



Brussels, 28 April 2022

STATEMENT ON CJEU RULING IN CASE C-401/19

Republic of Poland v. European Parliament and Council of the
European Union

EVA welcomes the ruling of the Court of Justice of the European Union (CJEU) on case [C-401/19](#) as it dismisses Poland's claim that Article 17 of the Digital Single Market Directive 2019/790 (also known as the DSM directive) would not be compatible with the freedom of expression and information of users of online content sharing services providers (OCSSPs), guaranteed in Article 11 of the Charter of Fundamental Rights of the European Union. The ruling confirms the opinion of Advocate General Henrik Saugmandsgaard Øe, who had already advised of its validity in July 2021.

Article 17 provides several procedural safeguards to ensure a balance between the right to freedom of expression for users uploading legal content online on the one hand, and the right to intellectual property and the consequent respect of copyright on the other. Full cooperation between collective management organisations (CMOs) and OCSSPs is essential to achieve this balance. In this respect, Article 17 promotes the issuance of collective licensing agreements that give platforms the necessary authorisation to access protected works while providing fair remuneration to creators.

This new CJEU ruling is also clear on the fact that the Member States should, when transposing the directive into national law, pursue a fair balance between the right to freedom of expression and the protection of intellectual property rights, which is the rightful purpose of Article 17.

The full text and the résumé of the ruling are available - for the time being only in Polish and French - on the [Curia website](#).

Background

Article 17 (the former Article 13) is the most contentious provision in the DSM Directive besides the press publishers neighbouring right. During the inter-institutional discussions, the adoption of Article 17 was opposed by several movements, which claimed that the article would violate the freedom of expression. The directive came into force in June 2019, and, despite the deadline for national transposition being in June 2021, many Member States still have not implemented the directive. In May 2019, Poland lodged an action against the European Parliament and Council, asking the CJEU to annul Article 17 for its incompatibility with the EU Charter of Fundamental Rights.

END

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About EVA

European Visual Artists (EVA) represents the interests of authors' collective management societies for the visual arts. **28 European societies** are gathered under this roof as members or observers. They manage collectively authors' rights of close to **130 000 creators** of works of fine art, illustration, photography, design, architecture and other visual works.

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