

RESEARCH NOTE

RESEARCH AND DOCUMENTATION DIRECTORATE

Collective management of copyright and related rights in the
Member States

[...]

[...]

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[...]

SUMMARY

INTRODUCTION

1. The Research and Documentation Directorate (RDD) received a request for a research note on the collective management of copyright and related rights in the Member States.
2. More specifically, this research note aims to provide an answer to the following three questions:
 - (a) Is the carrying out of activities related to the collective management of copyright restricted to particular entities? If the answer is in the affirmative:
 - Which entities are permitted to carry out these activities?
 - Does this restriction apply to all types of protected works?
 - Which activities are restricted?
 - (b) Is the carrying out of activities concerning the collective management of rights related to copyright restricted to particular entities? If the answer is in the affirmative:
 - Which entities?
 - Which activities are restricted?
3. The research covers the law in 13 Member States, namely **Austria, Belgium, Czechia, Finland, France, Germany, Greece, Ireland, Italy**, the **Netherlands, Poland, Spain**, and **Sweden**.¹
4. A summary table of the legal situation in the 13 Member States covered is annexed to this explanatory summary.

I. GENERAL OVERVIEW OF THE REGULATION OF COPYRIGHT IN THE EUROPEAN UNION

5. As the legal literature shows, the harmonisation process in the field of copyright within the EU is characterised by a gradual or piecemeal approach, which sometimes leads to inconsistencies.²
6. As a result, a comparison of the national laws of the Member States reveals a number of major differences in terms of terminology, wording and content in relation to the regulation of copyright.³ In fact, national structures of intellectual property law are based on many and varied cultural and legal traditions. Despite a long process of harmonisation, those conceptual differences are still quite evident, both in the classification and regulation of copyright and related rights, and in the specific area of collective management of those rights.

¹ [...]

² Hugenholtz, B. (ed.), *Harmonising European Copyright Law. The Challenges of Better Lawmaking*, Wolters Kluwer, 2009, pp. 15.

³ Hugenholtz, B. (ed.), *Harmonising European Copyright Law*, cited above, p. 301.

7. Ever since the first directive in the field of copyright was adopted in 1991, there has been intensive and sustained European legislative activity, resulting in two regulations and 13 directives. These legislative acts today form the EU copyright acquis.⁴
8. This legislative activity has naturally led to continuous adaptations of national law. This process of adaptation and change is indeed still underway in some Member States.
9. As regards the management of copyright and related rights in particular, this relates to the way in which those rights are exploited economically, licensed, assigned or remunerated for different types of use. The management of those rights may be carried out both directly by authors and holders of related rights and through an intermediary who, as agent, professionally manages the rights of others.
10. Given the intrinsic link between how copyright is commercially exploited and the functioning of the internal market, the European Commission proposed harmonising this area on the basis of

⁴ The EU regulatory framework for copyright and related rights consists of:

- Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission ([OJ 1993 L 248, p. 15](#));
- Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases ([OJ 1996 L 77, p. 20](#));
- Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society ([OJ 2001 L 167, p. 10](#));
- Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art ([OJ 2001 L 272, p. 32](#));
- Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights ([OJ 2004 L 157, p. 45](#));
- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property ([OJ 2006 L 376, p. 28](#));
- Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs ([OJ 2009 L 111, p. 16](#));
- Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights ([OJ 2011 L 265, p. 1](#));
- Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works ([OJ 2012 L 299, p. 5](#));
- Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ([OJ 2014 L 84, p. 72](#));
- Directive (EU) 2017/1564 of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society ([OJ 2017 L 242, p. 6](#));
- Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC ([JO 2019, L 130, p. 82](#));
- 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](#));
- Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market ([OJ 2017 L 168, p. 1](#)),
- and Regulation (EU) 2017/1563 of the European Parliament and of the Council of 13 September 2017 on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled ([OJ 2017 L 242, p. 1](#)).

various premises. Since the economic dimension of individual management is limited, and differences relating thereto at national level are minimal, efforts focused on collective management.

11. During this process, it became apparent that the collective management of copyright and related rights was based on national models which were heterogeneous and, in several cases, monopolistic.
12. This was, in brief, the context in which Directive 2014/26 was adopted. Its aim is to harmonise the collective management of copyright and related rights across the national legal systems.⁵
13. The directive lays down, inter alia, two types of entity which may provide such management, namely, collective management organisations and independent management entities.
14. According to the definitions provided in Directive 2014/26,⁶ the difference between the two types of entity lies, firstly, in the nature of their business. Collective management organisations are not-for-profit, while independent management entities are for-profit. The second difference is that, contrary to collective management organisations, independent management entities are neither owned nor controlled by rightholders.
15. In addition, under Directive 2014/26, independent management entities are only subject to some of the provisions of the latter. In particular, unlike collective management organisations, they are not, in principle, required to agree to manage the rights entrusted to them by rightholders. Nor are they subject to the obligation to refrain from restricting the exercise by rightholders of their right to terminate the authorisation to manage the rights granted to them, by requiring that the management of those rights be entrusted to another collective management entity.⁷
16. Furthermore, Directive 2014/26 also establishes different rules at other levels. Thus, only collective management organisations are obliged to put in place supervision of the persons who manage the business of the organisation and to ensure that those persons manage that business in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.⁸ In addition, the directive requires collective management organisations to comply with particular rules on the management of rights revenue, to which independent management entities are not subject.⁹
17. In this context, the heterogeneity of the national structures of intellectual property law also has repercussions for collective management systems, which explains the differences that are sometimes found in the nomenclature used and, in particular, the fact that the terminology used by some Member States differs from that used in Directive 2014/26.¹⁰ Nevertheless, in order to

⁵ On the transposition of Directive 2014/26, see also the 'Report on the application of Directive 2014/26/EU on collective management of copyright and related rights and multiterritorial licensing of rights in musical works for online use in the internal market', SWD (2021) 338 final, and the 'Study on selected issues relating to the application of the CRM Directive', available on <https://digital-strategy.ec.europa.eu/en/library/reports-collective-management-and-extended-licensing>.

⁶ Article 3(a) and (b) of Directive 2014/26.

⁷ Article 5(2) and (6) of Directive 2014/26.

⁸ Article 9(1) and Article 10(1) of Directive 2014/26.

⁹ Articles 11 to 13 of Directive 2014/26.

¹⁰ See, for example, the use of the terms 'société de gestion' in Belgium or 'sociedad de gestión' in Spain to identify collective management organisations, or the terms 'organisme de gestion collective' and 'organisme de gestion indépendants' used in France.

ensure consistency in the terms used in this summary, the terminology from Directive 2014/26 will be used when referring to the different types of organisations that may provide collective management of copyright. By contrast, the more generic term 'organisation' is used to refer to both collective management organisations and independent management entities, in order to identify any legal person that carries out or may carry out a collective management activity.

II. COLLECTIVE MANAGEMENT MODELS FOR THE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS IN THE MEMBER STATES

18. The heterogeneity of the above-mentioned national copyright regimes means there is a wide variety of collective management systems within the EU. Despite this lack of uniformity, it does seem possible to classify the existing management systems into two main groups.
19. The first group is composed of Member States in which, in principle, the law does not exclusively assign rights management to collective management organisations (**Austria, Germany and Ireland**). In this first group, it would seem appropriate to include a subcategory composed of Member States which, although they do not exclusively assign the management of certain rights to collective management organisations, nevertheless they lay down systems of extended collective licensing or licences with an extended effect (**Finland and Sweden**).
20. Extended collective licensing is a rights management mechanism which allows a collective management organisation to grant licences as a collective licensing organisation, on behalf of rightholders, irrespective of whether the rightholders have authorised that organisation to do so. This means that the licences do not only cover the rights entrusted individually to the collective management organisation by its members, but are extended to cover other rightholders in the same category who are not members of that organisation. The mandate to represent non-members is therefore not based on a contract, but is derived from a legal provision. In these systems, in order to operate extended collective licensing, collective management organisations must, in particular, fulfil a representativeness criterion.¹¹
21. As for the second group, it is composed of Member States whose legislation restricts the management of certain rights to being carried out by collective management organisations (**Belgium, Czechia, France, Greece, Italy, the Netherlands, Poland and Spain**). It is important to note that, although there are some differences between these countries in terms of which rights must be managed by collective management organisations, in most of these countries, the operating space left to independent management entities remains fairly marginal.

