



ReCreating Europe

Webinar

**The Regulatory
Landscape for Copyright
Content Moderation:
Evaluation and Future
Trajectories**

**16 NOVEMBER 2021
10.00-11.30 CEST**

Program

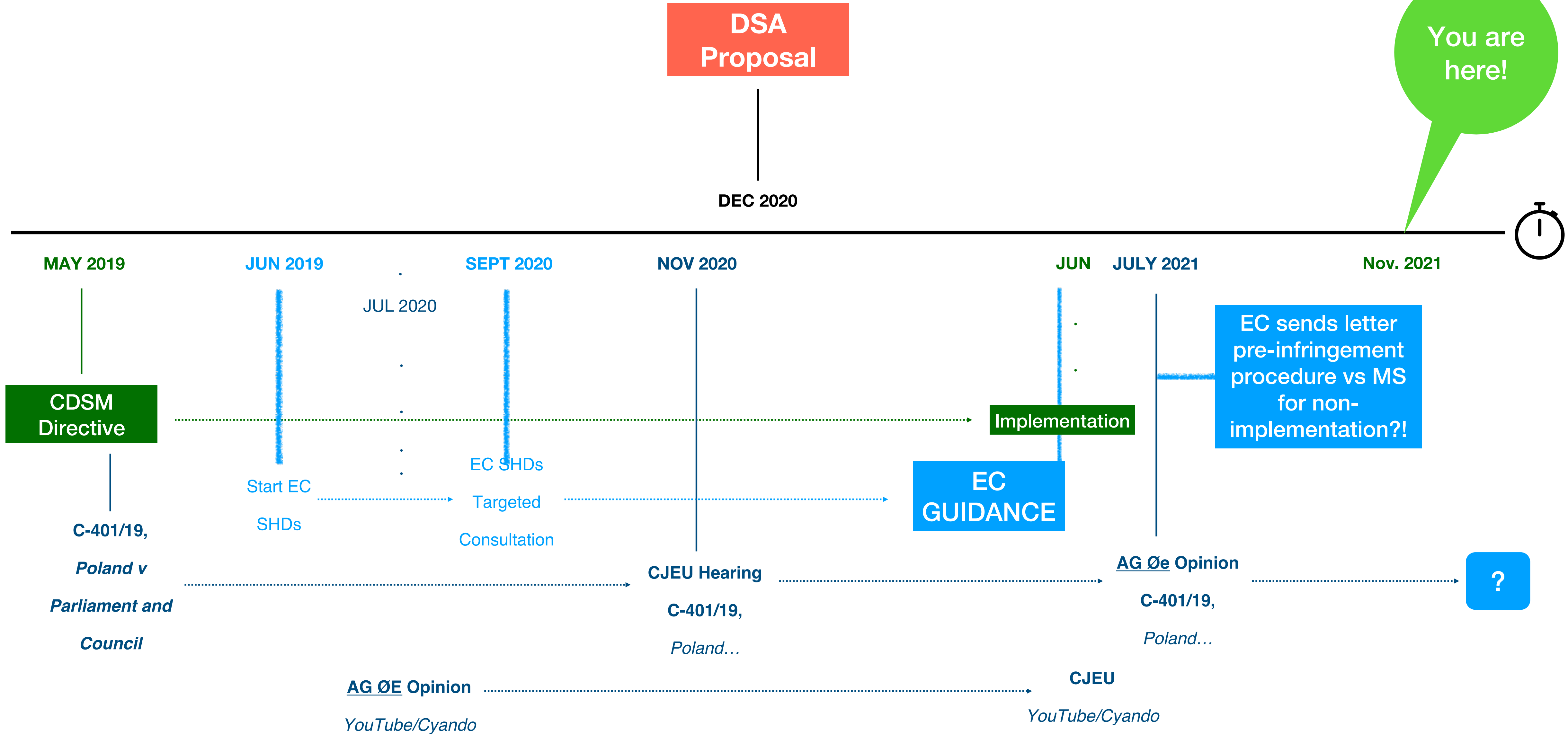
- **The regulatory framework of copyright content moderation at EU Level**
 - João Pedro Quintais
- **Panel 1. Mapping the national implementation of Art. 17 CDSM Directive**
 - Peter Mezei, Helena Kowalewska Jahromi, Kacper Szkalej, Giulia Priora
- **Panel 2. What's to come in EU copyright content moderation?**
 - Sebastian Felix Schwemer, Thomas Riis, Julia Reda
- **Closing Remarks**
 - Thomas Riis

The regulatory framework of copyright content moderation at EU Level...

