CENTRE FOR INTELLECTUAL PROPERTY & INFORMATION LAW

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

Questionnaire – Annex to the Comparative National Implementation Report

GREECE

Last Updated: 10 August 2023

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This comparative report is based on 25 national questionnaires prepared by national legal experts.

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

Country: GREECE

National Expert: DR ANNA DESPOTIDOU (School of Law, Aristotle University of Thessaloniki)

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PART I: Article 15 CDSMD

Note: The questions below concern the national implementation of Article 15 CDSMD in your country. They refer to this as the "local national implementation" or LNI. It is recommended that you read all the questions before beginning to compose answers. In all responses, please cite the relevant provisions of national law in your country.

Background information

1. Did your national jurisdiction provide protection (whether via copyright or a relevant targeted related right) for press publications prior to the adoption of the CDSMD? If so, please briefly describe this, indicating any differences from the protection provided by Article 15 CDSMD.

No, Greek legislation did not provide any special protection, either via copyright or any other relevant related right, for *press publications* prior to the adoption of the CDSMD. However, on the condition of originality, articles as well as reports of any kind, with or without photos, that are published in the press, are protected as "works" by regular copyright. In addition, *publishers of printed matter* in general, are granted a special related right to authorise or prohibit the reproduction, by reprographic, electronic or any other means, of the typesetting and pagination format of the works published by them, if the said reproduction is made for exploitation purposes (Art. 51 L. 2121/1993). Obviously, the protection granted herewith is of a narrower scope than the one provided by Article 15 CDSMD and, due to the way press publications are usually exploited in the digital environment (i.e., by the ISSPs), *it seems to be of no relevance in the context under consideration.*

2. Has Article 15 CDSMD been transposed into national law in your country? If so, please cite the legal act with which and the date on which this was done. Please also briefly indicate whether you consider that the transposition takes a textual ("*ad litteram*") or intentionalist approach (e.g., one that is adaptive to national circumstances).

Yes. The Greek legislator has transposed the CDSM Directive into the Greek legal order on the 24 of November 2022, by enacting L. 4996/2022 (ΦΕΚ Α΄ 218/24.11.2022, available at: https://www.opi.gr/images/library/nomothesia/ethniki/nomoi/4996_2022_pdf), which amended the basic Greek Copyright Law (L. 2121/1993 on "Copyright, Related Rights and Cultural Matters", ΦΕΚ Α΄ 25/4.03.1993, available at: https://opi.gr/en/library/law-2121-1993), as well as L. 4481/2017 on "Collective Management of Copyright and Related Rights" (ΦΕΚ Α΄ 100/20.7.2017, available at: https://opi.gr/en/library/law-4481-2017). In this context, Article 15 CDSMD has been transposed by Art. 18 of the above L. 4996/2022, according to which *a new* Article is to be added in L. 2121/1993, after Art. 51A that provides protection to *previously unpublished works*, as Art. 51B, under the title: "Protection of press publications concerning online uses – Enabling provision". In my opinion, the Greek implementation of Article 15 CDSMD is *partially of a textual nature* (i.e., in relation to the concept of "press publication", the beneficiaries of the protection as well as the rights granted to them) and partially *of an intentionalist one*, since, as explained below, in certain matters it does not only depart from the wording of the original text, but it also adopts rather innovative/"creative" approaches (i.e., regarding the exclusion of "very short extracts" or the determination of press publishers' remuneration)[1].

[1] See A Despotidou, "Implementing Article 15 of the CDSMD into the Greek legal order: "creative" or further confirmation of the EU press market's fragmentation?", Kluwer Copyright Blog, 8 March 2023, available at: https://copyrightblog.kluweriplaw.com/2023/03/08/implementing-article-15-of-the-cdsmd-into-the-greek-legal-order-creative-or-further-confirmation-of-the-eu-press-markets-fragmentation/.

If available, please provide a link to the legal provision in the official language(s) of your jurisdiction. If you are aware of a good (official or unofficial) English language translation, please include that as well.

The provision of Article 51B of L. 2121/1993 can be found in Greek at the official page of the Hellenic Copyright Organization (HCO):
https://opi.gr/vivliothiki/2121-1993#a51b

The Hellenic Copyright Organization (HCO) provides a good (not "official") translation in English at:
https://opi.gr/en/library/law-2121-1993#a51b

Note: if there is no national implementation of Article 15 CDSMD, please process to Part II of the questionnaire.

AC 1: Subject matter

3. What is the subject matter (object) of protection by the LNI and how is this defined? Please focus on any differences (including additions) from the concept of "press publications" as defined by Art. 2(4) CDSMD.

The subject matter/"object" of protection according to Article 51B para. 1 of the L. 2121/1993 is the "press publication". It is defined *exactly as* in Article 2 (4) of the CDSMD, which is transposed *ad litteram* in para. 1 of the above Greek provision. In addition, periodicals that are published for scientific or academic purposes, such as scientific journals, *are not* press publications for the purposes of the above national provision.

4. Does the LNI protect against uses of individual words or very short extracts? If these are excluded from protection, how are they defined? Please note whether a qualitative or quantitative approach is taken and whether such short extracts may include non-literary content. Please note whether there are specific provisions on headlines.

Article 51B para. 2 (*in fine*) L. 2121/1993 protects against uses of individual words or very short extracts, in the sense that they are explicitly excluded from the scope of the PPR. Although *there is no specific reference* to the exact number of words under which the use of an extract/part of a press publication by an Information Society Service Provider (ISSP) should always be permitted. As to the definition of "very short extracts" a rather *qualitative approach has been taken*. More specifically, the Greek implementing provision provides that an extract should be deemed as being "very short" when its use does not affect the effectiveness of the rights granted to press publishers herewith. This, as further elaborated, will be the case "in particular, when the use of the extract replaces the press publication itself or prevents the interested party from reading it". The qualitative approach adopted here is clearly inspired by Recital 58 (*in fine*) CDSMD, whereas the wording of the respective definition resembles that of the Italian implementation.[2] In addition, it is based on competition law justifications and makes algorithmic enforcement harder, while putting fundamental rights' protection at risk. Mainly because, pursuant to the Greek definition, even a very short extract, the use of which affects the effectiveness of the PPR, since it "undermines the investments made by the publishers of press publications in the production of content" (Recital 58, *ab initio*), may not qualify as "very short" and, therefore, its use (by the ISSPs) will not be permissible[3].

[2] See C Sganga, Answer to Q. 4 in the national report on the implementation of Article 15 in Italy.
[3] See A Despotidou, "Implementing Article 15 of the CDSMD into the Greek legal order: "creative" or further confirmation of the EU press market's fragmentation?", Kluwer Copyright Blog, 8 March 2023, available at: https://copyrightblog.kluweriplaw.com/2023/03/08/implementing-article-15-of-the-cdsmd-into-the-greek-legal-order-creative-or-further-confirmation-of-the-eu-press-markets-fragmentation/

The (qualitative) definition of "very short extracts" adopted by the Greek legislator *does not exclude the possibility that such short extracts may include non-literary content*. This conclusion is further substantiated by the fact that press publications *per se* may contain not only text contributions (i.e., "literary content"), but – in addition to these – other types of works and protected subject matter, such as graphics, photographs, audio and video sequences etc.[4]

There are no specific provisions regarding headlines.