A. MEMBER STATES WHICH DO NOT RESTRICT THE CARRYING OUT OF ACTIVITIES RELATED TO THE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS TO PARTICULAR ENTITIES

22. In five of the 13 Member States studied (**Austria, Finland, Germany, Ireland and Sweden**), activities relating to the collective management of copyright and related rights can only be carried out by certain entities. However, this observation should be accompanied by additional explanations of specific features which characterise these five legal systems as regards collective management of copyright and related rights.

¹¹ It should be noted that issues relating to the collective licensing mechanism referred to in Directive 2019/790 are excluded from the analysis carried out in the context of this research note.

23. In **Austria**, the collective management of these rights may be carried out by any collective management organisation and any independent management entity that is present in the market and has management authorisation.¹² Collective management organisations or independent management entities which are established in the territory of other Member States and which have collective management rights under the law of their State of establishment are not subject to the requirement for such management authorisation for multi-territorial licensing of online rights in musical works. However, as regards other rights under the Law on copyright, they must also have management authorisation and a registered office within the country.¹³
24. In the case of Austria, it is important to note that, despite the fact collective management is not legally restricted to being conducted by particular entities, its legal system nevertheless lays down a monopoly principle (*Monopolgrundsatz*).¹⁴ According to that principle, only one collective management organisation or one independent management entity may be authorised for the management of a given right, which leads to the de facto exclusion of independent management entities from the Austrian market where the management of that right has already been assigned to a particular collective management organisation. To date, nine organisations have received such authorisation, all of which are collective management organisations.
25. In **Germany**, collective management of copyright and related rights can be carried out, inter alia, by collecting societies and independent management entities.¹⁵ In fact, because German legislation does not contain a monopoly principle of the kind laid down in Austrian law, in practice several collective management organisations operate in the German market.¹⁶ These are, in general, specialised according to subject area.¹⁷ As for independent management entities, there are at least two such entities operating in the German market.¹⁸
26. In **Ireland**, any management organisation, whether it is a collective management organisation or an independent management entity, may undertake the management of copyright and related rights.¹⁹ Furthermore, the practice of specialising on the basis of rights and subject matter is also

¹² Conclusion drawn from Paragraph 4 of the Verwertungsgesellschaftengesetz 2016 (Austrian Act on collective management organisations) of 20 May 2016 (BGBl. I Nr. 244/2021) ('the VerwGesG'). Although this paragraph states that particular provisions of the VerwGesG do not apply to independent management entities, it should be noted that those provisions do not relate the management of copyright and related rights, but rather concern rules on the organisation of collective management organisations (Paragraph 6), their membership and governance structure (Paragraphs 12 to 22), collaboration with supervisory authorities in the EU and the European Economic Area (Paragraph 76) and collaboration with the European Commission (Paragraph 92(2)).

¹³ Article 3(3) of the VerwGesG.

¹⁴ Under Article 7 of the VerwGesG.

¹⁵ Referred to in Paragraphs 2 and 4 of the Gesetz über die Wahrnehmung von Urheberrechten und verwandten Schutzrechten durch Verwertungsgesellschaften (Law on the management of copyright and related rights by collecting societies) of 24 May 2016 (BGBl. I, p. 1190), as amended by the Law of 31 May 2021 (BGBl. I, p. 1204). Paragraph 3 of that law, which transposes Article 2(3) of Directive 2014/26, also provides for dependent entities which are owned or controlled by a collective management organisation.

¹⁶ Thirteen collective management organisations are registered by the supervisory authority, namely the Deutsches Patent- und Markenamt (German Patent and Trade Mark Office, 'the DPMA'). The DPMA, as the supervisory authority under Article 75(1) of the Law on the management of copyright and related rights by collective management organisations, publishes a [list of collective management organisations with a registered office/their headquarters in Germany](#) (01/04/2024).

¹⁷ For example, the oldest and largest collecting society, the Gesellschaft für musikalische Aufführungs- und Sevatische Vervielfältigungsrechte eV (GEMA), is responsible for managing the rights of composers, lyricists and music publishers. The collecting society VG Wort is responsible for managing the rights of writers and publishers.

¹⁸ These are CCLI Lizenzagentur GmbH (CCLI) and MPLC Deutschland GmbH (MPLC), which are registered. Legal literature also refers to other independent entities.

¹⁹ In Ireland, copyright and related rights are governed by the [Copyright and Related Rights Act, 2000 as amended](#).

widespread.²⁰ At present, 14 collective management organisations and four independent management entities are operating in the Irish market for the collective management of copyright and related rights.

27. In terms of the subcategory of Member States operating an extended collective licensing system (**Finland** and **Sweden**), several similarities can be identified.
28. In **Sweden**, before the transposition of Directive 2014/26, the terms 'collective management organisation' and 'independent management entity' were not used in national legislation. However, since its transposition, collective management organisations and independent management entities have coexisted, without collective management being assigned by law to particular organisations. In fact, copyright management may be carried out by various forms of associations, foundations, partnerships, trade unions and public limited companies.
29. However, the copyright management regime is based on the use of 'collective licenses with an extended effect',²¹ which are available for any type of work, provided the requirement that the management organisation be representative is met.²² As a condition for carrying out extended collective licensing, the law imposes a requirement of representativeness on collective management organisations, meaning that only organisations which represent a substantial number of authors may conclude contracts giving rise to a collective licence with an extended effect. This requirement for representativeness may explain the de facto exclusion of independent management entities observed in the Swedish market, as historical reasons may prevent independent management entities from reaching the size necessary to be sufficiently representative.
30. In **Finland**, the legislation does not provide for the legal assignment of collective management of copyright and related rights to specific organisations either. However, as with the Swedish model, Finland has a system of extended collective licensing. Finnish legislation²³ specifies the fields in which a system of collective licences with an extended effect may be operated. These include:
 - Television and radio programmes and periodicals;
 - Photocopying;
 - Internal communication activities;
 - Teaching and scientific research;
 - Archives, museums and libraries;
 - Works of art, and
 - Online recording services of television programmes.

²⁰ By way of example, The Authors' Licensing and Collecting Society Ltd is responsible for literary works and the Phonographic Performance Ireland CLG handles sound recordings.

²¹ See Riis, T. Schovsbo, J., Columbia Journal of Law and the Arts, Vol. 33, Issue IV.

²² Swedish legislation specifies which protected works are covered by the system of extended collective licences in Paragraphs 42a to 42h of the lag (1960: 729) om upphovsrätt till litterära och konstnärliga verk (upphovsrättslagen) (Law (1960: 729) on copyright in literary and artistic works).

²³ The tekijänoikeuslaki ([8.7.1961/404](#)) (Law on copyright), see Paragraphs 25f, 25h, 25 g, 13, 13a, 14, 16d, 16e, 25a and 25l.

31. At present, all organisations which have received ministerial accreditation to operate extended collective licences in a certain field and in relation to a specific activity in that field are collective management organisations. No independent management entity operates in Finland for reasons similar to those described in Sweden.
32. None of the five legal systems listed above draws a distinction between collective management of copyright, on the one hand, and the collective management of related rights, on the other.
33. In summary, in these five legal systems, the market presence of independent management entities is limited. It has been observed that, in practice, this type of entity is unusual in **Austria, Germany** and **Ireland**. In **Finland** and **Sweden**, such entities are de facto absent from the market.

