

Articles 15 & 17 of the Directive on  
Copyright in the Digital Single Market  
Questionnaire – Annex to the Comparative  
National Implementation Report  
**LUXEMBOURG**

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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: LUXEMBOURG

National Expert: DR BERND JUSTIN JÜTTE (University College Dublin)

Last updated: 6 July 2023

## 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.

Luxembourg law did not provide for the protection of press publications prior to the adoption of the CDSMD. Article 1 of the *Loi du 18 avril 2001 sur les droits d’auteur, les droits voisins et les bases de données* (<https://legilux.public.lu/eli/etat/leg/loi/2001/04/18/n2/jo>) provides for a general protection of original literary and artistic works, irrespective of their genre or mode of expression (“*œuvres littéraires et artistiques originales, quels qu’en soient le genre et la forme ou l’expression*”).

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).

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.

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

Article 15 CDMSD has been transposed into Luxembourg Law by:

Loi du 1<sup>er</sup> avril 2022 portant modification:

1. de la loi modifiée du 18 avril 2001 sur les droits d’auteur, les droits voisins et les bases de données ;
2. de la loi du 3 décembre 2015 relative à certaines utilisations autorisées des œuvres orphelines ;
3. de la loi du 25 avril 2018 relative à la gestion collective des droits d’auteur et des droits voisins et l’octroi de licences multiterritoriales de droits sur des œuvres musicales en vue de leur utilisation en ligne dans le marché intérieur,

en vue de la transposition de la directive 2019/790 du Parlement européen et du Conseil du 17 avril 2019 sur le droit d’auteur et les droits voisins dans le marché unique numérique et modifiant les directives 96/9/CE et 2001/29/CE.

(<https://legilux.public.lu/eli/etat/leg/loi/2022/04/01/a158/jo#intituleAct>)

In relation to Article 15 CDMSD the law takes the approach of a literal transposition. Article 10 of the Law inserts a new provision (article 56bis) into the *Loi du 18 Avril 2001 sur les droits d’auteur, les droits voisins et les bases de données* (*Loi du 18 Avril 2001*) which almost verbatim reproduces Article 15 CDMSD.

### 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.**

Article 56bis makes reference to “*publications de presse*” (press publications), which are defined in the new letter “h” of Article 41 of the *Loi du 18 Avril 2001*. The definition reproduces almost verbatim Art. 2(4) CDMSD.

- 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.**

The implementing law expressly excludes individual words and short extracts in accordance with the text of Article 15 CDSM Directive.

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

The implementing law does not specify the lower end of the scope of protection of the concept of press publication, However, Article 1 of the *Loi du 18 Avril 2001* excludes from the scope of protection of literary and artistic works “*les informations*” (information).

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

The implementing law does not expressly exclude public domain content included in press publications. However, the law stipulates that the rights granted (reproduction and making available) cannot be invoked to prohibit the use of works or other subject matter whose term of protection has expired (art 55bis, second paragraph, last sentence).

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

No.

## **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.**

The beneficiaries are defined as “*éditeurs de publications de presse*” (press publishers), which are not further defined. No territorial restrictions are mentioned.

### **AC 3: Restricted acts**

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

The implementing provision makes reference to “*articles 43 et 44 alinéa 2, pour l’utilisation en ligne*”. This refers to the online use of the reproduction right (directly and indirectly) and the right of making available (in accordance with art. 3(2) of Directive 2001/29).

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

Hyperlinking is expressly excluded by Article 56*bis* (1), second sentence.

### **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.**

The users are defined as ‘*fournisseurs de services de la société de l’information*’ (providers of information society services). This definition excludes, per article 56*bis* private or non-commercial uses by individual users. Hyperlinking is excluded as a category of use, as are isolated words and very short extracts, (article 56*bis* 3<sup>rd</sup> and 4<sup>th</sup> sentence).

#### **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.**

The text of the LNI follows that of the CDSMD. As a result, it provides that the rights provided by the LNI cannot be invoked against authors whose works or other protected subject matter have been included in a press publication. Similarly, the rights in press publications cannot be invoked against authorized users of the works or other protected subject matter if they are included in a press publication on the bases of a non-exclusive license.

### **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.**

The LNI recognizes exception by reference to the exceptions that apply to neighbouring rights under Article 46 of the *Loi du 18 Avril 2011*.

#### **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.**

The LNI does not foresee provisions on licensing modalities.

#### **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.**

The LNI replicates the general language of Article 15(5) CDSMD.

#### **AC 8: Term of protection**

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

The term of protection expires two years after publication, calculated from 1 January of the year following the publication (Article 56bis (4)).

#### **AC 9: Waiver**

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

The law does not expressly permit, nor exclude the possibility of waiver or an authorization without remuneration.

The LNI contains an additional provision which states that a press publisher who has obtained a right to use a work under a license or pursuant to a transfer possesses a sufficiently sound basis to claim partial remuneration for uses of that work that fall under a remunerated exception.

#### **AC 10: Entry into effect**

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

The protection for press publication applies to such press publication which have been published after and including 6 June 2019 (article 16 of the implementing law).

**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.**

Given the almost verbatim implementation, there are no noteworthy divergences from the standards set out in Article 15 CDSM.

## 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).

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.