5. Does the LNI extend to mere facts reported in its subject matter? If these are excluded from protection, how are they defined?

"Mere facts reported in press publications" are not explicitly excluded from protection, according to Article 51B of L. 2121/1993. However, Article 2, para. 5 of the latter, that only excludes "mere facts" from *copyright protection*, should not be regarded as being sufficient.

6. Does the LNI extend to public domain content incorporated in its subject matter? If these are excluded from protection, how are they defined?

Regarding "public domain content", Article 51B para. 3 *in fine* (sec. 4) explicitly provides that the rights granted to press publishers herewith shall not be invoked (by them) to prohibit third parties and, in particular, ISSPs from using works or other subject matter, which are incorporated in the press publication and *for which protection has expired*. As a result, other elements of the public domain, such as news, information, mere facts or data, cannot be considered as being excluded from the protection granted to press publishers.

7. Does the LNI include any other threshold conditions for protection?

No, the Greek implementation does not include any other threshold conditions for protection, nor does it go beyond the requirements provided for in Article 15 CDSMD.

AC 2: Right-holders

8. Who are the beneficiaries of the protection for press publications in the LNI? Please indicate any exclusions, (e.g., territorial). Please indicate if the LNI employs lists of press publications or beneficiaries that would be covered.

According to Article 51B, para. 2 of L. 2121/1993, the protection for press publications is granted to "*publishers of press publications*" established in a Member State and, therefore, it could be regarded as a legislative attempt to reinforce the EU publishers. The Greek implementing provision does not indicate any further exclusions, nor does it provide any definition regarding the above notion. Apart from this "limited" reference, Article 51B does not employ any lists of press publications or beneficiaries that would be covered.

AC 3: Restricted acts

9. Against what kind of acts does the LNI protect? Please provide any relevant definitions.

The Greek implementation (Article 51B, para. 2) "protects", i.e., attributes to publishers of press publications *the right to authorise or prohibit,* in relation to the online use of their publications by Information Society Service Providers (ISSPs): a) the direct or indirect, temporary or permanent reproduction by any means and form, either in whole or in part; and b) the making available to the public, by wire or wireless means, in such a way that anyone may have access to them from a time and place individually chosen by her/him.

[4] Recital 56 CDSMD; also see M Leistner, Answer to Q. 4 in the national report on the implementation of Article 15 in Germany.

In other words, Art. 51B of L. 2121/1993 provides to publishers of press publications the rights *of reproduction and making available to the public*. The "general" definition of both rights is provided, in relation to authors and their works, in Art. 3 of L. 2121/1993. More specifically, the right of reproduction is defined in para. 1 (a) of the latter, exactly as here, whereas the right of making available to the public is regulated in para. 1 (h) of the same provision as *a special part* (or "expression") of the broader right of *communication* (*of the work*) *to the public*, that may be delivered/executed by wire or wireless means or in any other way.

As regards to the definition of the ISSPs, please proceed to answer no. 11.

10. Does the LNI cover hyperlinking to the protected subject matter? If not, how is hyperlinking defined?

No, hyperlinks are explicitly excluded from the protected subject matter. In particular, Art. 51B, para. 2 sec. 2 *in fine* refers to "acts of posing hyperlinks", but, apart from this, no definition of "hyperlinking" is provided.

AC 4: Targeted users

11. Does the LNI target use by a specific kind of user (provider)? Please provide any relevant definitions. Specifically, please indicate whether private or non-commercial uses by individual users are covered. Please also indicate whether online platforms (OCSSPs) are covered.

Article 51B para. 2 (sec. 1) L. 2121/1993 protects against the online use of press publications by Information Society Service Providers (ISSPs), which it defines by reference to Article 2 para. 1 (b) of the Presidential Decree 81/2018 (FEK A΄ 218). The latter has transposed Directive (EE) 2015/1535 of the European Parliament and of the Council of 9 September 2015 (EE L. 241/1 – 17.9.2015), "laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services" into the Greek legal order. However, Article 2 para. 1 (b) of P.D. 81/2018, that corresponds to the provision of Article 1 para. 1 (b) of the respective Directive, defines the concept of the (Information Society) "service" and not of the (Information Society) "provider", referring, accordingly, to "any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services".

Online platforms (OCSSPs) are not explicitly mentioned in Article 51B.

As regards "private or non-commercial uses of press publications by individual users", Article 51B para. 2 (section 2) explicitly provides that the rights granted to press publishers herewith *shall not apply to them*, "copying" the wording of Art. 15 para. 1 section 2 CDSMD.

12. Does the LNI allow for the rights it provides to be invoked against:
- **a) right owners whose content is incorporated in the protected subject matter?**
- **b) holders of licenses to exercise rights in content that is incorporated in the protected subject matter?**

Please describe the applicable rules.

a) Pursuant to Article 51B para. 3 (sec. 1 & 2), the rights provided for under para. 2 (of the same provision) shall not prejudice the rights provided for in national and EU law *to authors and other right-holders* in respect of the works or other protected subject matter incorporated into a press publication. Likewise, the rights provided for under the above para. 2, shall not be invoked against those authors and other right-holders and, in particular, shall not deprive them from their right to exploit their works and other subject matter independently from the press publication in which they are incorporated.

b) Pursuant to Article 51B para. 3 (sec. 3), when a work or other protected subject matter is incorporated in a press publication *on the basis of a non-exclusive license*, the rights provided for in para. 2 (of the same provision) shall not be invoked to prohibit the use by other authorised users.

Obviously, in this aspect, the Greek legislator *has slavishly* transferred the provision(s) of Art. 15 para. 2 (sec. 1 and 2) CDSMD into para. 3 (sec. 1, 2 & 3) of the "new" Article 51B L. 2121/1993.

AC 5: Exceptions and limitations

13. Does the LNI recognise exceptions or limitations to the protection it provides? If so, please indicate what these are.