B. MEMBER STATES WHICH RESTRICT THE CARRYING OUT OF ACTIVITIES RELATED TO THE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS TO PARTICULAR ENTITIES

34. In eight of the Member States studied (**Belgium, Czechia, France, Greece, Italy, the Netherlands, Poland** and **Spain**), collective management of copyright and related rights is subject to restrictions.
35. Although each of these Member States has special features in relation to the types of rights that can only be managed by particular entities, all of those States share common characteristics. Thus, in most of them, there are collective management obligations for certain rights,²⁴ which can only be carried out by collective management organisations, thereby precluding, either explicitly or implicitly, management by independent management entities. The consequence of this configuration is that the presence of independent management entities is quite limited in the respective markets. Finally, in all those Member States, collective management organisations are subject to more stringent rules as regards their internal management, the rights of the rightholders, transparency and publicity around their activities.
36. In **Belgium** at present,²⁵ collective management of copyright and related rights is provided by collecting societies, collective management organisations and independent management entities.²⁶ Belgian legislation places restrictions on the management of rights by independent management entities. The Belgian legislature imposed certain restrictions on the management of remuneration and created legal monopolies with a view to the collection and distribution of rights to remuneration, which entail restrictions for independent management entities. Thus, the management of copyright in respect of remuneration for cable retransmission and/or another means of retransmission may only be exercised by collecting societies and/or collective management organisations representing authors.²⁷ In addition, the management of the rights of authors and holders of related rights for the purposes of authorising or prohibiting cable retransmission and/or other means of retransmission may be exercised only by collecting societies and/or collective management organisations, which manage the cable retransmission

²⁴ Those obligations go beyond mandatory collective management under, inter alia, Directive 93/83.

²⁵ See [Law of 08/06/2017](#) transposing Directive 2014/26 into Belgian law. See also, in that regard, on actors of collective management in Belgian law before and after the Law of 8 June 2017, Carine Libert, 'Gestion collective des droits d'auteur et des droits voisins' (Collective management of copyright and related rights), in F. Brison and H. Vanhees, [Le droit d'auteur belge. Hommage à Jan Corbet](#) (Belgian Copyright Law, Hommage to Jan Corbet), Larcier, Brussels, 2018.

²⁶ Article XI.246 of the [Code of Economic Law](#).

²⁷ Article XI.225 of the Code of Economic Law.

right and/or other means of retransmission in Belgium.²⁸ Similarly, where the author or holders of related rights have not entrusted the management of their rights to a collecting society or a collective management organisation, the collecting society or collective management organisation which manages rights in the same category is deemed to be responsible for managing their rights.²⁹

37. According to the list compiled by the Control Service of Copyright and Related Rights Management Companies, two independent management entities (Auteursbureau Almo and Toneelfonds J. Janssens) and two collective management organisations (SACD and Scam) operate in the Belgian market,³⁰ and the remainder are collecting societies.
38. In the **Netherlands**, the management of certain copyright and related rights can only be carried out by collective management organisations. This concerns, firstly, communication to the public of a work protected by copyright or material protected by related rights by cable or other means³¹ and, secondly, communication to the public of a cinematographic work.³²
39. In addition, the management of a number of other rights is exclusively assigned to specific collective management organisations. Thus, the management of copyright in music is carried out by a single association, Vereniging BUMA, which essentially ensures the public performance and broadcasting of all musical works and related texts, except for the public performance or broadcasting of dramatic musical works accompanied by the performance of the show.³³ This exclusive assignment does not apply to making music available online. Similarly, other foundations operate in specific fields:
 - Stichting Reprorecht, which is responsible for collecting and distributing payments for reprography;³⁴
 - Stichting Leenrecht, which collects and distributes fees for the lending of a literary, scientific or artistic work;³⁵

²⁸ Article XI.224.1 of the Code of Economic Law.

²⁹ Article XI.224.2 of the Code of Economic Law. See also information on the website [Control service of copyright and related rights management companies \[FPS Economie \(fgov.be\)\]](https://www.fgov.be/en/themes/copyright-and-related-rights/collective-management), under the heading 'Rationale for collective management'. See also F. Brison and H. Vanhees, [Le droit d'auteur belge. Hommage à Jan Corbet](#) (Belgian Copyright Law, Hommage to Jan Corbet), Larcier, Bruxelles, 2018.

³⁰ A list of collecting societies, collective management organisations and independent management entities, dated May 2022, is available on the website of the [Control service of copyright and related rights management companies \[FPS Economy \(fgov.be\)\]](https://www.fgov.be/en/themes/copyright-and-related-rights/collective-management), see, in particular, the document [Présentation des sociétés de gestion, des organismes de gestion collective et entités de gestion indépendantes](#) (Overview of collecting societies, collective management organisations and independent management entities).

³¹ Paragraph 26a (1) of the Auteurswet ([Stb. 1912, No 308](#)) (Law on copyright) and 14a of the Wet van 18 maart 1993, houdende regelen inzake de bescherming van uitvoerende kunstenaars, producenten van fonogrammen of van eerste vastleggingen van films en omroeporganisaties en wijzigingen van de Auteurswet 1912 (Law on the protection of performers, producers of phonograms or first fixations of films and broadcasters) of 18 March 1993 ([Stb. 1993, No 178](#)), known as the 'Wet naburige rechten' (Law on Related Rights) ('the WNR'). In that regard, it is irrelevant whether the collective management organisation concerned is established in the Netherlands or in another EU Member State or the European Economic Area. See also [Verkade D.W.F. in T&C Intellectuele eigendom, art. 26a Auteurswet, aant. 1](#) (last updated on 1 October 2022).

³² [Article 45d\(2\), \(3\) and \(4\) of the Auteurswet](#) (Law on copyright) and [Article 4 of the WNR](#).

³³ [Article 30a\(2\) and \(3\) of the Auteurswet](#) (Law on copyright), [Spor, J.H., Verkade D.W.F. & Visser, D.J.G., Auteursrecht, Auteursrecht, portretrecht, naburige rechten en databankenrecht \(Recht en Praktijk nr. IE2\), Deventer: Wolters Kluwer 2019](#), under 10.14, and [Verkade, D.W.F., in T&C Intellectuele eigendom, art. 30a Auteurswet, aant. 2a and 2b](#) (last updated on 1 October 2022).

³⁴ [Article 16l\(1\) of the Auteurswet](#) (Law on copyright).

- Stichting Thuis kopie, which has exclusive authorisation to collect and distribute remuneration for copies for private use of works protected by copyright, ³⁶ and
 - Stichting ter Exploitatie van Naburige Rechten, which is exclusively responsible for the collection and distribution of remuneration among rightholders in respect of phonograms produced for commercial purposes; ³⁷ it also has exclusive competence for fixing the amount of that remuneration. ³⁸
40. All of those bodies are collective management organisations, even if their nature as such is not explicitly provided for in Netherlands law. In 2021, 21 collective management organisations and two independent management entities could be identified in the Dutch market.
41. In **Spain**, until 1987, there was only one collective management organisation, the Sociedad General de Autores y Editores (SGAE), which managed all rights under a monopoly system. After the adoption of the Law on intellectual property, ³⁹ new collective management organisations appeared in the Spanish market to manage new rights enshrined in that law. Thus, at present, the Spanish system for the management of copyright and related rights is characterised by the coexistence of various collective management organisations, each specialising in a given sector, and each having a de facto monopoly in that sector. ⁴⁰ However, this sector-by-sector monopoly system is not required by law.
42. Specifically, following the amendments made to the Law on Intellectual Property in order to transpose Directive 2014/26, two types of organisation may collectively manage copyright and related rights: ‘entidades de gestión Colectiva’ (Spanish equivalent of collective management organisations) and ‘operadores de gestión Independientes’ (Spanish equivalent of independent management entities). However, their scope of action is different, given the legal restriction whereby the exercise of certain activities is entrusted only to collective management organisations. Thus, mandatory collective management activities can only be carried out only by collective management organisations. These include, in particular, the right to remuneration for distribution, the right to remuneration for communication to the public, the right to authorise cable retransmission and the right to compensation for private copying. In addition, the Comisión Nacional de la Competencia y los Mercados (Spanish Competition Authority) has published

³⁵ [Article 15f of the Auteurswet](#) (Law on copyright) and [Article 15a of the WNR](#), read in conjunction with the Besluit van de Minister van Justitie, genomen in overeenstemming met de Minister van Onderwijs, Cultuur en Wetenschappen, van 30 oktober 1996 (nr. 583470/96/6), tot aanwijzing van de Stichting Leenrecht als rechtspersoon belast met inning en verdeling van de vergoedingen voor uitlenen (Ministerial Order designating the legal person responsible for the collection and distribution of royalties/fees for loans/loan fees), of 30 October 1996 ([Stcrt. 1996, No 222](#)).

