

Implementation of the DSM-Directive – mission accomplished?

Regional survey of
Central and Eastern Europe

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Implementation of the DSM-Directive – mission accomplished?

Regional survey of Central and Eastern Europe

Controversial IP directive provides new protections for right holders

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

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

- **Art 17:** This provision received wide media coverage **under the non-technical term “upload filters”**. It introduced new obligations for online content-sharing service providers, making them directly liable for user posts which infringe copyrights, unless they have made “best efforts” to obtain permission from and acted diligently to take down infringing content flagged by right holders – and to prevent future uploads thereof.
- **Art 15:** This provision also received wide media coverage **under the non-technical, and incorrect term often used: “link tax”**. The media focus was partly a result of the fact that national initiatives of Member States to implement such a provision themselves have not been very successful in the past. Art 15 provides for a new ancillary right for press publishers established in a Member State.
- **Art 18-22:** These provisions **aim at providing a high level of protection for content creators**, including, for example,

a claim for an additional remuneration if the initial payment agreed on was disproportionately low when compared to the revenue generated by the exploitation of the work, the option for revocation of licenses if those works are not exploited and a claim for information on how one's works are exploited.

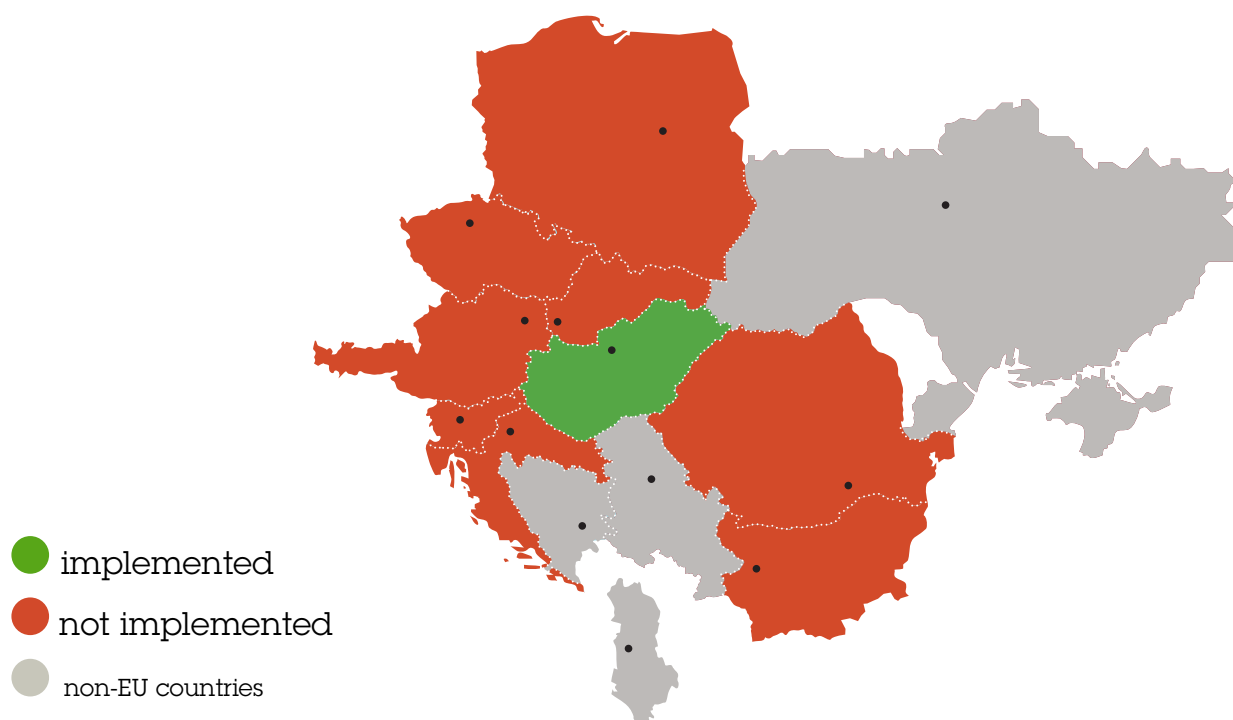
Contentious provisions have slowed implementation

