Commission urges numerous member states to implement EU copyright directives

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On 15 July 2022, the European Commission announced that it had sent reasoned opinions to Czechia for failure to provide information about the transposition of two copyright Directives, namely Directive 2019/789 on copyright and related rights applicable to certain online transmissions (SatCab II Directive) (see IRIS 2019-5/3), and Directive 2019/790 on copyright in the Digital Single Market (DSM Directive) (see IRIS 2019-4/5). Further, on 19 May 2022, the Commission sent reasoned opinions to 10 Member States (Bulgaria, Cyprus, Greece, Ireland, Latvia, Poland, Portugal, Slovenia, Slovakia and Finland) for failure to provide information about the transposition of the SatCab II Directive; and also sent reasoned opinions to 13 Member States over failure to transpose the DSM Directive. Notably, Member States were required to transpose both Directives into national law by 7 June 2021.

Under the EU treaties, the Commission may take legal action – an infringement procedure – against an EU member state that fails to implement EU law. This legal action involves a number of stages, including: first, sending a letter of formal notice requesting further information to the member state concerned, who must send a detailed reply; second, sending a reasoned opinion: a formal request to comply with EU law; and third, the Commission deciding to refer the matter to the EU Court of Justice.

In July 2021, the Commission announced that it had launched infringement procedures against over 20 EU member states for failing to transpose the SatCab II Directive and DSM Directive. However, numerous EU member states have now enacted national legislation implementing these Directives. The SatCab II Directive lays down rules to enhance cross-border access to more television and radio programmes, by facilitating the clearance of rights for the provision of online services that are ancillary to the broadcast of certain types of television and radio programmes, and for retransmission of television and radio programmes. While the DSM Directive lays down rules which aim to further harmonise EU law applicable to copyright and related rights, in particular digital and cross-border uses of protected content; and also lays down rules on exceptions and limitations to copyright and related rights. Notably, Article 17 DSM Directive, on the use of protected content by online content-sharing service providers (OCSSPs), has been subject to a recent high-profile EU Court of Justice

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judgment, which found the liability imposed on OCSSPs for content uploaded by users was consistent with freedom of expression (see IRIS 2022-6/14).

Finally, EU Member States that have received reasoned opinions have two months to reply to the European Commission, with the Commission stating that "[i]n the absence of a satisfactory response, the Commission may decide to refer the matter to the Court of Justice of the European Union".

European Commission, "Commission urges Czechia to fully transpose EU copyright rules into national law", 15 July 2022

https://digital-strategy.ec.europa.eu/en/news/copyright-commission-urges-czechia-fully-transpose-eu-copyright-rules-national-law

European Commission, "Commission urges Member States to fully transpose EU copyright rules into national law", 19 May 2022

https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2692

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