



Copyright Contract Law

Transposition of the DSM-directive in Belgium

General framework Directive: timing – transposition into Belgian law



- Directive 2019/790 of 17 april 2019
- Transposition deadline: 7 June 2021
- Procedure: Consultation of the Council for intellectual property (from 19/6/2019 until 19/06/2020) <https://economie.fgov.be/nl/themas/intellectuele-eigendom/instellingen-en-actoren/raad-voor-de-intellectuele/adviezen/advies-van-19-juni-2020-van-de>
- New consultation on political level in February 2021
- Approval by the council of ministers : 4th of June 2021 <https://news.belgium.be/nl/auteursrechten-en-naburige-rechten-de-digitale-eengemaakte-markt>
- **Advice Council of State (Raad van State): July - August 2021**
- Parliament: after summerbreak

Appropriate and proportionate remuneration

- Member States shall be free to use different mechanisms
- Member States have to take into account:
 - the principle of contractual freedom
 - a fair balance of rights and interests

Proposal in Belgium:

- Collective bargaining agreement
- Imperative law
- Also applicable if rights are transferred through a presumption

Transparency obligation

Proposal in Belgium:

- Must include gross revenues, costs and net revenue
- After a reasonable period after exploitation
- Collective bargaining agreement
- Obligation to inform the author or performer when the exploitation is ceased
- Also applicable if rights are transferred through a presumption
- Author or performer can choose to ask information to his contractual counterpart or to the sublicensee
- Not applicable if the administrative workload is too high compared to the revenues
- Not applicable if the contribution is not significant
- Authors and performers must keep the information confidential

Contract adjustment mechanism

- claim additional, appropriate and fair remuneration
- when the remuneration originally agreed turns out to be disproportionately low compared to all the subsequent relevant revenues

☺ → Unforeseen success or bad deal?

Proposal in Belgium:

- Exact words of directive

Right of revocation

Proposal in Belgium:

- Exploitation within the agreed period,
 - must comply with the fair professional usages
 - except if the agreed period gives a higher protection to the author or performer
- If there is no agreement : fair professional usages
- Not applicable:
 - Contribution of plurality of authors or performers, who would be harmed by right of revocation
 - Labourcontract
 - Order in non-cultural sector or advertising

Questions?

natacha.lenaerts@economie.fgov.be

copyright@economie.fgov.be