Art. 52 of L. 2121/1993, that regulates the "Type of license(s), limitations and duration of (related) rights, as well as other relevant matters" has been recently (i.e., in the context of the implementation of the CDSMD into the Greek legal order) modified *in order to apply to the press publisher's relative right as well*. Therefore, according to lit (b) of this provision, (all) the "general" exceptions or limitations, which are provided for copyright, i.e., for the economic rights of the author(s), apply accordingly (*by analogy/mutatis mutandis*) to the related rights regulated in Articles 46 to 51B of L. 2121/1993. These limitations and exceptions are included in Articles 18 to 28C of the latter and they are the following:

Art. 18: Reproduction for private use (private copy exception), Art. 19: Quotation of extracts, Art. 20: Reproduction of works in school textbooks and anthologies, Art. 21: Use of works for teaching purposes (as recently modified to implement Art. 5 CDSMD), Art. 21A (*new*): Exception for text and data mining for scientific research purposes, Art. 22B (*new*): Exception for text and data mining from reproduction and extraction of lawfully accessible works and other material, Art. 22: Reproduction of an additional copy by non- profit libraries or archives, Art. 22A (*new*): preservation of cultural heritage, Art. 23: Reproduction of Cinematographic works, Art. 24: Reproduction for judicial or administrative purposes, Art. 25: Reproduction for information purposes, Art. 26: Use of images of works situated in public places, Art. 27: Public performances or presentations on special occasions, Art. 27A: Certain permitted uses of orphan works, Art. 27B (*new*): Use of out of commerce works and other subject matters of protection, Art. 28: Exhibition and reproduction of works of fine arts, Art. 28A: Permitted uses for the benefit of persons who are print - disabled and persons with other disabilities, Art. 28B: Exception from the reproduction right (implementing Art. 5 para. 1 ISD), Art. 28C: Three-steps test.

Apparently, the provision of Article 52 (b) L. 2121/1993 *is in compliance with the provision of Article 15 para. 3 CDSMD*, according to which "Articles 5 to 8 of Directive 2001/29/EC, Directive 2012/28/EU and Directive (EU) 2017/1564 of the European Parliament and of the Council *shall apply "mutatis mutandis*" in respect of the rights granted to press publishers, pursuant to paragraph 1 of the above Article 15". However, some of the exceptions or limitations mentioned above are (obviously) of no relevance here, which leads us to believe that the EU legislator has – in this matter – expressed her/himself broader that she/he actually wanted.

AC 6: Licensing

14. Does the LNI include provisions on the licensing (incl. systems of extended collective licensing) of uses of press publications? If so, please briefly describe any relevant details. For example, these could involve the following:

- **criteria for determining the height of compensation;**
- **the process for negotiating compensation;**
- **transparency duties (incl. data sharing obligations);**
- **duties to engage in negotiations;**
- **oversight by a government authority;**
- **(mandatory) collective rights management**

Yes, the Greek implementation includes provisions on the licensing of uses of press publications, in paras 5-7 of Article 51B L. 2121/1993. In particular, as elaborated below, *a set of specific rules* regarding the determination (of the height/level) of the "remuneration" due to press publishers for the use of their publications by ISSPs are enacted. These rules are obviously inspired by the Italian implementation of Article 15 CDSMD.[5] However, the Greek legislator explicitly (and deliberately) uses the broader term "remuneration" instead of "fair compensation", probably bearing in mind that the latter is generally used in the context of exceptions (i.e., private levy schemes), collective and/or mandatory licensing and not when exclusive rights are being licensed to third persons ("users"), as in the case under examination.

[5] See C Sganga and M Contardi, "The new Italian press publisher's right: creative, fairness – oriented…and invalid?" (2022), 17 (5) JIPLP 421; also see C Sganga, Answer to Q. 14 and 19 in the national report on the implementation of Article 15 in Italy.

Furthermore, according to Article 51B para. 5 L. 2121/1993, the remuneration of the press publishers for the use of their respective press publications by ISSPs is to be determined *on the basis of the following criteria*: the number of years that both the ISSPs and the press publishers' enterprises have been active in the relevant market, their respective market share, the online traffic of the press publications under protection, the number of journalists employed by each publisher, the financial benefits generated (without further specification), as well as *any other criterion that may be deemed as appropriate for its calculation*. As becomes apparent from the language used, the list of criteria provided for in the above provision is indicative. In addition, the Plenary Session of the Hellenic Telecommunications & Post Authority (EETT) is given the power to issue a Regulation, in the context of which the above criteria *shall be further specified*. Apart from the fact that this Regulation hasn't been issued yet, one might actually question the relevance of the criteria provided for here to the value of the news and the publishers' investments, that are the intended object of protection granted by Article 15 CDSMD.

As to the process for negotiating the level of the remuneration due, paras 6 and 7 include detailed provisions. More specifically, negotiations may begin by one of the interested parties (press publisher or ISSP) sending an invitation to the other. If within sixty (60) days from the submission of such an invitation an agreement on the amount of the remuneration due is not reached, every party may submit a request – accompanied by an economic proposal – within the next thirty (30) days, asking the EETT to form a special Committee to decide on the matter. Having called the parties to submit their memorandums and present their opinions and arguments against each other, the Committee is entitled, even if one of the parties did not take part in the procedure, *to issue a confidential opinion regarding the appropriate amount of the remuneration that is owed to the press publisher.* The opinion of this special Committee is issued according to the EETT's principles and rules in relation to the handling of confidential documents, taking into account the criteria set out in the Regulation mentioned above, and may be used in court. Additionally, by means of a decision and under the threat of a financial fine (of EUR 50.000 up to 10.000.000) in case of non-compliance, the deciding Committee *may request* that any of the interested parties *disclose all the financial data that are necessary for the determination of the remuneration due* and take measures to secure the visibility of the press publishers' content on the ISSPs' search results page, until its opinion is published. If the parties, during the proceedings provided for in sections 1 to 5 of para. 5 of Article 51B L. 2121/1993, manage to reach an agreement regarding the amount of the remuneration under consideration, *they shall inform the Committee by the means of a joint declaration*. In such a case, the Committee must abstain from any further action, *whereas the responsibility for concluding the agreement (or not) is left to the parties concerned*.

In this sense, if none of the latter requests the issuance of the Committee's opinion within the deadline provided for in para. 6 sec. 1 (of Article 51B) or at least one of them does not accept the opinion issued or, in general, the parties fail to reach an agreement in relation to the "appropriate" remuneration of the press publisher(s), *any of the parties involved may bring the case to the competent first instance* (*civil*) *courts of Athens*, so that the amount due may be definitively decided. The competent court can, following a request from any litigant party that may be submitted even before the appointed hearing, order a number of measures – in accordance with the procedure of Article 691 et seq. of the Greek Code of Civil Procedure – *that are listed there exhaustively*. For example, it may order the parties to submit the evidence that is necessary for the determination of the remuneration due or to regulate – on a temporary basis – the maintenance of the visibility of the press publishers' content on the ISSPs' search results page. However, neither the wording nor the spirit of the provision of Article 51B, para. 7 of L. 2121/1993 implies a duty to conclude a contract, notwithstanding the enforceability of court orders. In addition, although the failure of the negotiations between the interested parties *"opens the door" for the intervention of* a public authority (i.e., EETT) in the whole process, no duty to engage in negotiations is imposed by para. 6 of Article 51B. Nonetheless, the fact that the right to bring the case to the competent court(s), if no agreement as to the level of the remuneration due has been reached, is offered to both parties/publishers and ISSPs, as if they were "equals", may actually raise concerns, since it does not seem to be in compliance with the *ratio* of Article 15 CDSMD[6].

[6] In this context, see C Sganga, Answer to Q. 14 in the national report on the implementation of Article 15 in Italy.