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

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

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

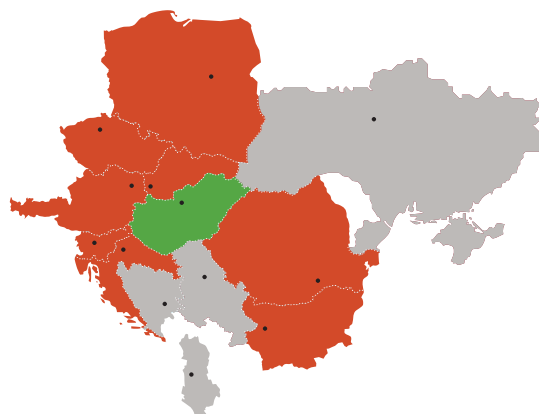
Implementation of the DSM Directive by 7 June 2021 deadline



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

Implementation

of the DSM Directive
by 7 June 2021 deadline



Austria



current status

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

draft bill

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

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

deadline achieved?

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



Georg
Kresbach
e-mail



Adolf
Zemmann
e-mail



Oleg
Temnikov
e-mail

Bulgaria



current status

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

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

draft bill

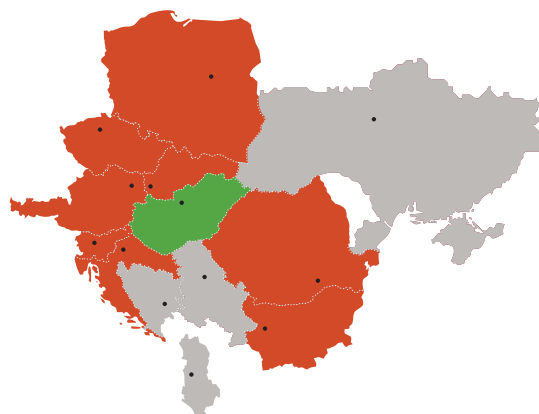
A draft bill has not yet been published.

deadline achieved?

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

Implementation

of the DSM Directive
by 7 June 2021 deadline



Croatia



current status

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

draft bill

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

deadline achieved?

No.



Benjamin
Sadric

[e-mail](#)



Katerina
Kulhankova

[e-mail](#)

Czech Republic



current status

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

draft bill

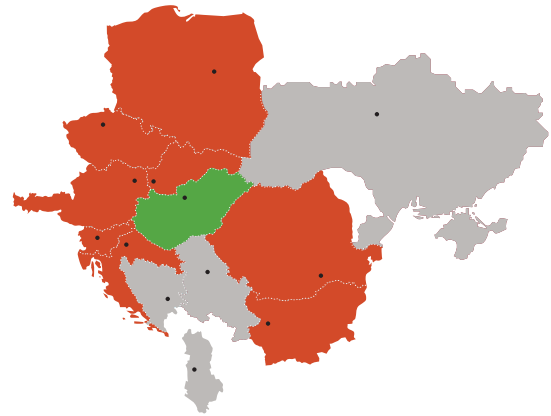
The draft bill is available online on the governmental portal for document sharing ([download here](#)) and currently is to be discussed by the government, however, no exact date has been set for this discussion.

deadline achieved?

No.

Implementation

of the DSM Directive
by 7 June 2021 deadline



Hungary



current status

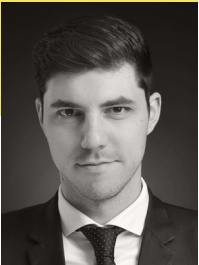
The final proposal of Act XXXVII of 2021 amending the currently effective Act LXXVI of 1999 on Copyright in order to implement the DSM Directive was presented and subsequently passed by the Hungarian parliament on 28 April 2021 (see the updated Copyright Act [here](#)). The relevant act carrying the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

draft bill

Yes.

deadline achieved?

Yes.