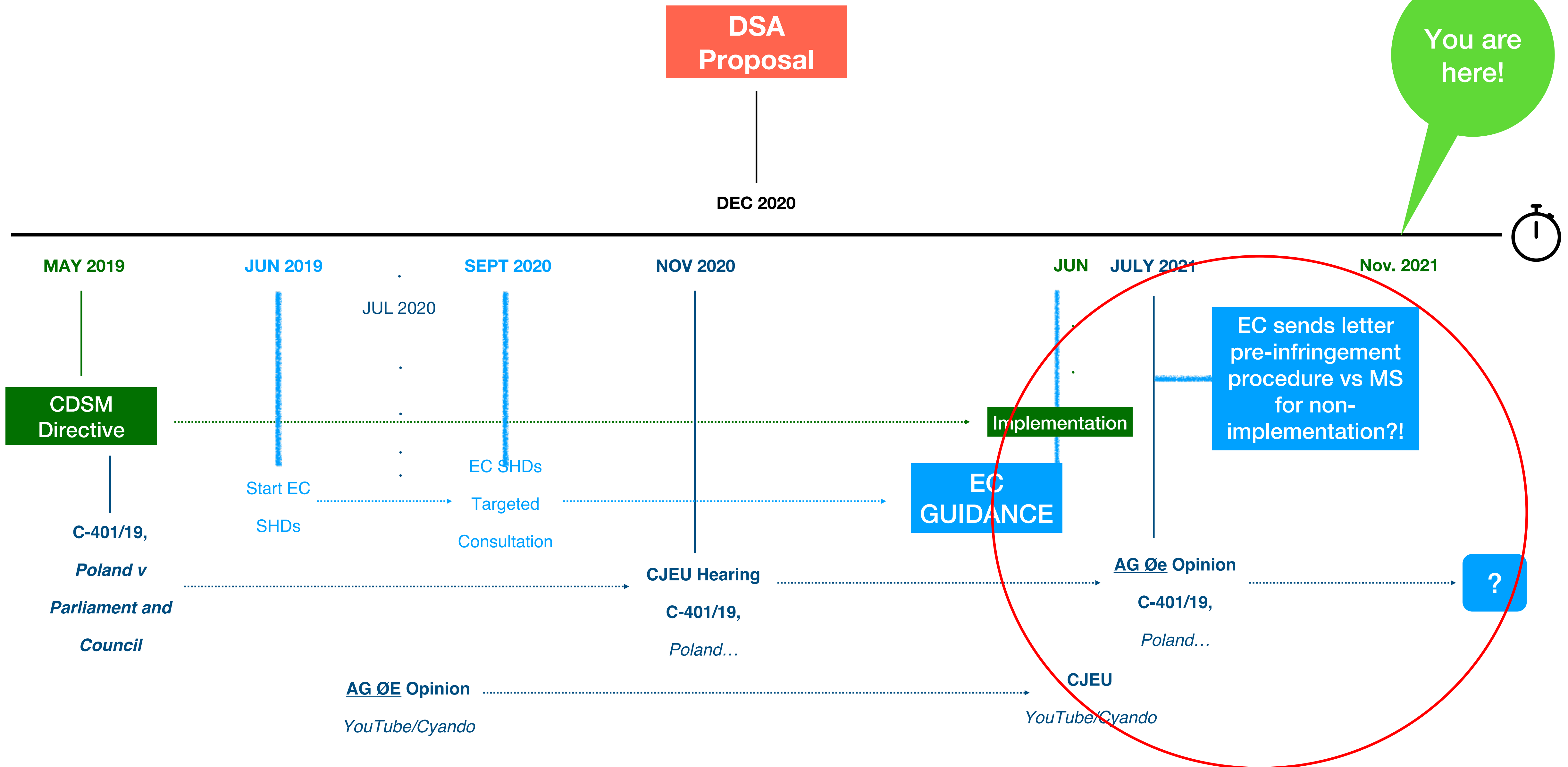
... in 6-ish minutes

João Pedro Quintais

Art. 17 CDSMD Timeline

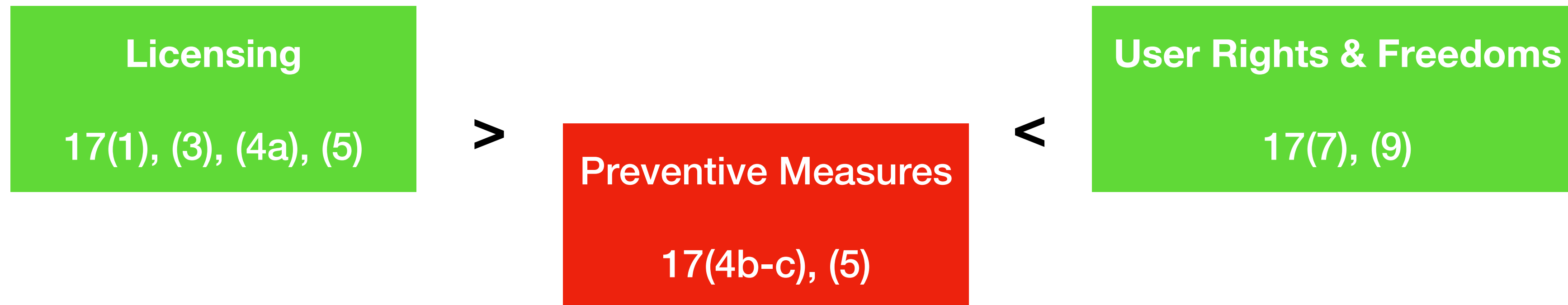


Art. 17 CDSMD Timeline



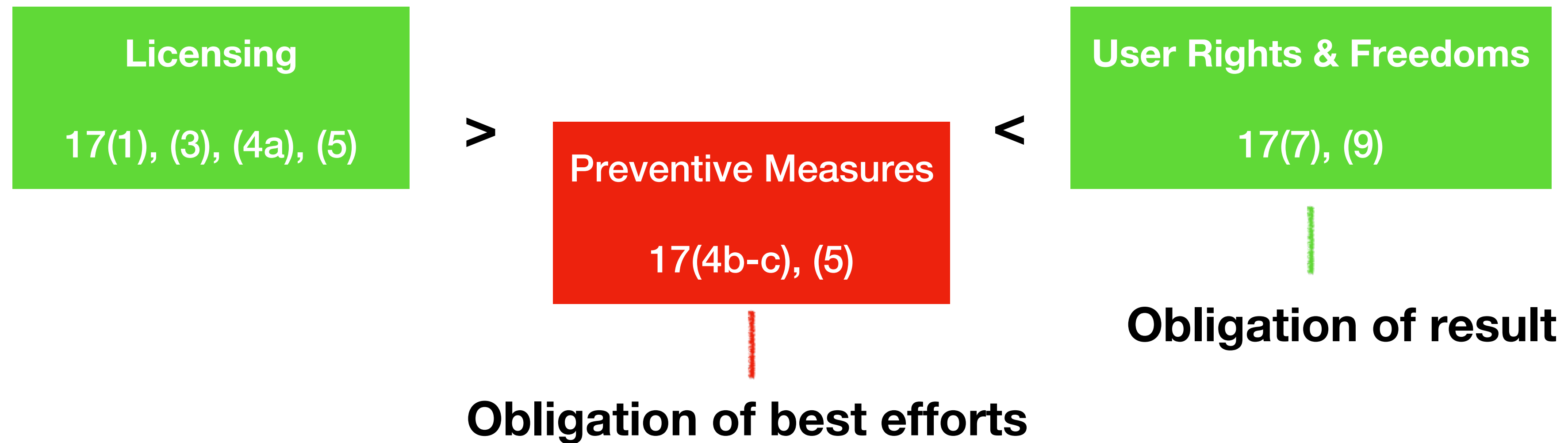
Article 17

Normative hierarchy



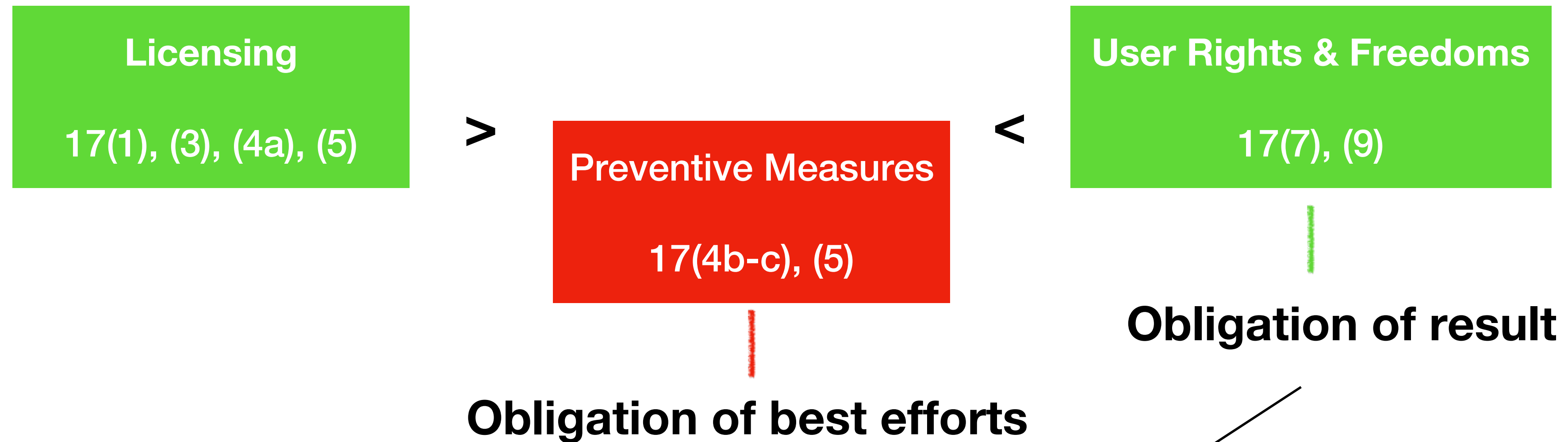
Article 17

Normative hierarchy



