity for piracy providers **ES** – OCSSPs must store and give access to protected content in large amounts or have a large audience in Spain; rule on additional courses of action, e.g., unjust enrichment
OMISSIONS	**DK** – no carve-outs from OCSSPs definition; no prohibition on general monitoring obligations; no parody exception **FR** – authorisations for users don't protect OCSSPs **HU** – no carve-outs from OCSSPs definition
INCOMPATIBLE GOLD PLATING (EXCESSIVELY MAXIMALIST TRANSPOSITION)	**AT** – potential expansion to other rights, incl. PPR; no immunity for piracy providers **DE** – potential expansion to other rights, incl. PPR; no immunity for piracy providers **DK** – no carve-outs from OCSSPs definition **EE** – expansion to other rights, incl. PPR **FR** – potential expansion to other rights, incl. PPR; extension to reproduction right; no immunity for piracy providers **HU** – potential expansion to other rights, incl. PPR; no carve-outs from OCSSPs definition **IE** – potential extension to reproduction right **IT** – potential expansion to other rights, incl. PPR **MT** – no immunity for piracy providers **ES** – potential expansion to other rights, incl. PPR; OCSSPs must store and give access to protected content in large amounts or have a large audience in Spain; rule on additional courses of action, e.g., unjust enrichment

ARTICLE 17 INCOMPATIBILITIES *(continued)*	
EXCESSIVELY MINIMALIST TRANSPOSITION	**AT** – addition of condition of competition with other providers to OCSSP definition **DE** – addition of condition of competition with other providers to OCSSP definition; interpretation of "best efforts" to obtain authorisation; payment of appropriate remuneration for parodies (unclear compatibility) **DK** – no parody exception **FR** – narrow quotation exception; authorisations for users don't protect OCSSPs **IE** – not clear that performers are protected; "fair dealing" conditions for E&Ls (unclear compatibility) **ES** – narrow quotation exception
INCORRECT INTERPRETATION OF AUTONOMOUS CONCEPTS OF EU LAW	**DK** – no carve-outs from OCSSPs definition **DE** – interpretation of "best efforts" to obtain authorisation **HU** – no carve-outs from OCSSPs definition **FR** – definition of "large amounts" may be incompatible depending on CJEU definition; narrow quotation exception **ES** – OCSSPs must store and give access to protected content in large amounts or have a large audience in Spain; narrow quotation exception
VARIATIONS IN TERMINOLOGY	**AT** – change of "best efforts" to "every effort" **HU** – change of "high industry standards of professional diligence" to "industry standards of professional diligence" **IT** – change of "best efforts" to "greatest efforts" **ES** – change of "best efforts" to "biggest efforts"
HOMING TENDENCIES	**AT –** potential expansion to other rights, incl. PPR **DE** – potential expansion to other rights, incl. PPR **EE** – expansion to other rights, incl. PPR **FR** – potential expansion to other rights, incl. PPR; extension to reproduction right; narrow quotation exception **HU** – potential expansion to other rights, incl. PPR **IE** – potential extension to reproduction right; "fair dealing" conditions for E&Ls (unclear compatibility) **IT** – potential expansion to other rights, incl. PPR **ES** – potential expansion to other rights, incl. PPR; narrow quotation exception