



Press and Information

Court of Justice of the European Union
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Judgment in Case C-401/19
Poland v Parliament and Council

The obligation, on online content-sharing service providers, to review, prior to its dissemination to the public, the content that users wish to upload to their platforms, is accompanied by the necessary safeguards to ensure that that obligation is compatible with freedom of expression and information

The Court of Justice dismisses the action brought by Poland against Article 17 of the directive on copyright and related rights in the Digital Single Market

Article 17 of Directive 2019/790 on copyright and related rights in the Digital Single Market¹ establishes the principle that providers of online content-sharing services (so-called ‘Web 2.0’ services) are directly liable when protected subject matter (works and so forth) is illegally uploaded by users of their services. However, the providers concerned may be exempted from that liability. To that end, they are in particular required, in accordance with the provisions of Article 17 of the Directive,² actively to monitor the content uploaded by users, in order to prevent the uploading of protected subject matter which the rightholders do not wish to make accessible on those services.

Poland brought an action before the Court of Justice for annulment of Article 17 of Directive 2019/790. According to the applicant, that article infringes the freedom of expression and information guaranteed in the Charter of Fundamental Rights of the European Union.³

In today’s judgment, **the Court dismisses that action brought by Poland.**

The Court observes, first of all, that, in order to benefit from the exemption from liability, laid down in Article 17 of Directive 2019/790, online content-sharing service providers are de facto required to carry out a prior review of the content that users wish to upload to their platforms, provided that those service providers have received from the rightholders the relevant and necessary information to that effect. Furthermore, in order to be able to carry out such a prior review, those providers are, depending on the number of files uploaded and the type of protected subject matter in question, required to use automatic recognition and filtering tools. According to the Court, such a prior review and prior filtering are liable to restrict an important means of disseminating online content. In those circumstances, **the specific liability regime, established by the Directive, in respect of online content-sharing service providers, entails a limitation on the exercise of the right to freedom of expression and information of users of those content-sharing services.**

As regards next the justification for such a limitation and, in particular, the proportionality of that limitation in relation to the legitimate objective pursued by Article 17 of Directive 2019/790 consisting in the protection of intellectual property rights, the Court finds, first, that **the EU legislature** — in order to prevent the risk which, in particular, the use of automatic recognition and filtering tools entails for the right to freedom of expression and information of users of online content-sharing services — **laid down a clear and precise limit on the measures that may be taken or required** in implementing the obligations laid down in that provision, **by excluding, in particular, measures which filter and block lawful content when uploading.** The Court recalls,

¹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ 2019 L 130, p. 92).

² See Article 17(4), point (b), and point (c), *in fine*, of Directive 2019/790.

³ Article 11.

in that context, that that a filtering system which might not distinguish adequately between unlawful content and lawful content, with the result that its introduction could lead to the blocking of lawful communications, would be incompatible with the right to freedom of expression and information and would not respect the fair balance between that right and the right to intellectual property. Secondly, Article 17 of Directive 2019/790 provides that users of the abovementioned services will be authorised, by national law, to upload content generated by themselves for the purposes, for example, of parody or pastiche and that they will be informed, by the abovementioned service providers, that they can use works and other protected subject matter under the exceptions or limitations to copyright and related rights, provided for in EU law. Thirdly, according to Article 17 of the Directive, the liability of online content-sharing service providers for ensuring that certain content is unavailable can be incurred only on condition that the rightholders concerned provide them with the relevant and necessary information with regard to that content. Fourthly, Article 17 states that its application must not lead to any general monitoring obligation, which means that the providers of online content-sharing services cannot be required to prevent the uploading and making available to the public of content which, in order to be found unlawful, would require an independent assessment of the content by them in the light of the information provided by the rightholders and of any exceptions and limitations to copyright. Fifthly, Article 17 of the Directive introduces several procedural safeguards, which protect the right to freedom of expression and information of users of the abovementioned services in cases where, nonetheless, the providers of the services erroneously or unjustifiably block lawful content.

The Court infers from the foregoing that **the obligation, on online content-sharing service providers, to review, prior to its dissemination to the public, the content that users wish to upload to their platforms**, resulting from the specific liability regime established in the Directive, **has been accompanied by appropriate safeguards by the EU legislature in order to ensure respect for the right to freedom of expression and information of the users of those services**, and a fair balance between that right, on the one hand, and the right to intellectual property, on the other. Nonetheless, Member States must, when transposing Article 17 of the Directive into their national law, take care to act on the basis of an interpretation of that provision which allows a fair balance to be struck between the various fundamental rights protected by the charter of fundamental rights.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text and the résumé](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355

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