Article 17

Normative hierarchy



EC + Council + Parliament in C-401/19 - Poland

EC Guidance 2021 + AG Opinion C-401- Poland

Authorization

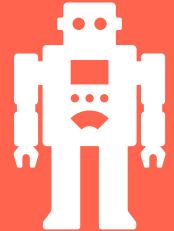


Best efforts to obtain authorization
17(4)(a)



**Preventive Measures
17(4)(b-c)**

NTD?
Others?



CRTs
(Filters, NSD)

not suited for
17(7) uses

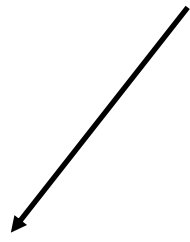
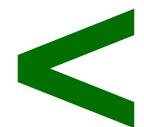
**User Rights & Freedoms
17(7), (9)**

- covers most UGC
- Mandatory
- Unremunerated
- No contractual or TPM override
- Contextual & dynamic (x 27)

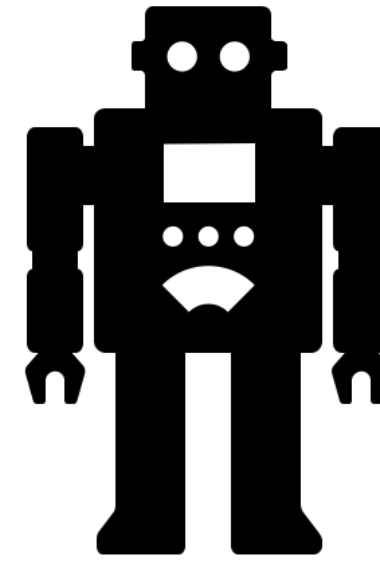
**Other E&Ls and lawful uses
17(7), (9)**

