CEATL legal survey: mapping the legal situation of literary translators in Europe

CEATL Authors' Rights Working Group, May 2022

- Survey conducted by CEATL's Authors' rights working group between **May and July 2021**.

- **27 respondents** representing some **10.000 European literary translators**.

- **One answer per country**: drafted by the most knowlegeable person(s) on legal issues in each association (legal counsel and/or board members, or other). Percentages correspond to a proportion of countries, not of individual translators.

69 questions, three parts:

- The **legal and contractual situation of literary translators** in each country
- Our member **associations' legal resources and action** (funding and staff, services offered to members, networking, negotiating and lobbying)
- **Emerging issues** (self-publishing, streaming services, machine translation, etc.)

This is a presentation of the results of the first part of the survey, relating them to the principles contained in the European DSM directive voted in 2019, the implementation of which was delayed in most countries.

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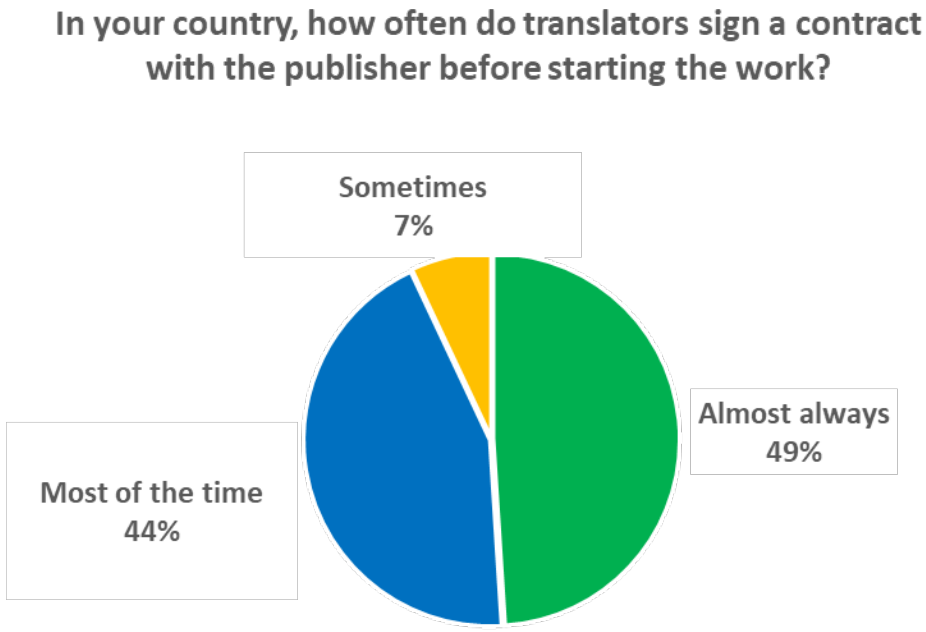
1. Types of contracts, legal framework and negotiations

Signing a contract: a well-established practice



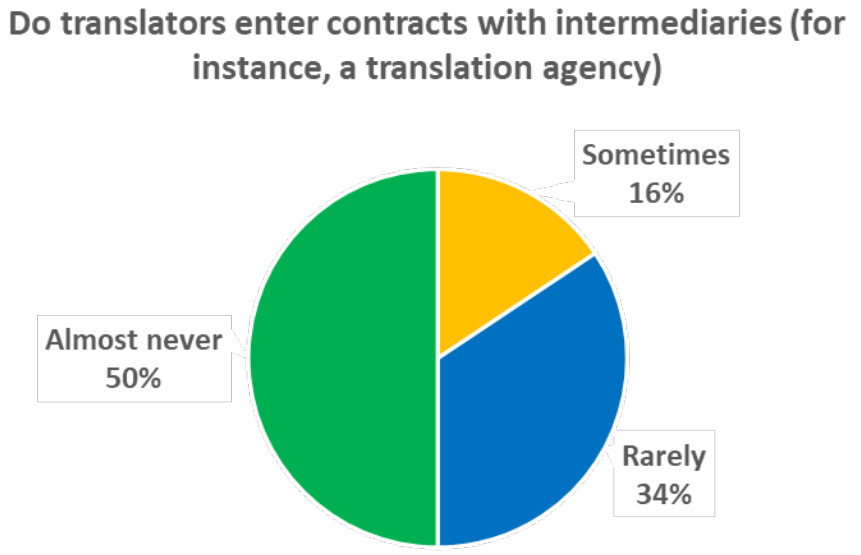
In most countries, **a formal contract is a necessity for the license or transfer of rights to be valid** for the publisher's own sake, hence a high rate of "almost always" or "most of the time" answers : 93%.

