

PhDr. Lubomir Zaoralek
Minister for Culture

In Prague on 22.11.2021
MK 58064/2021 SOAP

Dear Mr. Karabina, dear Mr. Skrivan,

Thank you for your letter dated 30 August 2021, in which you contact me in connection with the national implementation of the Copyright Directive in the Digital Single Market.

In your letter you express your disagreement with the course of the drafting of the proposed amendment to the Copyright Act, which was approved by the Government on 21 June 2021 and subsequently submitted to the Chamber of Deputies, now known as Chamber of Deputies Document 1246. The letter also recalls the so-called European Commission Recommendation on Article 17 of the above-mentioned Directive and the ongoing proceedings before the EU Court of Justice regarding Poland's case concerning this Article of the Directive and its compliance with the EU Charter of Fundamental Rights. In this context, you state that, in your opinion, the proposal for the implementation of Article 17 prepared by the Ministry of Culture is not in accordance with the aforementioned Recommendation or Communication of the European Commission - Guidelines on Article 17 of the Directive (EU) 2019/790 on copyright in the digital single market and with the opinion of the Advocate General on the aforementioned action of Poland concerning Article 17 of the Directive. In the conclusion of your letter, you ask about the further course of action of the Ministry and, in particular, how the European Commission's Guidelines and the decision of the Court of Justice of the EU will be incorporated.

I would like to assure you that the Ministry of Culture is aware of the complexity of the legal regulation in the Ministry of Culture and has devoted maximum effort to the preparation of the internal implementation. Consultations on the drafting of the implementation proposal were launched in June 2019 with an invitation to participate in the consultations to more than 120 potentially subsidised entities, including representatives of small and medium-sized enterprises, non-profit organisations and academia, most of whom took part in the consultations. The consultations took place from September 2019 to February 2020, primarily in written form via email communication. Background material on various topics was sent to the stakeholders, on which they had the opportunity to comment within a set deadline. Oral meetings were also held in November and December 2019 on the most complex topics selected (including the implementation of Article 17 of the Directive). Further planned oral meetings were suspended in view of the measure related to the occurrence of covid-19 and consultations continued in written form. In addition to the internal consultations with representatives of the entities concerned, the Ministry of Culture also consulted with the European Commission and other EU Member States and monitored the progress of the implementation in other Member States and the discussions with the public. The

implementation proposal was also subject to an inter-ministerial comment procedure, in the framework of which ministries and other interested parties had the opportunity to comment on it and did so (e.g. The Ministry of Industry and Transport, the Chamber of Commerce of the CR or the Confederation of Industry and Transport), whose agenda includes, among others, small and medium-sized enterprises. The proposal for implementation was also discussed very thoroughly by the Legislative Council of the Government and its committees.

As regards the timing of the submission of the implementation proposal to the Government and subsequently to the Parliament of the Czech Republic, the Czech Republic, like the other Member States, was put in a difficult situation in connection with the aforementioned Article 17 Guidelines and the case of Poland before the EU Court of Justice. The European Commission has repeatedly reminded the Member States to meet the deadline for implementation and at the same time has insisted on as uniform an implementation as possible, not deviating, if possible, from the text of the Directive. In the course of the implementation period, it then announced that the "guidelines for the application of Article 17" envisaged in the Memorandum would serve not only for the application (interpretation and application) of the legislation, but also as a guide to the Member States for the implementation of Article 17 in their internal legal advice. The Member States, including the Czech Republic, have repeatedly reminded the European Commission that if this is to be the case, the Guidelines must be available to the Member States in sufficient time for them to be able to use them as such a guide. Unfortunately, as you know, this did not happen, the European Commission did not issue the guidelines until

4. cervna pficemz2021, the deadline for implementation expired on cervna7. Similar2021. problem The hearing on Poland's Article 17 lawsuit before the EU Court of Justice, in which so far (only) the Advocate General's opinion has been issued, and **only** in July this year. the announcement of the decision of the Court of Justice of the EU has not yet been made. Therefore, in view of the implementation deadline, it was not possible to wait for the Court of Justice of the EU to issue its decision before presenting the proposal for the implementation of the Directive.

In the current situation, the Ministry of Culture has resorted to a method of implementation that adheres to the text of the Directive to the maximum extent possible and is also formulated in a sufficiently general manner to comply with any more detailed interpretation by the EU Court of Justice. According to the opinion of the Ministry of Culture, the generally formulated legal regulation also complies with the European Commission's Guidelines and should also comply with their eventual modified version, the issuance of which is not ruled out by the European Commission itself in connection with the decision of the Court of Justice of the EU in the above-mentioned court case.

I would add to the above that it was not possible to wait to submit the implementation proposal also for the reason that the European Commission warned that it would immediately initiate infringement proceedings against those Member States that fail to meet the implementation deadline. The initiation of this action, against 23 Member States, including the Czech Republic, actually took place in July this year.

At this moment, the legislative process is formally in the phase of consideration of the implementation proposal by the Chamber of Deputies. In view of the upcoming parliamentary elections at the beginning of June this year, it will be necessary, inter alia, in view of the above-mentioned ongoing European Commission exercise, to submit the implementation proposal immediately to the newly established Chamber of Deputies.

Yours sincerely



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