**Complaint & Redress
(Procedural Safeguards)
17(9)**

How?
Ex ante
Safeguards



EC Guidance



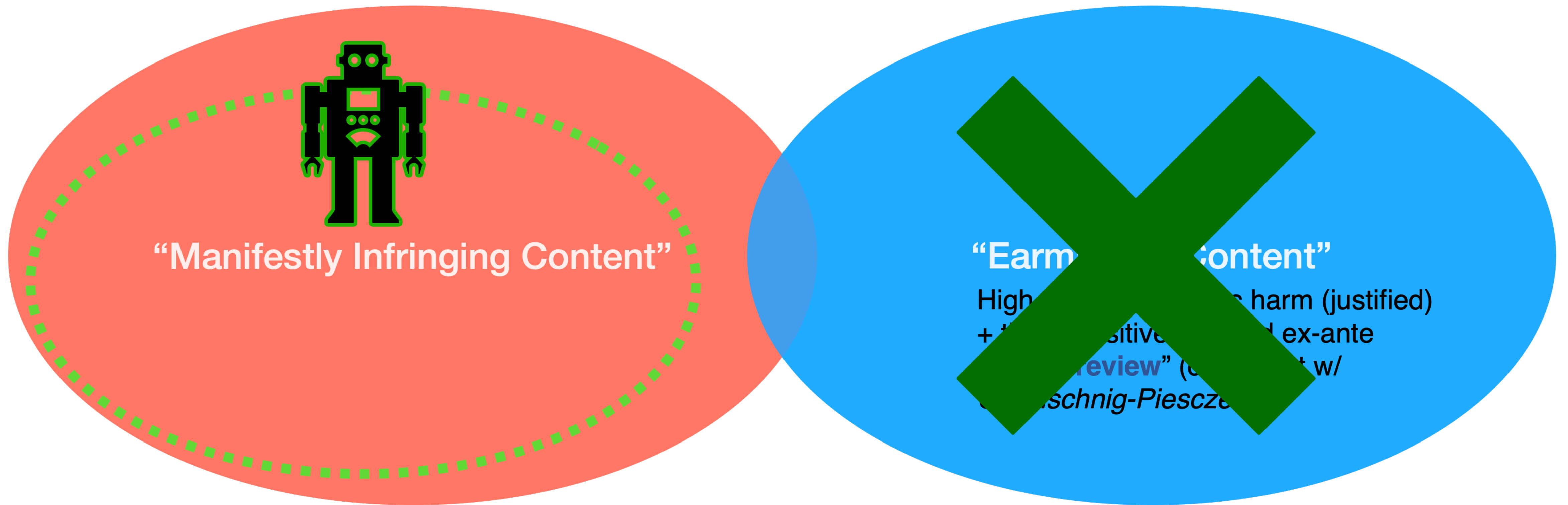
“Manifestly Infringing Content”

Exact matches + use of significant portions +.... gets fuzzier...

“Earmarked Content”

High-risk of economic harm (justified) + time sensitive... “rapid ex-ante **human review**” (compliant w/ *Glawischnig-Piesczek*)

EC Guidance



AG C-401/19: considering FoE, preventive filtering only possible for manifestly infringing or “equivalent” content (à la *Glawischnig-Piesczek*)

A bifurcated online platform world

non-OCSSP

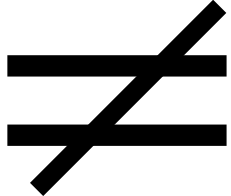
OCSSP

art. 3 InfoSoc + 14 eCD (→ DSA)

art. 17 CDSMD

Default: no direct liability
hosting safe-harbor + modular duties of care

Default: direct liability + licensing
no hosting safe-harbor but liability exemption mechanism tied to best efforts obligations for (1) licensing & (2) preventive measures



Content Moderation:
modular duties of care based on *YouTube/Cyando* (Tied to liability assessment) + national laws

Content Moderation:
Preventive measures (4) vs substantive & procedural safeguards (5-9)

A bifurcated online platform world

non-OCSSP

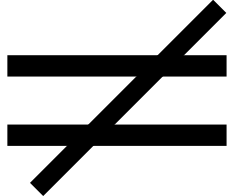
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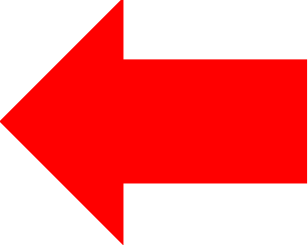
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Content Moderation:
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A multi-dimensional bifurcated online platform world