AC 7: Revenue sharing

15. Does the LNI require that any revenue it provides be shared with authors of works incorporated in its subject matter? If so, does it provide details on e.g., the size of the share or modes of collection and distribution or transparency obligations on press publishers? Please describe the applicable rules.

Yes, Art. 51B para. 4 L. 2121/1993 provides that authors of works, which have been incorporated into a press publication, *shall receive a percentage of the annual revenues* received by press publishers from ISSPs for the use of their respective publications. With the exception of its management by CMOs, the right of the authors to receive a "share" of the above revenues shall be inalienable and any contractual clause to the contrary shall be void.

Regarding *the size of the share* due to the authors, the Greek implementation has been rather "creative". More specifically, according to Art. 51B para. 4 sec. 2, the percentage to which the authors are entitled amounts to twenty-five percent (25%) of the annual revenue of the press publishers, if the latter employ in their business less than sixty percent (60%) of the authors/journalists under a contract of dependent labour; and it falls to only fifteen percent (15%), if the percentage of authors/journalists employed by them, under the above status, exceeds the threshold of 60%. In addition, eligible authors include those who receive an old-age or disability pension.

As already mentioned in a different context[7], the national provision discussed here is obviously *a result of journalistic lobbying*, whereas the arbitrary character of the criterion used for determining the "appropriate" share of the authors, as well as its incompatibility with the principle of equality, are striking. Therefore, para. 4 of Article 51B L. 2121/1993 *goes beyond the standards* set out in para. 5 of Article 15 CDSMD and, sooner or later, it will be challenged in the courts.

AC 8: Term of protection

16. What is the term of the protection afforded to press publications by the LNI?

According to Article 52, lit. (m) of L. 2121/1993, the rights provided for in Article 51B shall expire 2 (two) years after the press publication is published. The term shall be calculated from the 1 January of the year following the date the press publication at issue was published.

AC 9: Waiver

17. Can right-holders waive their rights under the LNI? Can authorisation be given for free?

The Greek implementation remains "silent" in relation to this matter.

AC 10: Entry into effect

18. From what date did the protection provided by the LNI come into effect in your jurisdiction?

According to Article 68A ("Intertemporal Law") para. 5 of L. 2121/1993, Article 51B and lit. (m) of Article 52, which, amongst others, constitute an implementation of the Directive (EU) 2019/790 (CDSMD), shall apply from 7 June 2021, and the acts that have been concluded as well as the rights that have been acquired before this date shall not be prejudiced. However, as regards the application of para 6 of Article 51B, concerning the procedure that has to be followed for the determination of the remuneration of press publishers from ISSPs (see Q. 14 above), *it is specifically provided* it will begin from 1 March 2023, whereas – until that date – para. 7 of the same provision, referring to the right of the parties to ask courts to determine the level of the above remuneration, is directly applicable. Finally, para 6 of Article 68A provides that para. 2 of Art. 51B *shall not apply* to press publications which have been published for the first time before 6 June 2019.

[7] See A Despotidou, "Implementing Article 15 of the CDSMD into the Greek legal order: "creative" or further confirmation of the EU press market's fragmentation?", Kluwer Copyright Blog, 8 March 2023, available at: https://copyrightblog.kluweriplaw.com/2023/03/08/implementing-article-15-of-the-cdsmd-into-the-greek-legal-order-creative-or-further-confirmation-of-the-eu-press-markets-fragmentation/.

Additional information

19. Can you think of any noteworthy divergence in the LNI from the standards set out in Article 15 of the CDSMD that you have not already addressed above? If so, please elaborate.

The most important divergences in the Greek implementation from the standards set out in Article 15 of the CDSMD refer to *the licensing of uses* of press publications, as well as to *the sharing of the revenues* received by press publishers from ISSPs for the use of their respective publications. Both of these have been discussed in length in the context of the answers given to Questions 14 and 15, above. It remains to be seen if the relevant national provisions (paras 4 to 7 of Article 51B L. 2121/1993) will be challenged in the courts, either at a national or/and at an EU level, as being examples of "gold-plating" that are not sufficiently justified.

PART II: Article 17 CDSMD

Note: The questions below concern the national implementation of Article 17 CDSMD in your country. They refer to this as the "local national implementation" or LNI. It is recommended that you read all the questions before beginning to compose answers. In all responses, please cite the relevant provisions of national law in your country.

Background information

1. **Has Article 17 CDSMD been transposed into national law in your country? If so, please cite the legal act with which and the date on which this was done. Please also briefly indicate whether you consider that the transposition takes a textual ("*ad litteram*") or intentionalist approach (e.g., one that is adaptive to national circumstances).**

Yes. The Greek legislator has transposed the CDSM Directive into the Greek legal order on the 24 November 2022, by enacting L. 4996/2022 (ΦΕΚ Α΄ 218/24.11.2022, available at: https://www.opi.gr/images/library/nomothesia/ethniki/nomoi/4996_2022_pdf), which amended the basic Greek Copyright Law (L. 2121/1993 on "Copyright, Related Rights and Cultural Matters", ΦΕΚ Α΄ 25/4.03.1993, available at: https://opi.gr/en/library/law-2121-1993) as well as L. 4481/2017 on "Collective Management of Copyright and Related Rights" (ΦΕΚ Α΄ 100/20.7.2017, available at: https://opi.gr/en/library/law-4481-2017). In this context, Article 17 CDSMD has been transposed by Art. 20 of the above L. 4996/2022, according to which *a new* Article is to be added in L. 2121/1993, after Article 66E that refers to the "Enforcement of protection of copyright and related rights in the internet", as Art. 66F, under the title: "Definition of online content-sharing service provider and use of works or other subject matters of protection by online content-sharing providers". In particular, the provision under consideration has been added in Chapter 11 of the Greek Copyright Law, that is devoted to the "Legal Protection" of rights.

In my opinion, the Greek implementation of Article 17 CDSMD takes a *textual* ("*ad litteram*") *approach*, with a few and minor exceptions, mostly in cases where the national legislator has decided to incorporate into the normative text of Article 66F parts of the recitals of the Directive (e.g., see the answer to Q. 5, below, regarding the transposition of Recital 62 CDSMD on *the exclusion from the immunity* (granted by Article 17(4)) of providers, whose main purpose is to participate in or to facilitate copyright piracy).

If available, please provide a link to the legal provision in the official language(s) of your jurisdiction. If you are aware of a good (official or unofficial) English language translation, please include that as well.

The provision of Article 66F of L. 2121/1993 can be found in Greek at the official page of the Hellenic Copyright Organization (HCO):

https://opi.gr/vivliothiki/2121-1993#a66f

A good ("unofficial") English language translation of Article 66F L. 2121/1993 is provided by the Hellenic Copyright Organization at the following link:

https://opi.gr/en/library/law-2121-1993#a66f

Note: if there is no national implementation of Article 17 CDSMD you can end the questionnaire at this point.