³⁶ [Article 16c\(2\) and Article 16d\(1\) of the Auteurswet](#) (Law on copyright), read in conjunction with the Regeling van de Minister voor rechtsbescherming van 22 maart 2022, nr. 3903171, directie Wetgeving en Juridische Zaken, tot aanwijzing van de rechtspersoon, bedoeld in artikel 16d van de Auteurswet en artikel 11 van de Wet op de naburige rechten (Ministerial Order designating the legal person referred to in Article 16d of the Auteurswet and Article 11 of the WNR) of 22 March 2022 ([Stcrt. 2022, 8189](#)).

³⁷ See [Article 15\(1\) of the WNR](#), [Spor, J.H., Verkade, D.W.F. & Visser, D.J.G., Auteursrecht. Auteursrecht, portretrecht, naburige rechten en databankenrecht \(Recht en Praktijk nr. 1E2\)](#), Deventer: Wolters Kluwer 2019, under 10.19, et [Visser, D.J.G., in: T&C Intellectuele eigendom, art. 15 WNR, aant. 1a](#) (last updated on 1 October 2022).

³⁸ See judgment of the Hoge Raad (Council of State) of 17 July 2020, 19/02785, [ECLI:NL:HR:2020:1300](#), paragraph 3.1.7.

³⁹ [Real Decreto Legislativo 1/1996, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual](#) (Royal Legislative Decree 1/1996 approving the revised text of the Law on Intellectual Property) of 12 April 1996.

⁴⁰ According to the [Ministry of Culture and Sport](#), the collective management organisations operating in Spain are as follows: SGAE, Centro Español de Derechos Reprográficos (CEDRO), Entidad de Gestión de Artistas plástico (VEGAP), Derechos de Autor de Medios Audiovisual (DAMA), Sociedad Española de Derechos de Autor (SEDA), Artistas Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE), Artistas Intérpretes, Sociedad de Gestión (AISGE), Asociación de Gestión de Derechos Intelectuales (AGEDI) and Entidad de Gestión de Derechos de los Productores Audiovisual (EGEDA).

reports warning of the existence of structural competition problems in the market for the management of copyright and related rights ⁴¹ and sanctioned various collective management organisations for undermining competition, in particular for abuse of a dominant position. ⁴² It is therefore unsurprising that the market share of independent management entities remains rather limited. ⁴³

43. A similar monopoly system used to exist in **Italy**, where, until 15 October 2017, the Law on copyright ⁴⁴ exclusively assigned the activity of intermediary to the Società italiana degli autori ed editori (Italian Society of Authors and Publishers, SIAE), carried out through direct and indirect interventions, mediation, mandate, representation, as well as by assigning rights to representation, performance, broadcasting, including communication to the public by satellite, and mechanical and cinematographic reproduction of protected works. Following the amendment of that law, ⁴⁵ the activity of intermediary activities is now reserved to the SIAE and other collective management organisations. This role now includes the granting of licences and authorisations to exploit protected works, the collection of revenue from such licences and authorisations and the distribution of revenue between rightholders.
44. Under the legislative act transposing Directive 2014/26 ⁴⁶ into Italian law, rightholders may entrust the management of their rights to a collective management organisation or an independent management entity of their choice. At the same time, however, it is specified that that right is to be exercised without prejudice to the provisions of the Law on the protection of copyright, which grant the right to act as an intermediary with regard to particular rights solely to the SIAE and to other collective management organisations. Therefore, independent management entities are precluded from carrying out these activities. In addition, the Italian legislation appears, in essence, to prevent independent management entities established both in Italy and abroad from entering the market. ⁴⁷ As regards related rights specifically, by contrast, unlike copyright, the legislative act which transposed Directive 2014/26 into Italian law seems to permit the management of related rights by independent management entities as well.
45. In **Poland**, although collective management organisations and independent management entities are recognised and regulated, national legislation provides for mandatory intermediation by collective management organisations in the following situations:

⁴¹ See the Report by the Spanish Competition Authority (CNMC) '[Informe sobre la gestión Colectiva de derechos de propiedad intelectual](#)' (Report on the collective management of intellectual property rights).

⁴² See, inter alia, resolutions by the CNMC against the SGAE of [25 January 2002](#), against AGEDI of [13 July 2006](#), against AGEDI and AIE of [9 December 2008](#), against AIE of [23 February 2011](#), against AGEDI and AIE of [26 November 2015](#) and against SGAE of [30 May 2019](#).

⁴³ According to the list published by the [Ministry of Culture and Sport](#), in Spain there are five independent management entities: Soundreef (a UK company), Unison Rights (a Spanish company), MPLC (a Spanish company), Jamendo (a Luxembourgish company) and Sugarpod (a Spanish company).

⁴⁴ Article 180 of Legge n. 633 – Protezione del diritto d'autore e di altri diritti connessi al suo esercizio (Law No 633/1941 on the protection of copyright and related rights) of 22 April 1941 ([GURI No 166 of 16 July 1941](#)).

⁴⁵ Amendment made by Article 19 of decreto-legge n. 148 – Disposizioni urgenti in materia finanziaria e per esig, indifferibili convertito con modificazioni dalla legge 4 dicembre 2017, n. 172 (Decree-Law No 148 laying down urgent provisions on financial matters and non-deferrable needs, converted with amendments by Law No 172 of 4 December 2017) of 16 October 2017 ([GURI No 242 of 16 October 2017](#)).

⁴⁶ See Article 4(2) of Decreto legislativo n. 35 – Attuazione della direttiva 2014/26/EU sulla gestione collettiva dei diritti d'autore e dei diritti connessi e sulla concessione di licenze multiterritoriali per i diritti su opere musicali per l'uso online nel mercato interno (Legislative Decree No 35 – Implementation of Directive 2014/26 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market) of 15 March 2017 ([GURI No 72 of 27 March 2017](#)).

⁴⁷ See [Meo, C., La disciplina della gestione collettiva del diritto d'autore e dei diritti connessi](#), p. 238.

- Payment of fees by way of compensation for authorised private use;
- Broadcasters' use of minor musical and oral works by broadcasting them and making them available on the Internet;
- Rebroadcasting of works via cable networks;
- Payment of remuneration for making works available on the internet in connection with authorised use for information purposes;
- Payment of remuneration for the lending of copies of works by public libraries;
- Payment of additional remuneration for certain uses of audiovisual works;
- Payment by producers of phonograms of the additional remuneration for performers, and
- Granting of collective licences for the use of works not commercially available.⁴⁸

46. As the register administered by the Minister for Culture and the Protection of National Heritage shows, there are currently two independent management entities in Poland.⁴⁹ Twelve collective management organisations have received authorisation from that minister (the authorisation for two of them has since been withdrawn),⁵⁰ the largest being Stowarzyszenie Autorów ZAiKS (Société des Auteurs ZAiKS). It is apparent from the explanatory memorandum to the Polish Law on collective management that the management of rights by entities which are not collective management organisations is, for practical reasons, limited to the licensing of rights to specific works or specific related rights.⁵¹ Furthermore, only collective management organisations may grant multi-territorial licences.⁵²
47. In **Czechia**, before the adoption of Directive 2014/26, collective management operated according to the monopoly principle, whereby each collective operator had an exclusive position in the field of rights they managed. Under that arrangement, the Ministry of Culture granted authorisation to conduct the activity of a collective manager, provided that no other person was already authorised to exercise the same right in relation to the same subject matter and, in the case of works, to exercise the same right in relation to the same type of work. Today, the monopoly enjoyed by collective managers is not a legal monopoly, but this de facto monopoly system has

⁴⁸ Articles 20, 20¹, 21 and 21¹, Article 25(4), Article 35¹, Article 70(3), Articles 95³ and 35¹⁰ of the Ustawa z dnia 4 lutego 1994 o prawie autorskim i prawach pokrewnych (Law on copyright and related rights) of 4 February 1994 ([Dz. U. of 2022, position 2509, consolidated text](#)).

⁴⁹ Register of independent management entities, available on the [Ministry's website](#).

⁵⁰ [Ministry's website](#).

⁵¹ [Explanatory memorandum to the draft Ustawa o zbiorowym zarządzaniu prawami autorskimi i prawami pokrewnymi](#) (Law on the collective management of copyright and related rights), pp. 133 and 134.