Online Platform rules DSA (Regulation)

non-OCSSP

OCSSP

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art. 17 CDSMD

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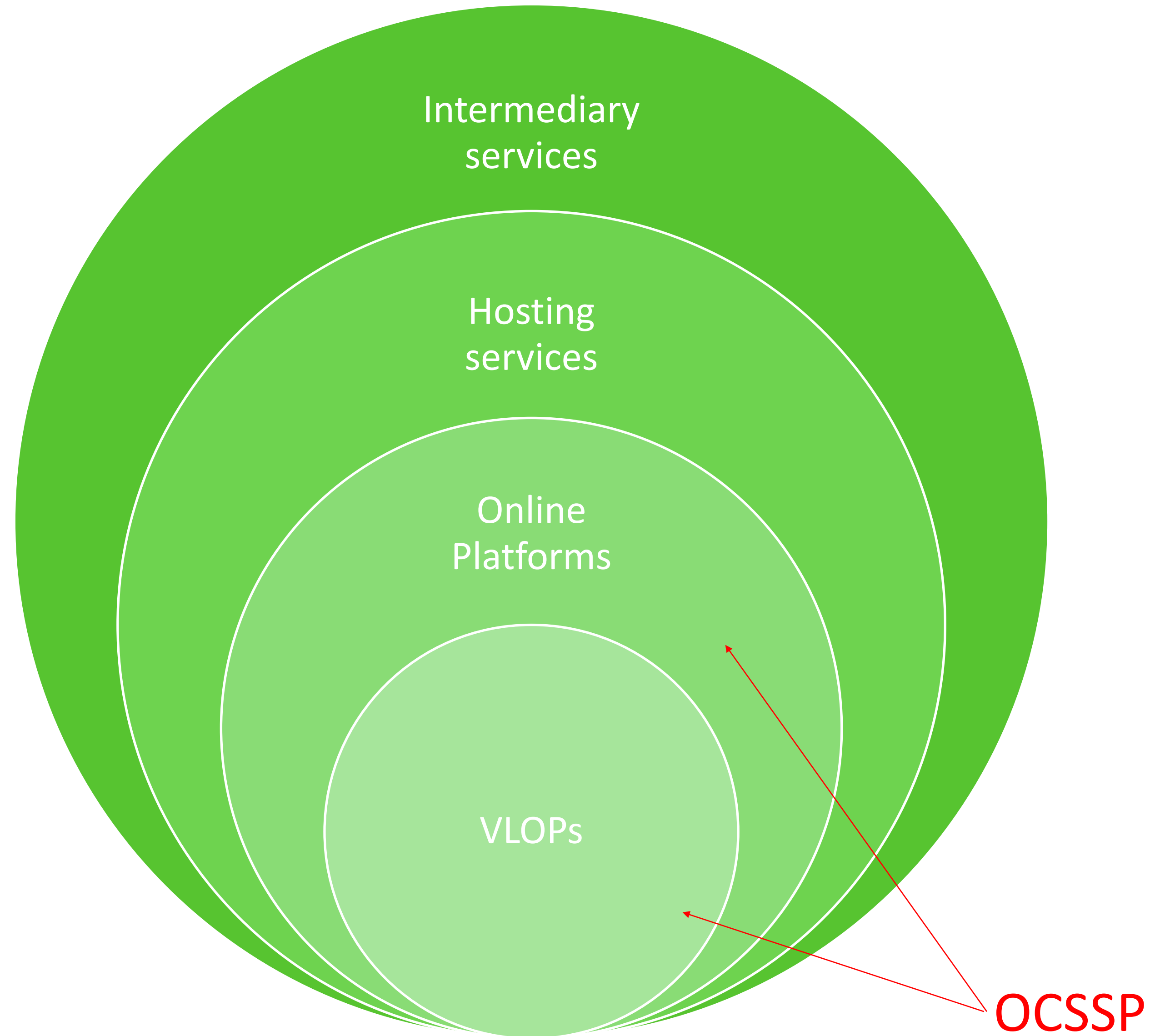


Content moderation:
modular duties of care based on *YouTube/Cyando* (Tied to liability assessment) + national laws

Content moderation:
Preventive measures (4) vs substantive & procedural safeguards (5-9)

DSA Rules

- Applicable outside specific lex specialis of art. 17
- (Some) Liability framework (II)
- (A lot) Due Diligence Obligations (III)





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