However, respondents underline that:

* With the allotted times for translations getting shorter and due to bureaucratic slowness, **a fair and growing number of translators are forced to start working before signing a contract**, which also makes negotiations more complicated.

* The answer "most of the time" leaves room for **a significant proportion of translations done without a contract**. For instance, in Spain, white papers published in 2010 and 2015 suggest that close to 30% of translations are done without a contract.

In the vast majority of cases, the contract is signed with the publisher itself.



Countries that answered “sometimes”:
Germany, Italy, Romania, the Netherlands.

The direct contractual relationship between translator and publisher (which is to be recommended, if only for the sake of accountability and transparency) is the rule.

Though there exist a number of translation agencies for certain segments of the market (coffee table books, mangas), no bigger trend is perceptible.

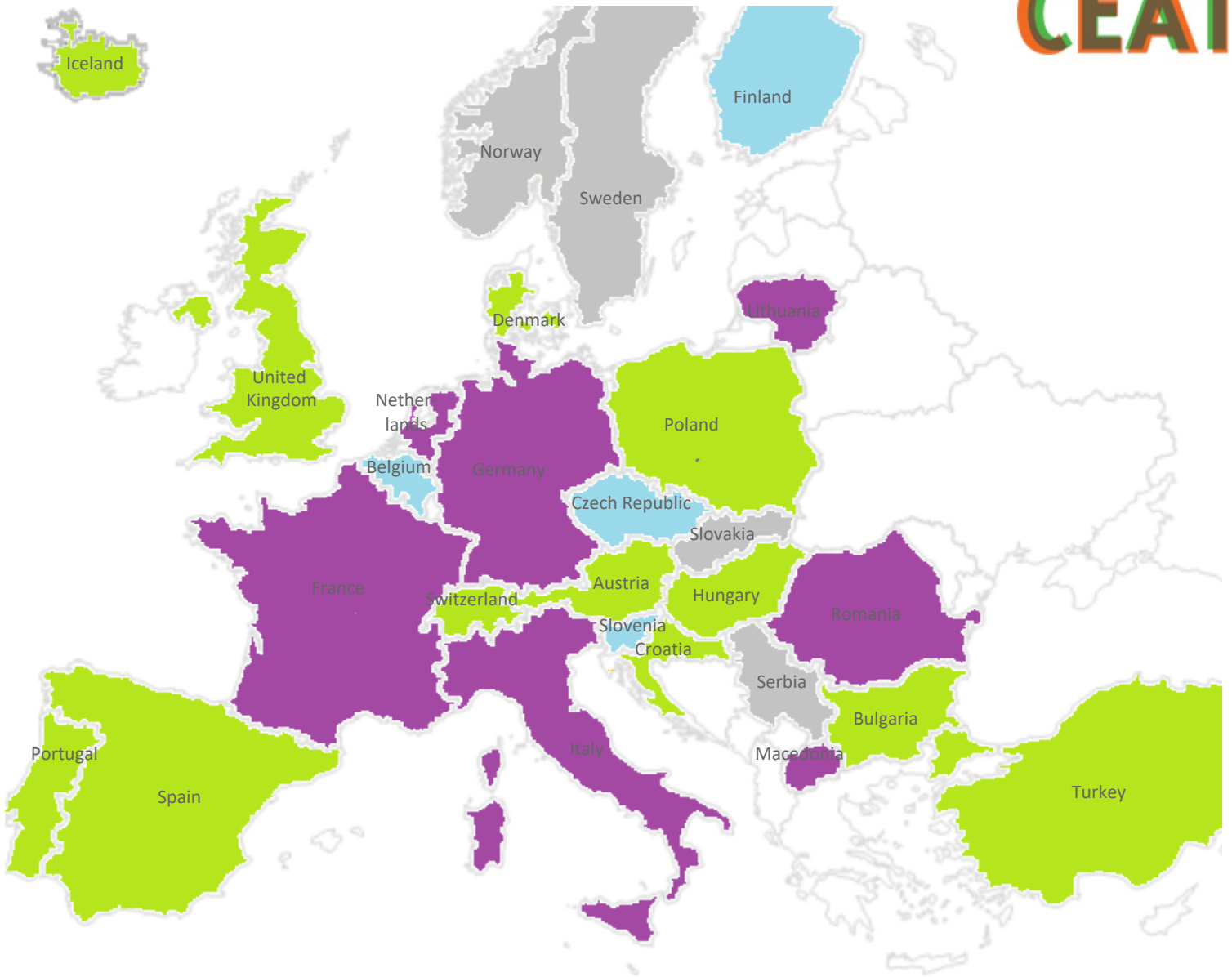
A weak legal framework for translation contracts: **no typical and no standard contract in a majority of countries**