⁵² Article 53 of the Ustawa z dnia 15 czerwca 2018 o zbiorowym zarządzaniu prawami autorskimi i prawami pokrewnymi (Law on the collective management of copyright and related rights) ([Dz. U. de 2018, position 1293](#)) position 1293.

not yet been completely abandoned, as there are currently only three independent management entities in Czechia.

48. In fact, in that Member State, the business of collective management of copyright and related rights may be carried out by collective management organisations and independent management entities. However, the latter are no longer entitled to manage mandatory collective management rights, which are to be carried out only by collective management organisations.⁵³
49. In **France**, collective management of copyright and related rights can be carried out by collective management organisations and independent management organisations which may operate in any legal form. There are several collective management organisations in the French market. Usually, these bodies specialise in a particular field.⁵⁴ Furthermore, some organisations operate in several fields,⁵⁵ which sometimes leads to competition between collective management organisations in the market. To date, there do not appear to have been any independent management entities.
50. Independent management entities are not authorised to manage copyright or related rights which are subject to mandatory collective management, which must be carried out by collective management organisations. This covers:
 - Private copying;
 - Simultaneous, unabridged and unaltered cable retransmission;
 - Lending in libraries;
 - Digital exploitation of out-of-print books;
 - Reprographic reproduction, and
 - Researching and referencing works of plastic, graphic or photographic art.⁵⁶

⁵³ Pursuant to Article 97d of [zákon č. 121/2000 o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů](#) (Law on copyright, related rights and amending certain laws) of 7 April 2000, the rights subject to mandatory collective management are the right to remuneration for 'the use of an artistic performance fixed on a phonogram published for commercial purposes, the use of a phonogram published for commercial purposes, the making of a reproduction for personal use on the basis of a phonogram of an audiovisual recording or other recording by transferring its contents by means of a device to a blank medium, the making of a reproduction of a work for the personal use of a natural person, for internal use by a legal person or a natural person exercising a professional activity, by means of an apparatus for making printed reproductions on paper or a similar medium, the resale of an original work of art, the lending of the original or a reproduction of a published work, the right to reasonable remuneration for the rental of the original or a reproduction of the work or performance of the performer fixed on a phonogram or an audiovisual recording, the right to use, by retransmission of radio and television broadcasts, live broadcasts of works, performances and performances fixed in a phonogram or audiovisual recording, except for performances in which the phonogram has been published for commercial purposes, as well as the right to use, by retransmission, phonograms broadcasts other than those published for commercial purposes and audiovisual recordings; and, in addition, except in the following cases: the right of retransmission shall be exercised by the broadcaster in connection with its own broadcasts, be it its own rights or rights exercised pursuant to a contract concluded with the rightholder, the broadcast by the initial transmitter shall be made exclusively by means of an internet access service and the retransmission shall not be carried out in a controlled environment [...]'.⁵⁶

⁵⁴ For example, the Société des auteurs compositeurs et éditeurs de music (SACEM) or the Société des auteurs dans les arts graphiques et plastiques (ADAGP).

⁵⁵ For example, the Société pour la perception de la rémunération équitable (SPRE) or the Société civile des auteurs, réalisateurs et producteurs (ARP).

⁵⁶ See, respectively, Articles [L. 311-6](#), [L. 132-20-1](#) and [L. 217-2](#), [L. 133-1](#), [L. 134-3](#), [L. 122-10](#), [L. 136-2](#) of the Intellectual Property Code.

51. In **Greece**, activities related to collective management of copyright may be carried out by several categories of entities, namely:
- Collective management organisations established on national territory;
 - Independent management entities established on national territory, including the specific category of independent management entities with a dominant position in the Greek market;
 - Collective management organisations and independent management entities established in another EU Member State or a State of the European Economic Area (EEA);
 - Collective management organisations established in a third State;
 - Entities owned or controlled, directly or indirectly, in whole or in part, by a collective management organisation; and
 - Agents of collective management organisations and collective protection organisations, where expressly provided for by law.⁵⁷
52. The law transposing Directive 2014/26 into Greek law provides that independent management entities are not authorised to manage copyright or related rights which are subject to mandatory collective management,⁵⁸ which must be carried out by collective management organisations. This covers:
- Reproduction of lawfully published works intended for private use, without the author's authorisation and without remuneration;
 - Remuneration for broadcasting on radio and television or for the presentation to the public of a work recorded on a sound or image matrix;
 - The simultaneous, unabridged and unaltered secondary broadcasting of radio programmes or television programmes via cables or other materials,⁵⁹ and
 - Cable retransmission of programmes, constituting a special category of broadcasting.⁶⁰
53. Greek law stands out because it has a specific category of independent management entities, that is, independent management entities with a dominant position on the Greek market.⁶¹ Those entities, which were already operating in the market when Law No 4481/2017 entered into force, are treated in the same way as collective management organisations both as regards the

⁵⁷ Nomos 4481/2017 sxetika me ti sillogiki diaxeirisi dikaionmatwn pneumatikis Idioktisia kai siggenikon Dikaionmaton, horigisi poliedafikon adeion gia epigrammikes xriseis mousikon ergon kai alla themata aramenotitas Ypourgeiou Politismou kai Athlitismou (FEK 100/20.7.2017) (Law No 4481/2017 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works and other issues falling within the competence of the Ministry of Culture and Sport) ('Law No 4481/2017').

⁵⁸ Article 32 of Law No 4481/2017.

⁵⁹ Articles 18, 49 and Article 52(2) of Nomos 2121/1993 gia tin pneumatiki idioktisia, ta syggenika dikaiomata kai ta politistika zitimata (FEK 25/4-3-1993) (Law No 2121/1993 on intellectual property, related rights and cultural affairs) ('Law No 2121/1993').

⁶⁰ Conclusion drawn from a combined reading of Article 35(5) of Law No 2121/1993 and Article 54(5) of Law No 4481/2017.

⁶¹ Referred to in Article 50 of Law No 4481/2017.

privileges enjoyed by those organisations, in particular mandatory collective management or procedural presumptions in their favour, and in terms of the obligations imposed on them, by analogy with those imposed on those bodies. That equivalence is criticised by academic writers, who see it as a risk of distorting competition and possible incompatibility with Directive 2014/26.⁶²

III. SPECIAL REQUIREMENTS GOVERNING INDEPENDENT MANAGEMENT ENTITIES UNDER NATIONAL LAW

54. In all the Member States studied, the activity of managing copyright and related rights by independent management entities is, in essence, subject to partially different requirements from those applicable to collective management organisations. However, those States can be separated into three groups.
55. In the first group, made up of four Member States (**Austria, Ireland, Italy** and **Spain**), before commencing management activities, both collective management organisations and independent management entities must obtain authorisation and/or be registered.
56. In **Austria**, collective management organisations and independent management entities have, in principle, the same rights and obligations as each other. The conditions for starting collective management activities are also similar. Thus, in order to engage in management activities, both collective management organisations and independent management entities must obtain authorisation to manage rights (*Wahrnehmungsgenehmigung*) from the Aufsichtsbehörde für Verwertungsgesellschaften (supervisory authority for collective management organisations, which is granted for an unlimited period. However, the Austrian law on collective management organisations precludes the application of some of its provisions to independent management entities. Therefore, specific rules govern, in particular, the internal organisation of independent management organisations.
57. In **Ireland**, all collective management organisations and all independent management entities must be registered and remain registered for as long as they continue their activities. Two different registers are provided for: the Register of Copyright Licensing Bodies or the Register of Licensing Bodies for Performers' Property Rights.⁶³ However, in accordance with Directive 2014/26, there is a difference in the governance and control structure of independent management entities compared to collective management organisations.⁶⁴
58. In **Spain**, both collective management organisations and independent management entities need an authorisation issued by the Ministry of Culture and Sport and require public registration in order to be able to carry out management activities. Independent management entities are, however, subject to more flexible governance and control rules.
59. Similarly in **Italy**, collective management organisations and independent management entities are required to report the commencement of their management activities to the competent authority, the Autorità per le garanzie nelle comunicazioni (Communications Regulatory

⁶² Λ. Κοτσίρης, *Δίκαιο Πνευματικής Ιδιοκτησίας και Κοινωνικό Κεκτημένο*, Εκδόσεις Σάκκουλα, Αθήνα- Θεσσαλονίκη, 7η έκδ., 2017, p. 232, ([available on Sakkoulas-Online.gr](http://www.sakkoulas-online.gr)); Ε. Σπερδόκλη, *Δικονομικά ζητήματα του Δικαίου Πνευματικής Ιδιοκτησίας*, Εκδόσεις Σάκκουλα, Αθήνα- Θεσσαλονίκη, 2021, σ. 182 ([available on Sakkoulas-Online.gr](http://www.sakkoulas-online.gr)).