AC 1: Subject matter

2. What is the subject matter (object) of protection by the LNI?

According to para. 2 sec. 1 of Art. 66F L. 2121/1993, protection is granted to *works* protected by copyright law (see. Art. 2 L. 2121/1993), as well as to the *subject matter of related rights*, as provided for in Chapter 8 of L. 2121/1993 (Articles 48 et seq.). It should be mentioned, though, that the related right granted to publishers of printed matter(s), by Article 51 of L. 2121/1993 ("γραμμικό δικαίωμα εκδοτών εντύπων"), in relation to "the reproduction of the typesetting and pagination format of the works published by them", if it is made *for exploitation purposes*, is apparently excluded, since its subject matter is irrelevant in the context under examination (i.e. in the OCSSPs' digital environment).

AC 2: Right-holders

3. Who are the beneficiaries of the protection provided by LNI? Please note whether there are any deviations from the directive.

As derives from the provision of para. 2 sec. 2 of Article 66F L. 2121/1993, the beneficiaries of the protection granted herewith are authors (i.e., the owners of copyright) as well as holders of certain related rights. More specifically, apart from the related rights owners that are listed in Article 3(2) ISD, i.e., performers (or performing artists), phonogram producers (or producers of sound recordings), producers of audiovisual works (or producers of image or sound and image recording media) and broadcasting (i.e., radio and television) organisations (see, accordingly, Articles 46, 47 and 48 of L. 2121/1993), that are particularly mentioned in the Greek implementation, the latter *explicitly extends protection to press publishers* (pursuant to the new Article 51B).

AC 3: Exclusive rights

4. Against what kind of act does the LNI protect right-holders? Is a legal qualification given to those acts (e.g., "communication to the public")?

Article 66F para. 2 (sec. 2) L. 2121/1993 protects right-holders from acts performed by OCSSPs which constitute *either* communication to the public, in the broader sense, *or* making available to the public. The use of the conjunction "or" *is considered to be justified* due to the fact that, according to EU copyright law, there is a misalignment between authors and related rights owners in regard to the communication and making available (to the public) rights.[8] In this context and in compliance with Art. 3 (1) and (2) ISD, Art. 3 (h) L. 2121/1993 grants authors the broader right of communication to the public, which includes making available, whereas Articles 46 para. 2 (h), 47 para. 1 (d) and 2 (d), 48 para. 1 (g) and 51B para. 2 (b) L. 2121/1993 reserve for related rights owners only the making available right. In other words, in the matter under consideration, the Greek implementation (Article 66F para. 2 sec. 2) *adopts the wording of the Directive*, indicating explicitly the national provisions on the basis of which the aforementioned economic rights are granted to the "beneficiaries" of the protection granted herewith.

AC 4: Targeted providers

5. Does the LNI target a specific kind of service provider? Please provide any relevant definitions, including any exclusions ("carve-outs"). Please focus on any differences from the concept of "online content sharing providers" (OCSSPs) as defined by Article 2(6) CDSMD and any elements taken from the recitals (e.g., facilitating piracy, definitions of "large amounts").

Yes, the specific kind of service providers, at which Article 66F L. 2121/1993 is targeted, is indicated in para. 1 that transposes the definition of "online content sharing providers" (OCSSPs) of Article 2 para. 6 CDSMD into the Greek legal order. It should be noted that, apart from the definition of OCSSPs *per se*, also the list of "carve-outs" included in the above EU provision is transposed – word by word – in Article 66F para. 1 L. 2121/1993, *but* with a slight modification/"addition"**:** *online application shops* are also excluded from the definition with regard

[8] See C Angelopoulos, "Comparative National Implementation Report on "Articles 15 & 17 of the Directive on Copyright in the Digital Single Market", available at: https://informationlabs.org/copyright, p. 24.

to the protection granted herewith. Moreover, and to the extent this might be of any interest, the notion "large amounts" (of copyrighted works or other subject matter), that is to be found in the definition provided for in the Directive, has been rendered as "significant quantities" in the context of Article 66F para. 1 L. 2121/9193, probably following the French implementation. However, the Greek text contains no further specifications and/or explanations. Even more interesting, though, is the fact that the word "organises" has been rendered by the national legislator as "optimises" (= βελτιστοποιεί), which apparently *raises the requisite degree of the involvement* of the OCSSP in the organisation of protected material uploaded by its users. As already mentioned, though, if this stricter interpretation is adopted, then a number of OCSSPs, such as social media services, that leave considerable degree of organisational freedom to their users, may fall outside the definition provided for in the CDSMD for the purposes of Article 17.[9]

More importantly and in addition to the divergences discussed above, Article 66F para. 5 sec. 2 indicates that the liability exemption mechanism (i.e., the "immunity") provided to OCCSPs does not apply to service providers *whose main purpose is the participation in or the facilitation of piracy*. Although this restriction is included in Recital 62 of the Directive, nothing similar or equivalent can be found in the normative text of Article 17 CDSMD. Notwithstanding the ambiguities related to the interpretation of such a "purpose", unless we consider that the restriction at issue is *an application of the principle of proportionality*,[10] its implementation in Article 66F para. 5 does not seem to be justified.

6. Were the targeted service providers considered to infringe the relevant exclusive rights in your country prior to the adoption of the LNI? Please indicate whether any liability was primary or secondary.

Prior to the adoption of Article 66F L. 2121/1993 and pursuant to Article 14 of P. D. 131/2003 (that implements the E-Commerce Directive *safe harbour provisions* into the Greek law), the targeted service providers – and in particular the so-called "hosting service providers" – were not considered to infringe the relevant exclusive rights, i.e., they *were not held liable* for copyright infringing content uploaded by their users, *unless*:

a) they had actual knowledge of the infringement and, as regards claims for damages, they were also aware of facts or circumstances from which the latter was becoming apparent

b) they had acted expeditiously, i.e., as soon as they became aware of the infringement, to remove or otherwise disable access to the infringing content.

In order for the relevant rule to apply, the hosting service provider would have to confine itself to a merely "technical, neutral and passive" role, as to which the interpretation given by Greek courts was not consistent,[11] whereas the liability established herewith *was not primary*, but rather "secondary".

Moreover, implementing Article 8 (3) of the ISD and in compliance with Article 14 (3) of the E-Commerce Directive, Article 64A of L. 2121/1993 provides that "right-holders *may apply for an injunction* against intermediaries whose services are used by a third party to infringe copyright or a related right". However, according to the prevailing view, this provision *is of a purely "procedural nature"* and it does not independently establish service providers' secondary liability for direct copyright infringements committed by their users. Finally, Article 66E ("Enforcement of the Rights on the internet", available at: https://opi.gr/en/library/law-2121-1993#a66e), that was added to L. 2121/1993 by Article 52 para. 1 of L. 4481/2017 "Collective management of copyright and related rights, multi-territorial licensing in musical works for online use in the internal market and other issues falling within the scope of the Ministry of Culture and Sports" (FEK A΄ 100/20.07.2017) and has been recently modified (by Article 25 L. 4708/2020), puts in force the so-called "notice and take-down" procedure, engaging internet service providers in the combat against copyright infringement acts.