Peter

Ihasz

e-mail



Jakub

Pietrasik

e-mail

Zuzanna

Nowak

e-mail

Poland



current status

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

draft bill

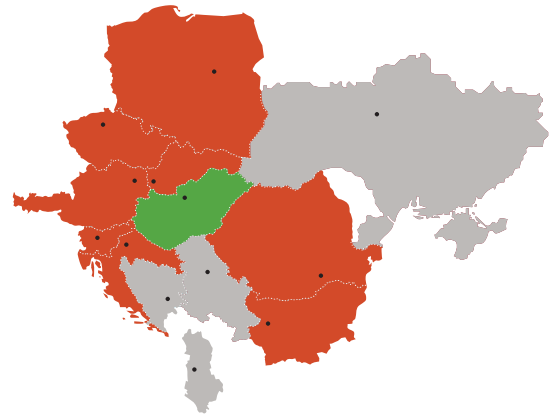
As of 7 June 2021, no draft bill, nor any amending act was finalised or published. Not even guidelines for implementation have been published.

deadline achieved?

No.

Implementation

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Romania



current status

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

draft bill

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

deadline achieved?

No.



Sorin
Dumitru
e-mail



Dalibor
Palaticky
e-mail

Slovakia



current status

The legislative process is in the preliminary stage.

draft bill

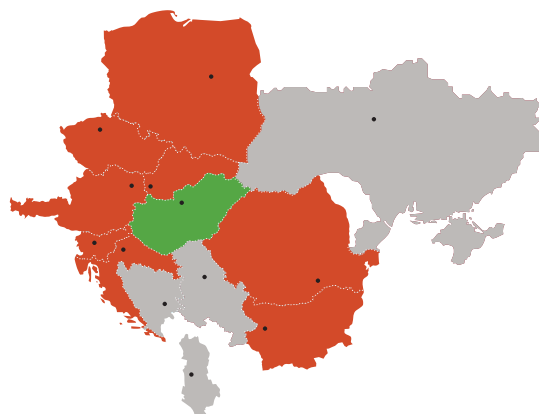
No official draft bill has been published on the parliament website or sent out to the stakeholders.

deadline achieved?

No. A transposition in summer/autumn 2021 is likely.

Implementation

of the DSM Directive
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Slovenia



current status

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

draft bill

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

deadline achieved?

No.



Klara
Miletic
e-mail

Wolf Theiss
Offices

ALBANIA

Murat Toptani Street
1001 Tirana
T. +355 4 2274 521
tirana@wolftheiss.com

AUSTRIA

Schubertring 6
1010 Vienna
T. +43 1 515 10
wien@wolftheiss.com

BOSNIA AND HERZEGOVINA

Zmaja od Bosne 7
71 000 Sarajevo
T. + 387 33 953 444
sarajevo@wolftheiss.com

BULGARIA

Expo 2000, Phase IV, 55 Nikola Vaptsarov Blvd.
1407 Sofia
T. +359 2 8613 700
sofia@wolftheiss.com

CROATIA

Ivana Lučića 2a/19
10 000 Zagreb
T. +385 1 4925 400
zagreb@wolftheiss.com

CZECH REPUBLIC

Pobřežní 12
186 00 Prague 8
T. +420 234 765 111
praha@wolftheiss.com

HUNGARY

Kálvin tér 12–13
1085 Budapest
T. +36 1 4848 800
budapest@wolftheiss.com

POLAND

ul. Mokotowska 49
00-542 Warsaw
T. +48 22 378 8900
warszawa@wolftheiss.com

ROMANIA

4 Vasile Alecsandri, The Landmark, Building A
010639 Bucharest
T. +40 21 308 8100
bucuresti@wolftheiss.com

SERBIA

Bulevar Mihajla Pupina 6/18
11000 Belgrade
T. +381 11 330 2900
beograd@wolftheiss.com

SLOVAKIA

Aupark Tower, Einsteinova 24
851 01 Bratislava
T. +421 2 591 012 40
bratislava@wolftheiss.com

SLOVENIA

Bleiweisova cesta 30
1000 Ljubljana
T. +386 1 438 00 00
ljubljana@wolftheiss.com

UKRAINE

9, Khoryva Str.
04071 Kyiv
T. +38 044 377 75 00
kiev@wolftheiss.com