



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 303

Communication from the Commission - TRIS/(2022) 00742
Directive (EU) 2015/1535
Notification: 2021/0799/A

Observations from the Commission (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

Observaciones - připomínky - Bemärkningar - Bemerkungen - Märkused - Παρατηρήσεις - Comments - Observations - Osservazioni - Piezīmes - Komentāri - Megjegyzések - Komentti - Opmerkingen - Uwagi - Observacoes - Komentáře - Pripombe - Huomautuksia - Synpunkter - Коментари - Comentarii.

Sin plazo de statu quo - Doba pozastavení prací se neaplikuje - Ingen status quo frist - Keine Stillhaltefrist - Ooteaeg ei ole kohaldatav - Δεν υπάρχει statu quo - Standstill period does not apply - Pas de délai de statu quo - Termine di status quo non previsto - Bezdarbības periods netiek piemērots - Atidėjimo periodas netaikomas - A halasztási időszak nem alkalmazandó - Il-perjodu ta' waqfien ma japplikax - Geen status quo-periode - Okres odroczenia nie ma zastosowania - Prazo do statu quo não previsto - Períoda pozastavenia neplatí - Obdobje mirovanja ne velja - Ei status quon määraaika - Ingen tidfrist för status quo - Не се прилага период на прекъсване - Perioada de stagnare nu se aplică.

(MSG: 202200742.EN)

1. MSG 303 IND 2021 0799 A EN 03-03-2022 02-03-2022 COM 5.2 03-03-2022

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2021/0799/A - SERV30

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Within the framework of the notification procedure laid down by Directive (EU) 2015/1535, the Austrian authorities notified to the Commission on 2 December 2021 the draft "Federal Act amending the Copyright Act" ("notified draft"). The notified draft, as well as the notification message, refer to dominant service providers for the sharing of online content and for the searching of online content, i.e. online platforms, search engines and social media services. The Commission understands that the notified draft would introduce in Austrian law a mechanism of mandatory collective management applicable to the exercise of the rights of publishers of press publications. Furthermore, the notification message expressly refers to the transposition of Directive (EU) 2019/790 ('the DSM Directive'). The Austrian authorities indicate that the notified draft 'adds the way in which the copyright-related right and the participation right of authors of works contained in the press publication may be exercised, which are not provided for by Directive 2019/790'.

Therefore, the notified draft should be viewed in the light of paragraph (1) of Section 76f of the Copyright Act Amendment, as notified in Themis database on 31 December 2021:

"(1) Any person who, as a service provider, produces, on his own initiative and under his editorial responsibility and supervision, a press publication in analogue or digital form shall have the exclusive right to reproduce the press publication in whole or in part as part of an information society service (Section 1(1)(2) of the 1999 Notification Act) for online use and to make it available to the public.[...]"

Examination of the notified draft has prompted the Commission to issue the following comments pursuant to Article 5(2) of Directive (EU) 2015/1535.

The Commission would like to inform the Austrian authorities that it takes note of the current notification. The Commission understands that the notified measure would be introduced in the context of Austria's implementation of the DSM Directive, and consider that it constitutes an amendment to Austria's Federal Act on copyright, which has been



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notified in the Themis database on 31 December 2021.

In view of the above, the Commission will therefore assess these provisions, if and when they are adopted, in the context of the conformity checks of the measures adopted by Austria to implement the DSM Directive.

The Commission would also like to recall that the current notification under Directive (EU) 2015/1535 does not affect the obligations of Austria under Article 29 of the DSM. According to this provision, Member States shall inform the Commission of the measures they adopt as transposition measures and make a reference in the notified draft to this Directive.

At this stage, and without prejudice to any further assessment of the Austrian implementing measures which have already been notified or may be notified in the future under Article 29 of the DSM Directive, the Commission however would like to draw the attention of the Austrian authorities to the Commission's answer to the Parliamentary question 4603/2020 . On that occasion, the Commission pointed out that mandatory collective mechanisms laid down in national laws implementing Article 15 of the DSM Directive may raise doubts as they could deprive publishers of press publications of the freedom to choose the ways to exercise the new rights granted to them by that directive. The business models and practices of publishers of press publications across the European Union are diverse and the Commission considers that the DSM Directive leaves them the freedom to conclude different types of agreements with online service providers, either through collective management or through direct licencing.

The Commission invites the Austrian authorities to take the above comments into account.

The Commission furthermore recalls that once the definitive text has been adopted, it has to be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

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European Commission

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