[9] See A Metzger and M Senftleben, "Selected Aspects of Implementing Article 17 of the Directive on Copyright in the Digital Single Market into National law – Comments of the European Copyright Society" (2020) 11 JIPITEC 115, available at https://ssrn.com/abstract=3589323, p. 3.

[10] See C Angelopoulos, "Comparative National Implementation Report on "Articles 15 & 17 of the Directive on Copyright in the Digital Single Market", available at: https://informationlabs.org/copyright, p. 28.

[11] See, One-Member Court of First Instance of Athens no 4658/2012, DiMEE 2013, 67 = NoB 2012, 1204 and no 13478/2014, DiMEE 2015, 253.

AC 5: Scope of protection

7. In your national jurisdiction prior to the transposition of the CDSMD did the service providers targeted by the LNI benefit from the protection of an immunity (e.g., the national implementation of the hosting safe harbour provided by Article 14 of the ECD (Directive 2000/31/EC))? If so, does this provision continue to apply?

Yes, prior to the transposition of the CDSMD the Information Society Service Providers (ISSPS) in general, including OCSSPs, *did* benefit from the protection of an immunity and, in particular, the so-called "safe harbour" provided for by Article 14 of the ECD. The latter has been implemented into the Greek legal order by Article 13 of the P.D. 131/2003 (FEK A΄ 116/16-5-2003), according to which the so-called *hosting providers are not held liable for the information* stored (by them) at the request of the recipient, if certain conditions are met. In other words, the liability exemption provided covers only (information society) services that play a neutral, merely technical and passive role towards the hosted content.

Article 13 of the P.D. 131/2003, as explicitly provided in Article 66F para. 4 sec. 1 of L. 2121/1993 (i.e., the Greek implementation of Article 17 CDSMD), "shall not to apply to cases *covered by this Article".* As further indicated, though, "this provision does not affect the potential application of Article 13 of the P.D. 131/2003 to service providers, to whom it concerns, for purposes which do not fall within the scope of Article 66F of L. 2121/1993".

8. Does the LNI provide an immunity for targeted service providers against the protection it introduces? If so, please describe the conditions for this immunity. To the extent that such conditions relate to obligations to take action against infringing content, please distinguish between obligations to take action against current infringing content and obligations to take action against future infringing content.

Yes, according to Article 66F para. 2 L. 2121/1993, OCSSPs, in order to communicate to the public or make available to the public works or other subject matter of protection, shall obtain right-holders' authorisation, in particular by concluding a licensing agreement. As further provided (see, para. 5 of the same Article), though, *if no authorisation is granted*, OCSSPs shall be held liable for unauthorised acts of communication and making available to the public, of copyright-protected works and other subject matter of protection (i.e., "primary" liability), unless they demonstrate, *in light of the principle of proportionality*, that they have cumulatively satisfied the following conditions: a) made *every possible effort* to obtain an authorisation and b) made, in accordance with high industry standards of professional diligence, every possible effort to ensure the unavailability of specific works and other subject matter of protection for which the right-holders have provided the service providers with the relevant and necessary information; and in any event c) acted expeditiously, upon receiving a sufficiently substantiated notice from the right-holders, to disable access to, or to remove from their website, the notified works or other subject matter of protection, and made every possible effort to prevent their future uploads in accordance with point (b).

From the wording of sec. 1 lit. (c) of the provision under examination, which "copies" (almost) slavishly that of para. 4 (c) of Article 17 CDSMD, it derives that the OCSSPs have to take immediate action *against current infringing content*, i.e., to disable access to or to remove from their website the works or other matter of protection, as soon as the respective right-holders so request, by giving them a sufficiently substantiated notice regarding the availability of unauthorised content on their websites (*notice and take down*). As far as future content is concerned, the second part of lit (c) requires that OCSSPs make every possible effort to prevent the future uploads of "notified" works, that have been already promptly removed (*stay down*), in accordance with lit. (b).

Apart from the *explicit, general reference to the principle of proportionality* in the beginning of para. 5 of Article 66F, the Greek implementation does not contain any further specifications regarding the procedures that have to be followed for the "illegal" content to be blocked. Obviously, the most significant deviation from the wording of the relevant EU text (i.e., Article 17 para. 4 CDSMD) is *the standard of care* to which targeted service providers should adhere in relation to the conditions of immunity provided for and, more specifically, the use of the term "*every possible effort*" instead of the initial "best efforts" (see Answer to Q. 9, below).

9. Does the LNI identify a standard of care to which targeted service provider should adhere in relation to the conditions of the immunity? For example, the Directive makes reference to "best efforts" and to "high industry standards of professional diligence". Please also discuss whether you consider any such terms used in the LNI to represent accurate translations of the corresponding terms in the EU provision, preferably taking into account both the English language and the national language versions.

Yes, in the Greek implementation (Article 66F para. 5 L. 2121/1993), both standards of care, provided for in the relevant EU provision in relation to the conditions of OCSSPs' immunity, i.e., "high industry standards of professional diligence", as well as "best efforts", are indicated. However, though the former has been translated accurately (= "υψηλά πρότυπα επαγγελματικής ευσυνειδησίας του κλάδου"), the term used for the translation of the latter, i.e., "κάθε δυνατή προσπάθεια", that equals to "every possible effort", can't be considered as being accurate and/or successful, since it *apparently exceeds the level of reasonableness* that is inherent in Article 17 para. 4 CDSMD and, thus, surpasses the EU legislator's original intent.[12] It is worth mentioning that the term "best efforts" had been *already inaccurately rendered as "κάθε δυνατή προσπάθεια" into the Greek official translation* of the CDSMD (i.e., the one that has been published in the EU Official Journal), whereas the Greek legislator, disregarding the consequences of this final choice, simply adopted it. Taking into account that the term "best efforts" is (definitely) an autonomous concept of EU, in conjunction with the fact that a variety of translations is to be found in the LNIs under consideration, the situation becomes rather problematic.

10. Are the conditions for the immunity in the LNI subject to the principle of proportionality? If so, please describe any specified implications.

Yes, *they all are*. In particular, the Greek implementation (Article 66F para. 5 *ab initio* L. 2121/1993) requires that the "measures"/means, that the OCSSPs must take to escape liability or, vice versa, *to be granted immunity*, follow the principle of proportionality, in the sense that "they need only limit themselves to due diligence endeavours".[13] In addition, para. 6 of the same provision, that transposes *ab litteram* para. 5 of Article 17 CDSMD into the Greek legal order, stipulates that, in order to determine whether the service provider has complied with its obligations under para. 5, *and in light of the principle of proportionality*, the following elements, among others, should be taken into account: a) the type, the audience and the size of the service and the type of works or other subject matter of protection uploaded by the users of the service, as well as b) the availability of suitable and effective means and their cost for service providers.

In the view of the above, it seems that the principle of proportionality should, on a case-by-case basis, determine when the conditions for the immunity are met.

11. Do the conditions of the immunity differ depending on the characteristics of the specific service provider (e.g., size or age)? If so, please describe those differences, providing any relevant definitions.