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

Article 17 CDMSD has been transposed into Luxembourg Law by:

Loi du 1<sup>er</sup> avril 2022 portant modification:

4. de la loi modifiée du 18 avril 2001 sur les droits d’auteur, les droits voisins et les bases de données ;
  5. de la loi du 3 décembre 2015 relative à certaines utilisations autorisées des œuvres orphelines ;
  6. de la loi du 25 avril 2018 relative à la gestion collective des droits d’auteur et des droits voisins et l’octroi de licences multiterritoriales de droits sur des œuvres musicales en vue de leur utilisation en ligne dans le marché intérieur,
- en vue de la transposition de la directive 2019/790 du Parlement européen et du Conseil du 17 avril 2019 sur le droit d’auteur et les droits voisins dans le marché unique numérique et modifiant les directives 96/9/CE et 2001/29/CE.

(<https://legilux.public.lu/eli/etat/leg/loi/2022/04/01/a158/jo#intituleAct>)

In relation to Article 17 CDMSD the law takes the approach of a literal transposition.

### **AC 1: Subject matter**

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

The subject matter covered by Article 70bis, which is inserted into the *Loi du 18 Avril 2011* by Article 12 of the LNI are works and other protected subject matter (Article 70bis(2))

## **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.**

The LNI does not provide protection in the stricter sense, neither does Article 17 CDSMD. However, it requires OCSSPs to obtain authorization for the relevant rightholders, which are authors (with reference to Article 4 of the *Loi du 18 Avril 2001*), related right holders (with reference to Article 44 of the *Loi du 18 Avril 2001*; interpreting or performing artists, phonogram producers and producers of first fixations of films in relation to the right to communication to the public) and broadcasters (with reference to Article 53 of the *Loi du 18 Avril 2011*; for broadcasting organisations in relation to simultaneous or differential transmissions, reproduction, and communication to the public.).

## **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”)?**

The LNI refers to acts of communication to the public and making available to the public.

## **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”).**

Article 70bis as implemented into the *Loi du 18 Avril 2011* refers to Article 41(i) of the same law into which the definition of OCSSP from Article 2(6) CDSMD has been reproduced.

- 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.**

No liability was assigned to ISPs that are now defined as OCSSPs prior to the adoption of the LNI.

## **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, specifically by the *Loi du 14 août 2000 relative au commerce électronique*, which implemented Directive 2000/31/EC. Specifically applicable would have been Article 61 on the liability exclusion for hosting providers. As art. 17 CDSM Directive stipulates, and implements accordingly into Luxembourg law, the liability exemption provided by art. 14(1) ECD does not apply to OCSSPs performing acts of communication to the public, but acts falling outside the scope of the LNI/CDSM Directive are not affected.



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, the LNI reproduces the conditions set out in Article 17(6) CDSMD.

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.

The LNI reproduces the standard of “*meilleur efforts*” of the CDSMD, which includes references to “high industry standards of professional diligence” (“*normes élevées du secteur en matière de diligence professionnelle*”). The translation adopted, which corresponds to the formulation used in the French version of the CDSM Directive is accurate when compared with the English and German versions of the text (given that German is an official language in Luxembourg, judges might (though unlikely given the language of the law) refer to the German language version).

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

Yes. The proportionality test will have to be conducted taking into consideration the elements reproduced from Article 17(5) CDSMD.

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, the LNI reproduces the conditions set out in Article 17(6) CDSMD.

#### **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.

The law refers to “*informations pertinentes et nécessaires*” and to “*notification suffisamment motivée*”, which corresponds to the standards established by Article 17(4)(b) and (c) CDSM Directive.

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.

#### **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.

No, see Article 70bis(9) of the *Loi du 18 Avril 2001* as amended by the LNI.

**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.

#### **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.**

a) Yes – Article 10(1) of the *Loi du 18 Avril 2011*.

b) Yes – Article 10(6) of the *Loi du 18 Avril 2011*.

The law merely indicates that such exceptions are available, no specification as to the concrete conditions for their application are made. Relevant case-law does not seem to exist.

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

The normal exceptions contained in the various provision of the Luxembourg copyright law would apply.

#### **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.

**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.**

The LNI, according to art. 70bis(3) stipulates that authorisations obtained by OCSSPs covers acts performed by their users when they do not act in commercial capacity or do not generate significant revenues.

#### **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?**

No.

**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.

**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.

#### **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.**

The LNI largely reproduces Article 17(9) CDSMD for this purpose.

**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.**

In accordance with article 17 CDSM Directive, the LNI foresees that mediation is made available to users of OCSSPs in accordance with arts 88 and 89 of the *Loi du 18 Avril 2001*, which makes the same mediation mechanisms available as is foreseen for licensing negotiations.

#### **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.

#### **AC 13: Information obligations**

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

The LNI obliges OCSSPs to provide information on the practices of cooperation between themselves and rightholders pursuant to article 70bis(5) of the LNI, as well as information on the use of content covered by any licensing agreements they reach with rightholders. In addition, OCSSPs must inform users in the terms and conditions on the possibility to rely on exceptions under the national law covered works and related rights (article 70bis(10)).

#### **AC 14: Waiver**

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

No express provision is made to this effect.

**AC 15: Entry into effect**

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

9 April 2022.

**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.

**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.**

Given the almost verbatim implementation, there are no noteworthy divergences from the standards set out in Article 17 CDSM.