⁶³ Laid down by sections 175 and 280 of the Copyright and Related Rights Act, 2000, as amended (see [unofficial consolidated version](#) version).

⁶⁴ Collective Management in the European Union, Guibault (2018), p. 143.

Authority), which keeps and publishes a list of all those organisations. However, where, under Italian legislation, the management of rights may be carried out by both categories of organisation, collective management organisations must satisfy certain organisational conditions which do not apply to independent management entities, in particular as regards the internal organisation of collective management organisations and the management of rights revenue.

60. In the second group (**Belgium, Czechia, Germany, Greece and Poland**), the requirement to obtain authorisation and/or to register applies, in essence, only to collective management organisations.
61. In **Germany**, collecting societies must, in principle, receive authorisation from the DPMA where those societies are responsible for the management of copyright and related rights which derive from the German law on the management of copyright and related rights by collecting societies. There are exceptions for collecting societies whose headquarters are in another Member State or in a country of the European Economic Area. In addition, a registered collecting society is normally, by way of a simple presumption, considered to be representative. The authorisation requirement does not apply to independent management entities.
62. In **Belgium**, before commencing their activity, collecting societies and collective management organisations must obtain ministerial authorisation. Independent management entities are only subject to a prior declaration regime. Such declarations are made to the Control Service of Copyright and Related Rights Management Companies and published on its website in order to ensure publicity and transparency.⁶⁵
63. In **Czechia**, collective management organisations must be authorised by the Ministry of Culture to carry out their activities, whereas independent management entities are only required to notify the same Ministry of their activities. The Ministry, in turn, registers the entity concerned on a list drawn up for that purpose.⁶⁶ This registration is only declaratory in nature.
64. A similar system exists in **Poland**, where collective management organisations must have an authorisation issued and published by the Minister for Culture and Protection of National Heritage. Independent management entities which are regarded as pursuing a regulated activity within the meaning of the Polish Law on entrepreneurs must simply be registered in the register of independent management entities managed by that minister.⁶⁷ Only certain provisions relating to collective management organisations apply mutatis mutandis to independent management entities. The latter are not subject, in particular, to the provisions on governance and control in the same way as collective management organisations and on the basis of the Law on the collective management of copyright and related rights.⁶⁸
65. It should nevertheless be noted that the Polish legislation stands out due to the absence of any reference to two conditions referred to in Directive 2014/26, namely the requirement that an independent management entity be neither owned nor controlled by rightholders and the

⁶⁵ See, in that regard, Puttemans, A., 'Afdeling 10. /Section 10. – [Vergunning en Verklaring/Autorisation and statements](#)'.

⁶⁶ This list is available at: <https://www.mkcr.cz/seznam-nezavislych-spravcu-prav-cs-1640>.

⁶⁷ Ustawa z dnia 6 marca 2018 – Prawo przedsiębiorców (Law on entrepreneurs) of 6 March 2018 ([Dz. U. de 2021, position 162, consolidated text](#)).

⁶⁸ Under Article 119 of the Law on the collective management of copyright and related rights, independent management bodies are subject to the supervision of the Minister, exercised on the basis of Article 43(7) in conjunction with Article 40 and the provisions of Chapter 5 of the Law on entrepreneurs.

specification that the management of copyright or related rights constitutes the exclusive or main activity of such an entity.

66. In **Greece**, collective management organisations and collective protection organisations are required to obtain authorisation from the Ministry of Culture and Sport. Given the particular nature of the Greek law, in that a specific category of independent management entities has a dominant position in the national market, the same authorisation requirement applies to this category of entities. In addition, those entities are subject to other specific requirements and are required, in particular, to lay down, in their statute, rules governing the functioning of the general assembly of their members. These requirements seem to be explained by the need to ensure transparency and accountability.
67. The other categories of independent management entities established in Greece may conduct their activities once they have received a declaratory administrative act from the competent body within the Ministry of Culture establishing that they have notified the Intellectual Property Organisation (IPO) of their intention to engage in collective management activities, as well as specific information such as their registered office and legal representative.⁶⁹ As a general rule, they are only subject to a limited number of requirements compared with those applicable to collective management organisations, which is explained by the desire not to impose a disproportionate burden on small undertakings. In addition, Greek law also lays down certain specific requirements for entities which constitute public limited companies and on entities which become members of collective management organisations.
68. The third group brings together Member States (**Finland, France, the Netherlands and Sweden**) which have special features as a result of specific way the management of copyright and related rights is organised in their country.
69. In the **Netherlands**, the management of several copyright and related rights is entrusted to specific collective management organisations, and where this is the case, those individual organisations must obtain authorisation from, or be designated by, the Minister for Justice.⁷⁰ Other collective management organisations are not subject to such a requirement, nor are independent management entities. Furthermore, the latter are, in essence, subject only to some of the requirements that apply to collective management organisations, notably the requirements related to transparency.
70. In **Finland**, where a system of extended collective licensing applies, any organisation wishing to obtain the status of organisation operating such licences must be approved by the Ministry of Education and Culture. The Ministry approves the organisation on request for a fixed period of up to five years. Granting the approval is subject to conditions relating, in particular, to the operational capacity of the organisation concerned and to the obligation to submit annual reports to the Ministry. The Finnish law on collective management of copyright provides, in addition, that before commencing the activities covered by that law, any organisation, including

⁶⁹ See, in that regard, Article 4 (1) and (8) of Nomos 4481/2017 *sxetika me ti sillogiki diaxeirisi dikaionmatwn pneumatikis Idioktisias kai siggenikon Dikaionmaton, horigisi poliedafikon adeion gia epigrammikes xriseis mousikon ergon kai alla themata aramenotitas Ypourgeiou Politismou kai Athlismou* (FEK 100/20.7.2017) (Greek Law on the collective management of copyright and related rights).

⁷⁰ In the case of copyright in music, authorisation from the Minister for Justice is required. However, as regards Stichting Reprorecht, Stichting Leenrecht, Stichting Thuiscope and Stichting ter Exploitatie van Naburige Rechten, it is a designation by the Minister for Justice.

any independent management entity, must send the Finnish Patent and Registration Office a notification concerning the collective management of rights.⁷¹

71. In **Sweden**, which also has a system of collective licences with an extended effect, along with some special features, independent management entities which have entered into such agreements or which receive remuneration must satisfy a number of requirements laid down by the Swedish Law on collective copyright management.⁷² Thus, like collective management organisations, independent management entities must meet requirements relating, in particular, to their internal organisation and functioning. However, the obligations on independent management entities are not as stringent as those imposed on collective management organisations. This seems to be explained, in particular, by differences in their nature from an organisational point of view.
72. However, this procedure is never applied to independent management organisations for which there is no formal requirement to enter the market. Nor does the accreditation procedure apply to collective management organisations which would like to provide voluntary collective management. Furthermore, French legislation provides that the provisions which concern, inter alia, compliance with the principle of equal treatment in the management of the rights of all rightholders or the obligation to separate, in annual accounts, income from the exploitation of rights, on the one hand, from their own assets and the sums which they receive by way of management fees, on the other, are applicable only to collective management organisations.