Yes, they do differ, depending on the criteria provided for in Article 66F para. 7 of L. 2121/1993, which implements the provision of Article 17 (6) CDSMD, establishing a special ("softer"/more lenient) regime for start-ups *almost verbatim*. It should be noted, however, that according to the Greek implementation, the immunity of the start-ups, of the size and age provided for in the Directive, *is also depended on the principle of proportionality*.

[12] In this context see A A Larroyed, "When translations shape legal systems: how misguided translations impact users and leas to inaccurate transposition – The case of 'best efforts' under Article 17 DCDSM", pp. 4, 16, available at: https://ssrn.com/abstract=3740066

[13] C Angelopoulos, "Comparative National Implementation Report on "Articles 15 & 17 of the Directive on Copyright in the Digital Single Market", available at: https://informationlabs.org/copyright, p. 29.

AC 6: Right-holder cooperation

12. Does the LNI depend the conditions of the immunity on right-holder cooperation? If so, please describe what cooperation is expected of right-holders.

Yes, it does so *indirectly*, in the context of the conditions that must be met in order that immunity be granted. More specifically, pursuant to Article 66F para. 5 sec. 1 lit. (b), OCSSPs must prove they made every possible effort, in accordance with high industry standards of professional diligence, to ensure the unavailability of specific works and other subject matter of protection *for which the right-holders have provided them with the relevant and necessary information*. Likewise, pursuant to the next provision (lit. (c)), they must prove they acted expeditiously, *upon receiving a sufficiently substantiated notice from the right-holders*, to disable access to or to remove from their websites the notified works or other subject matter, and made every possible effort to prevent their future uploads. In other words, the above obligations of OCSSPs (take-down and stay-down) are dependent on the right-holders' "initiatives", i.e., the proper execution of their *duties to inform* the respective providers, as already mentioned. It should be emphasised, that the Greek legislator has translated the relevant terms accurately, making the proper distinction between "relevant and necessary information", on the one hand, and "sufficiently substantiated notice", on the other.

13. Does the LNI allow right-holders to "earmark" content the unauthorised online availability of which could cause them significant economic harm? If so, please provide any definitions and conditions that govern such earmarking and describe any special regime set in place for earmarked content.

No such reference in made in the Greek implementation of Article 17 CDSMD.

AC 7: General monitoring

14. Does the LNI permit the conditions of the immunity to result in general monitoring? If not, please explain how "general monitoring" is defined.

Article 66F para. 9 sec. 1 stipulates that "the application of this Article shall not lead *to any general monitoring obligation*". However, apart from this general reference, no further specification or definition is provided.

15. Does the LNI recommend or dissuade from using any specific kind of technology in order to adhere to the conditions for immunity? If so, please describe.

No, it does not. We could say that the Greek implementation is, in fact, *technologically neutral*.

AC 8: Exceptions and limitations

16. Prior to the adoption of the LNI, did national law provide for an exception or limitation to copyright for uses for the purpose of a) quotation, criticism and review; and b) caricature, parody or pastiche? If not, has it now introduced such exceptions or limitations? Please describe the conditions under which such exceptions or limitations apply.

Prior to the transposition of Article 17 CDSMD into the Greek legal order, L. 2121/1993 provided *only* for a "quotation exception" (Article 19). This refers to "short extracts from a lawfully published work of a third person/author" and is strictly formulated (and interpreted by courts), so as to apply mainly to literary works, falling into the areas of sciences, research, education etc., *for the purpose* of advocating the case of the person making the quotation or criticising the position of the other, *on the condition* that the quotation is compatible with "good morals" (*bona fides*) and that the extent of the extract does not exceed the one justified by its purpose. In addition, pursuant to the same provision, the quotation must be accompanied by an indication of the source of the extract, as well as of the names of the author and the publisher, provided that these names appear in the source. Interestingly enough, the Greek law did not – until recently – include any exception or limitation in favour of caricature, pastiche or/and parody, whereas the latter had been recognised by Greek courts a long time ago, on the basis of constitutional law justifications (e.g., freedom of expression and right of criticism). Moreover, in

accordance with Article 66F para. 8, the *new mandatory exceptions* (provided for in Article 17 para. 7 CDSMD) cover only uses on OCSSPs, whereas no general exceptions for the purpose of caricature, parody or pastiche have been introduced in L. 2121/1993, nor has the content of Article 19 of the latter, regulating the quotation exception in the analogue environment, been modified. Although the approach chosen by the Greek legislator *is – at first sight – sufficient for compatibility purposes*,[14] it is important to note that the new quotation exception needs to be interpreted broadly, so as to be compatible with the recent CJEU case law.[15] Besides, it remains to be seen how the "diversification" (*dualism*) as to the treatment of the same uses of protected content in the online environment, on the one hand, and in the analogue, on the other, will be implemented in practice. Apart from anything else, this does not seem to be sufficiently justified.

17. Do other exceptions or limitations apply to the protection provided by the LNI? If so, please describe.

To the extent that OCSSPs and Information Society Service Providers, in general, are not excluded from the scope of the exceptions or limitations provided for in Articles 18 to 28C of L. 2121/1993, we could conclude that the latter may also apply to the protection provided by Article 66F, *if their specific conditions are met*. However, taking into account that most of the above exceptions or limitations (see the answer to Question 15, in the Questionnaire on Article 15 CDSMD above) *cover reproduction acts* and, thus, relate (mainly, *if not exclusively*) to the reproduction right, one might actually question whether they might be relevant in the context under consideration here.

AC 9: Licensing

18. Does the LNI include provisions on the licensing (incl. systems of extended collective licensing) of relevant uses? If so, please briefly describe any relevant details. For example, these could involve the following:
- **criteria for determining the height of compensation;**
- **the process for negotiating compensation;**
- **transparency duties (incl. data sharing obligations);**
- **duties to engage in negotiations;**
- **oversight by a government authority;**
- **(mandatory) collective rights management.**

No, the Greek implementation provides no details as to the licensing schemes of relevant uses. The only reference to "licensing" is to be found in Article 66F para. 2 *in fine*, where it is provided that OCSSPs, in order to communicate to the public or make available to the public works or other subject matter of protection, shall obtain an authorisation form the right-holders, *in particular by concluding a licensing agreement*.

19. Under the LNI, do licenses obtained by a platform cover the platform's users and/or the other way around? If so, please explain.

In this matter also the Greek implementation follows the Directive, in the sense that para. 3 of Article 66F L. 2121/1993 transposes *almost verbatim* the provision of Article 17 (2) CDSMD. Therefore, when an OCSSP obtains an authorisation, that authorisation *shall also cover the acts of communication and making available to the public, carried out by the users of the services*, provided the latter are not acting "on a commercial basis or their activity does not generate significant revenues", without further specifications. Licenses obtained by the platform's users, as well as their legal consequences, are not mentioned in the provision.

[14] C Angelopoulos, "Comparative National Implementation Report on "Articles 15 & 17 of the Directive on Copyright in the Digital Single Market", available at: https://informationlabs.org/copyright, p. 40.
[15] See, C Angelopoulos, op. cit., p. 40, citation no 228 (CJEU: C-145/10, *Eva Maria Painer*, C-476/17, *Pelham*, C-516/17, *Spiegel Online*).

AC 10: Legitimate uses: *ex ante* safeguards

20. Does the LNI include a concept of "legitimate uses"? If so, how are these defined? How are legitimate uses treated?

There is no specific reference in Article 66F L. 2121/1993 to "legitimate uses" or their treatment. The only relevant provision is to be found in para. 8 of the latter, which repeats (word-by-word) the one of Article 17 (7) CDSMD, stipulating that the cooperation between OCSSPs and the right-holders shall not hinder the availability of works or other subject matter of protection *that do not infringe copyright and related rights*, including those which are covered by an exception or limitation.

21. Does the LNI include a concept of "manifestly infringing uploads"? If so, how is this defined? How are "manifestly infringing" and "non-manifestly infringing" uploads treated?

No, it does not.

22. Does the LNI include other *ex ante* mechanisms for the avoidance of action against legitimate content? If so, please describe these citing the relevant provisions of national law.

No, Article 66F of L. 2121/1993 does not include any *ex ante mechanisms* targeting to prevent action against legitimate uses, i.e., to prevent blocking of legitimately uploaded (non-infringing) content.

AC 11: Legitimate uses: *ex post* safeguards

23. Does the LNI provide for effective and expeditious complaint and redress mechanisms in the event of disputes? If so, please describe these. If applicable, please include information on time limits, decision-makers, procedural steps and whether any review is performed by humans.

Regarding the establishment of "effective and expeditious complaint and redress mechanisms in the event of disputes", Article 66F para. 11 L. 2121/1993 repeats verbatim the provision of Article 17 (9) CDSMD, without setting any particular time limits or specifying the decision makers and/or the procedural steps that need to be taken. The decisions to disable access to or to remove uploaded content from the platform(s) shall be subject to human review, as to which no further information/clarification is given.

24. Does the LNI foresee for any other ways of settling disputes over content posted on their platforms (e.g., out-of-court mechanisms or recourse to the courts, incl. collective redress)? If so, please list these.

Article 66F para. 10 (last sentence) provides that disputes between right-holders and users may be resolved *with the assistance of one or more mediators*, in accordance with Article 35 para. 9 of L. 2121/1993, that is to be applied here *by analogy*. The last provision is (also) *new*, having been introduced into the Greek copyright law by Article 3 para. 9 of L. 4996/2022, in the context of the implementation of Directive (EE) 2019/789. In particular, according to the latter "When no agreement has been concluded between the collective management organisation and the operator of retransmission services or between the operator of retransmission services and the broadcasting organisation, regarding authorisation for the retransmission of a broadcasting in accordance with paragraphs 4 and 5], *any of the interested parties has the right to request the assistance of one or more mediators* chosen from a table of independent and impartial mediators, which is drawn up by the Hellenic Copyright Organization (HCO) every two (2) years. The HCO may ask for the opinion of collective management organisations and of the cable – network operators for the drawing – up of the above-mentioned table. Mediators assist in negotiations and may make proposals to the parties. It shall be deemed that all parties accept the proposal of the previous sentence, if none of them raises objections within a time – limit of three (3) months from the notification of the proposal".

AC 12: Sanctions

25. Does the LNI foresee sanctions in cases of abuses of the procedures it introduces by right-holders, users and/or platforms? If so, please describe these.

No reference is made to this matter.

AC 13: Information obligations

26. Does the LNI impose information obligations on platforms? If so, please describe these.

According to Article 66F para. 9, which transposes Article 17 (8) CDSMD into the Greek legal order *almost literally*, OCSSPs provide right-holders, *at their request*, with adequate information a) on the functioning of the practices they have adopted in order to qualify for the "immunity" of para. 5 of the same provision and b) in case licensing agreements have been concluded between them and the right-holders, on the use of the content covered by the latter.

Moreover, according to Article 66F para. 11, that repeats the wording of the last sentence of Article 17 (9) CDSMD, OCSSPs shall also inform their users (*already*) in their terms and conditions that they can use works and other subject matter of protection under exceptions and limitations to copyright and related rights provided for in Union Law.

AC 14: Waiver

27. Can right-holders waive the rights provided by LNI? Can authorisation be given for free?

This issue *is not addressed* in the context of Article 66F L. 2121/1993.

AC 15: Entry into effect

28. From what date did the protection provided by the LNI come into effect in your jurisdiction?

According to Article 68A ("Intertemporal Law") para. 5 of L. 2121/1993, the protection provided by Article 66F, implementing Article 17 CDSMD shall apply from 7 June 2021, despite the delayed implementation into the Greek legal order. Moreover, the acts that have been concluded and the rights that have been acquired before this date shall not be prejudiced.

Additional information

29. Does the LNI explicitly address the relationship between the protection it provides as against OCSSPs and fundamental or human rights (whether of OCSSPs or third parties)?

No, it does not.

30. Can you think of any noteworthy divergence in the LNI from the standards set out in Article 17 of the CDSMD that you have not already addressed above? If so, please elaborate.

The most significant divergences from the standards set out in Article 17 of the CDSMD have been already addressed above. However, it is also noteworthy that the Greek legislator has been profoundly "reluctant" to choose between the terms "online *content sharing* providers" (=πάροχοι επιγραμμικών υπηρεσιών *διαμοιρασμού* περιεχομένου) and "online *content exchange* providers" (=πάροχοι επιγραμμικών υπηρεσιών *ανταλλαγής* περιεχομένου). Therefore, she/he has used both terms throughout the relevant provision *as synonyms*, putting a "slash" symbol between them (!) [i.e., πάροχος επιγραμμικών υπηρεσιών ανταλλαγής/διαμοιρασμού περιεχομένου]. Apart from the fact that such a legislative choice is rather unusual, it should be noted that the term "*content exchange*", which has been used in the (official) Greek translation, published in the EU Official Journal, is apparently narrower and refers mainly to the activities that take place in the context of P2P networks.

A final observation has to do with the fact that according to para. 12 of Article 66F L. 2121/1993, which transposes Article 17 (9) [sentence 7] of CDSMD into the Greek legal order, any processing of personal data, that may happen for the purposes of the application of the provision under consideration, should only take place in accordance with Law 3471/2006 "concerning the processing of personal data and the protection of privacy in the electronic communications sector" (FEK A΄ 133/28.06.2006), as amended. Despite the fact that Regulation (EU) 2016/679 ("GDPR") is explicitly mentioned in the relevant provision of the CDSMD and is – obviously – in force in Greece today, as provided for in L. 4624/2019 (FEK A΄ 137/29.08.2019), the Greek implementing provision (i.e., Article 66F para. 12) remains silent as to this point. We cannot but assume this is a case of legislative "oversight" that needs to be redressed the soonest possible.