CONCLUSION

73. Despite the heterogeneity of the systems of collective management of copyright in those Member States which were the subject of this study, their legal regimes can be divided into two main groups: Member States which do not legally restrict the carrying out of collective management activities to particular organisations and those in which competences are legally assigned to collective management organisations.
74. The Member States which do not legally restrict collective management to particular organisations are **Austria, Finland, Germany, Ireland** and **Sweden**, which form the first group.
75. A special feature that is common to the last two Member States (**Finland** and **Sweden**) was identified, namely, that they have a system of collective licences with an extended effect, under which the effects of the licences granted by the collective management organisation also affect rightholders who are not members.
76. The requirement of representativeness in order to be allowed to operate collective licences seems to benefit collective management organisations, which are traditionally more established in the market. As a result, in some Member States where there is no legal restriction, extended collective licensing systems may lead to a similar limitation to such a restriction.
77. A second group of States, where the management of copyright and related rights is restricted by law to collective management organisations, was identified. This group is composed of **Belgium, Czechia, France, Greece, Italy**, the **Netherlands, Poland** and **Spain**. It appears from an analysis of the legal systems concerned that in most of those States, the legal restriction of management

⁷¹ Article 53 of the laki tekijänoikeuden yhteishallinnoinnista (Law on collective management of copyright) ([29.12.2016/1494](#)).

⁷² [Lag \(2016:977\) om kollektiv förvaltning av upphovsrätt](#) (Law on collective management of copyright).

activities concerns specific rights, and that no distinction is made between copyright and related rights.

78. It would seem appropriate to highlight a general trend towards limiting the rights of independent management entities through the assignment of the competence to manage copyright and/or related rights to collective management organisations. This trend may be explained by the fact that different types of rightholders' organisations traditionally performed the collective management function in most Member States.
79. An analysis of the markets of the 13 Member States concerned by this research note indicates that the management of copyright and related rights by independent management entities is not very widespread in practice.
80. In general, independent management entities are subject to less strict rules than those applicable to collective management organisations, especially as regards governance and control. It is only in cases where these entities perform the same functions as collective management organisations (for example, in the case of independent management entities with a dominant position on the market in **Greece** or independent management entities in **Sweden** which conclude extended collective licensing agreements or collecting remuneration) that they are treated in the same way as collective management organisations in terms of internal operation obligations and transparency obligations.
81. On the one hand, this difference in treatment may be explained by the fact that independent management entities fundamentally operate as companies governed by private law and, consequently, are already subject to the rules of internal organisation and external controls laid down by company law. The latter imposes high standards of governance, financial management, transparency and reporting in all Member States. On the other hand, the difference in treatment may also be explained by the fact that, at present, their role in collective management is still minor.

[...]

SUMMARY TABLES

States which do not restrict collective management to particular organisations		
State	Special features with regard to copyright	Special features with regard to related rights
Austria	<p>Collective management is not legally restricted to particular organisations.</p> <p>However, only one collective management organisation/entity may be authorised for the management of a given right.</p>	<p>There is no distinction between the management of copyright and the management of related rights, thus the latter is not restricted to particular organisations.</p>
Finland	<p>Collective management is not legally restricted to particular organisations.</p> <p>However, a system of extended collective licensing is provided for by law and may be applied in certain fields and in relation to certain activities.⁷³</p>	<p>There is no distinction between the management of copyright and the management of related rights, thus the latter is not restricted to particular organisations.</p>
Germany	<p>Collective management is not legally restricted to particular organisations.</p>	<p>There is no distinction between the management of copyright and the management of related rights, thus the latter is not restricted to particular organisations.</p>
Ireland	<p>Collective management of copyright is not restricted to particular organisations.</p>	<p>Collective management of related rights is not restricted to specific organisations.</p>

⁷³ The tekijänoikeuslaki (Law on copyright) specifies the following fields (see Articles 25f, 25h, 25g, 13, 13a, 14, 16d, 16e, 25a and 25l): television and radio programmes and periodicals; photocopying, internal communication purposes, teaching and scientific research, archives, museums and libraries, works of art and online recording of television programmes. The provisions cited also specify the fields, activities and exceptions in more detail.

<p>Sweden</p>	<p>Collective management is not legally restricted to particular organisations.</p> <p>However, a system of extended collective licensing is laid down for the use of all types of work.⁷⁴</p> <p>This does not exclude the coexistence of several management organisations in the same field.</p>	<p>There is no distinction between the management of copyright and the management of related rights, thus the latter is not restricted to particular organisations.</p>
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⁷⁴ Article 42a of the lag (1960: 729) om upphovsrätt till litterära och konstnärliga verk (upphovsrättslagen) (Law (1960: 729) on copyright in literary and artistic works) provides that 'a contractual licence [...] shall apply to the use of works in a certain way, where an agreement has been reached for the use of works in such a way with an organisation which represents a substantial number of authors of works used in Sweden in the field'. Where that is the case, the legislation provides for the right to use works covered by copyright, for public authorities, companies, organisations, teaching activities, archives and libraries, radio and television companies, anyone transmitting radio or television programmes simultaneously and without modification, and radio or television companies broadcasting productions made by the company itself or under its control, which were broadcast before 1 July 1995.

States which restrict the collective management of certain rights to particular organisations		
State	Special features with regard to copyright	Special features with regard to related rights
Belgium	<p>The management of certain rights ⁷⁵ is legally restricted to collective management organisations/collecting societies.</p> <p>Collective management of non-restricted rights may be carried out both by those organisations and by independent management entities.</p>	There is no distinction between the management of copyright and the management of related rights, thus the answer to the first question applies.
Czechia	<p>Collective management of certain rights is restricted to collective management organisations. ⁷⁶</p> <p>Collective management of non-restricted rights may be carried out by both collective management organisations and independent management entities.</p>	There is no distinction between the management of copyright and the management of related rights, thus the answer to the first question applies.
France	The management of certain rights ⁷⁷ is legally restricted to collective management organisations.	There is no distinction between the management of copyright and the management of related rights, thus

⁷⁵ Under the Code of Economic Law (Articles XI.213, XI.224, XI.225, XI.229, XI.239 and XI.244), this reservation concerns: cable retransmission, private copying of audio and audiovisual works, reprography remuneration, publishers' statutory remuneration, remuneration for reproduction and communication to the public for the purpose of illustration for teaching or scientific research, public lending, radio broadcasting and communication of a service in a place accessible to the public.

⁷⁶ Pursuant to Article 97d of [zákon č. 121/2000 o právu autorském, o právech souvisejících s právem autorským a o změně některých zákonů](#) (Law No 121/2000 on copyright, related rights and amending certain laws) of 7 April 2000, the rights subject to mandatory collective management are the right to remuneration for the use of an artistic performance fixed on a phonogram published for commercial purposes, the use of a phonogram published for commercial purposes, the making of a reproduction for personal use on the basis of a phonogram of an audiovisual recording or other recording by transferring its contents by means of a device to a blank medium, the making of a reproduction of a work for the personal use of a natural person, for internal use by a legal person or a natural person exercising a professional activity, by means of an apparatus for making printed reproductions on paper or a similar medium, the resale of an original work of art, the lending of the original or a reproduction of a published work, the right to reasonable remuneration for the rental of the original or a reproduction of the work or performance of the performer fixed on a phonogram or an audiovisual recording, the right to use, by retransmission of radio and television broadcasts, live broadcasts of works, performances and performances fixed on a phonogram or audiovisual recording, except for performances in which the phonogram has been published for commercial purposes, as well as the right to use, by retransmission, phonograms broadcasts other than those published for commercial purposes and audiovisual recordings; and, in addition, except in the following cases: the right of retransmission shall be exercised by the broadcaster in connection with its own broadcasts, be it its own rights or rights exercised pursuant to a contract concluded with the rightholder, the broadcast by the initial transmitter shall be made exclusively by means of an internet access service and the retransmission shall not be carried out in a controlled environment.

	Collective management of non-restricted rights may be carried out by both collective management organisations and independent management entities.	the answer to the first question applies.
Greece	<p>Collective management of certain rights ⁷⁸ is restricted to collective management organisations.</p> <p>Collective management of non-restricted rights may be carried out both by collective management organisations and by independent management entities.</p>	There is no distinction between the management of copyright and the management of related rights, thus the answer to the first question applies.
Italy	<p>The collective management of certain rights ⁷⁹ is legally restricted to collective management organisations.</p> <p>Collective management of non-restricted rights may be carried out by both collective management organisations and independent management entities.</p>	<p>Collective management of related rights may be carried out by collective management organisations and independent management entities which fulfil the conditions laid down by the legislation.</p> <p>The applicable conditions are identical for both of these categories.</p>
The Netherlands	The management of certain copyright rights is restricted to being carried out by collective management organisations in general ⁸⁰ and some other copyright rights are restricted to being carried out by individual	The management of certain related rights is restricted to being carried out by collective management organisations in general, ⁸² and some other related rights are restricted to being carried out by individual

⁷⁷ Under Articles [L. 311-6](#), [L. 132-20-1](#), [L. 217-2](#), [L. 133-1](#), [L. 134-3](#), [L. 122-10](#) and [L. 136-2](#) of the Intellectual Property Code, that reservation concerns, respectively, private copying, simultaneous, unabridged and unaltered cable retransmission, lending to libraries, digital exploitation of out-of-print books, reproduction by reprography and researching and referencing of works of plastic, graphic or photographic art.

⁷⁸ In accordance with Law No 2121/1993, that reservation concerns the reproduction of lawfully published works intended for private use, remuneration for broadcasting on the radio and television or for the presentation to the public of a work recorded on a sound or image matrix, the secondary transmission of radio programmes or television programmes by means of cables or other materials, and the retransmission by cable of programmes. See Articles 18, 49 and Article 54(2) of that law.

⁷⁹ Under Article 180 of Legge n. 633 – Protezione del diritto d'autore e di altri diritti connessi al suo esercizio (Law No 633/1941 on the protection of copyright and related rights), that restriction concerns the rights of representation, performance, quotation, broadcasting, including communication to the public by satellite, and of mechanical and cinematographic reproduction of protected works.

⁸⁰ In accordance with the Auteurswet (Law on copyright), that restriction concerns: the right to authorise the communication to the public of a literary, scientific or artistic work by cable transmission or other means and the right to remuneration for the publication of a cinematographic work.

	<p>collective management organisations.⁸¹</p> <p>Collective management of non-restricted rights may be carried out by both collective management organisations and independent management entities.</p>	<p>collective management organisations.⁸³</p> <p>Collective management of non-restricted rights may be carried out by both collective management organisations and independent management entities.</p>
Poland	<p>The activity of independent management entities is limited to the management of certain rights to specific works.⁸⁴</p> <p>Collective management of non-restricted rights may be carried out by both collective management organisations and independent management entities.</p>	<p>There is no distinction between the management of copyright and related rights, thus the answer to the first question applies.</p>
Spain	<p>Collective management of certain rights⁸⁵ must be carried out by collective management organisations.</p> <p>The collective management of non-restricted rights may be carried out by both collective management organisations and independent management entities.</p>	<p>There is no distinction between the management of copyright and the management of related rights, thus the answer to the first question applies.</p>

⁸² Under the [WNR](#), that restriction concerns: the right to authorise the communication to the public of material protected by related rights by cable transmission or other means and the right to remuneration for the publication of a performer's performance that is intended to contribute to the making of a cinematographic work.

⁸¹ In accordance with the Auteurswet (Law on copyright), that reservation concerns: the public performance and broadcasting of any musical work and related texts, reprography, the lending of a literary, scientific or artistic work and the reproduction of a work for private use.

⁸³ Under the [WNR](#), that restriction concerns: the reproduction or communication to the public of phonograms produced for commercial purposes, the lending of recordings and the reproduction of recordings.

⁸⁴ In accordance with the Ustawa z dnia 4 lutego 1994 o prawie autorskim i prawach pokrewnych (Law on copyright and related rights), that reservation for compulsory intermediation of collective management organisations concerns: payment of fees by way of compensation for authorised private use (Articles 20 and 20¹), use by broadcasters of minor musical and oral works made for their distribution and making available on the internet (Article 21), rebroadcasting works on cable networks (Article 21¹), payment of remuneration for making works available on the internet in connection with authorised informational use (Article 25(4)), payment of remuneration for the lending of copies of works by public libraries (Article 35¹), payment of an additional remuneration for certain uses of audiovisual works (Article 70(3)), the payment by phonogram producers of the additional remuneration for performers (Article 95³), and the granting of collective licences for the use of works not available on the market (Article 35¹⁰). Article 53 of the Law on the Ustawa z dnia 15 czerwca 2018 o zbiorowym zarządzaniu prawami autorskimi i prawami pokrewnymi (Law on the collective management of copyright and related rights) also provides for the reservation of multi-territorial licensing.

⁸⁵ In accordance with Real Decreto Legislativo 1/1996, por el que se aprueba el texto refundido de la Ley de Propiedad Intelectual (Royal Legislative Decree 1/1996 approving the revised text of the Law on Intellectual Property), this reservation concerns the right to remuneration for distribution, the right to remuneration for communication to the public, the licence right for cable retransmission and the right to compensation for private copying. See Articles 20.4.b, 25.9, 37.2, 90.7, 108.6, 109.3.2, 116.3 and 122.3 of that law.

Requirements on organisations carrying out collective management activities ⁸⁶		
State	In respect of collective management organisations	In respect of independent management entities
Austria	Both collective management organisations and independent management entities require authorisation from the supervisory authority in order to carry out collective management activities.	Both collective management organisations and independent management entities require authorisation from the supervisory authority in order to carry out collective management activities.
Belgium	Collecting societies and collective management organisations must receive prior authorisation from the Minister for Economic Affairs.	Independent management entities are only required to make a prior declaration to the Control Service.
Czechia	Collective management organisations must be authorised by the Ministry of Culture to carry out their activities.	Independent management entities must notify the Ministry of Culture of their activities. The Ministry registers the entity concerned on a list. Registration is only declaratory in nature.
Finland	<p>All management organisations are required to declare the commencement of their activities to the Finnish Patent and Registration Office.</p> <p>In order to operate collective licences with an extended effect, approval by the Ministry of Education and Culture is required.</p>	All management organisations are required to declare the commencement of their activities to the Finnish Patent and Registration Office.
France	In order to be able to conduct mandatory collective management, collective management organisations must be approved by the Minister	Independent management entities may not conduct mandatory collective management, thus they are not

⁸⁶ This section of the table presents only the formal requirements for the authorisation, notification or registration of collective management organisations and independent management entities. The information gathered on other requirements is provided in the summary.

	<p>responsible for culture.</p> <p>If the case does not concern mandatory collective management, there is no approval procedure.</p>	<p>subject to the approval procedure.</p>
Germany	<p>Collective management organisations require authorisation from the DPMA in order to carry out collective management activities, where those organisations manage rights which derive from the Law on collective management.</p>	<p>Independent management entities do not require authorisation.</p>
Greece	<p>Collective management organisations and independent management entities with a dominant position in the national market are required to submit an application to the IPO and, then, to obtain authorisation from the Ministry of Culture and Sport with a reasoned decision.</p>	<p>Other independent management entities are obliged to notify the IPO of their intention to carry out a collective management activity with a range of information. They may carry out their activity once they have received a declaratory act from the Ministry of Culture and Sport.</p>
Ireland	<p>Collective management organisations and independent management entities must be registered in the register of copyright management organisations or in the register of property rights management organisations of performers.</p>	<p>Collective management organisations and independent management entities must be registered in the register of copyright management organisations or in the register of property rights management organisations of performers.</p>
Italy	<p>Collective management organisations and independent management entities are required to report the start of their management activity to the Communications Guarantee Authority.</p>	<p>Collective management organisations and independent management entities are required to report the start of their management activity to the Communications Guarantee Authority.</p>
The Netherlands	<p>Where the management of particular rights is entrusted to specific collective management organisations, those organisations must obtain authorisation from, or be designated by, the Minister for Justice.</p> <p>Other collective management organisations are not subject to such a</p>	<p>Independent management entities are not subject to any requirements in order to commence collective management activities.</p>

	requirement.	
Poland	Collective management organisations must hold an authorisation issued by the Minister for Culture and Protection of National Heritage.	Independent management entities must be registered in the register of independent management entities managed by that minister. Registration is only declaratory in nature.
Spain	Both collective management organisations and independent management entities must receive authorisation from and be registered with the Ministry of Culture and Sport.	Both collective management organisations and independent management entities must receive authorisation from and be registered with the Ministry of Culture and Sport.
Sweden	Collective management organisations and independent management entities must be registered with the Intellectual Property Office.	Collective management organisations and independent management entities must be registered with the Intellectual Property Office.