Typical contract, i.e. translation contract fairly strictly framed by law as a publishing contract

Standard contract, i.e. contract agreed between highly representative translators' and publishers' organisations

None of the above

Almost all of our associations offer a model contract or a code of good practice, if not both



Model contract

Code of good practice

Both model contract and code of good practice

Negotiating one's contract: a mixed picture

In your country, how often do translators individually negotiate the content of the contract?

Almost always

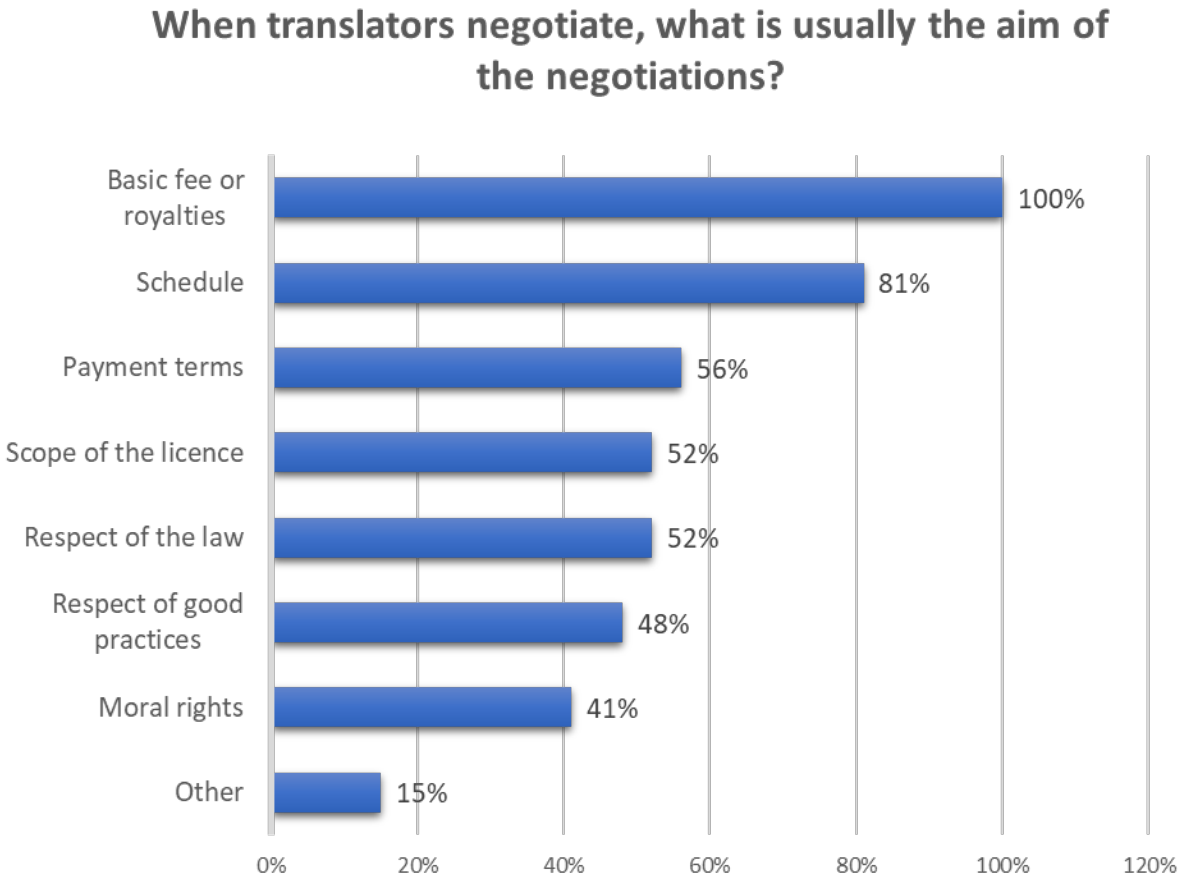
Most of the time

Sometimes

Rarely

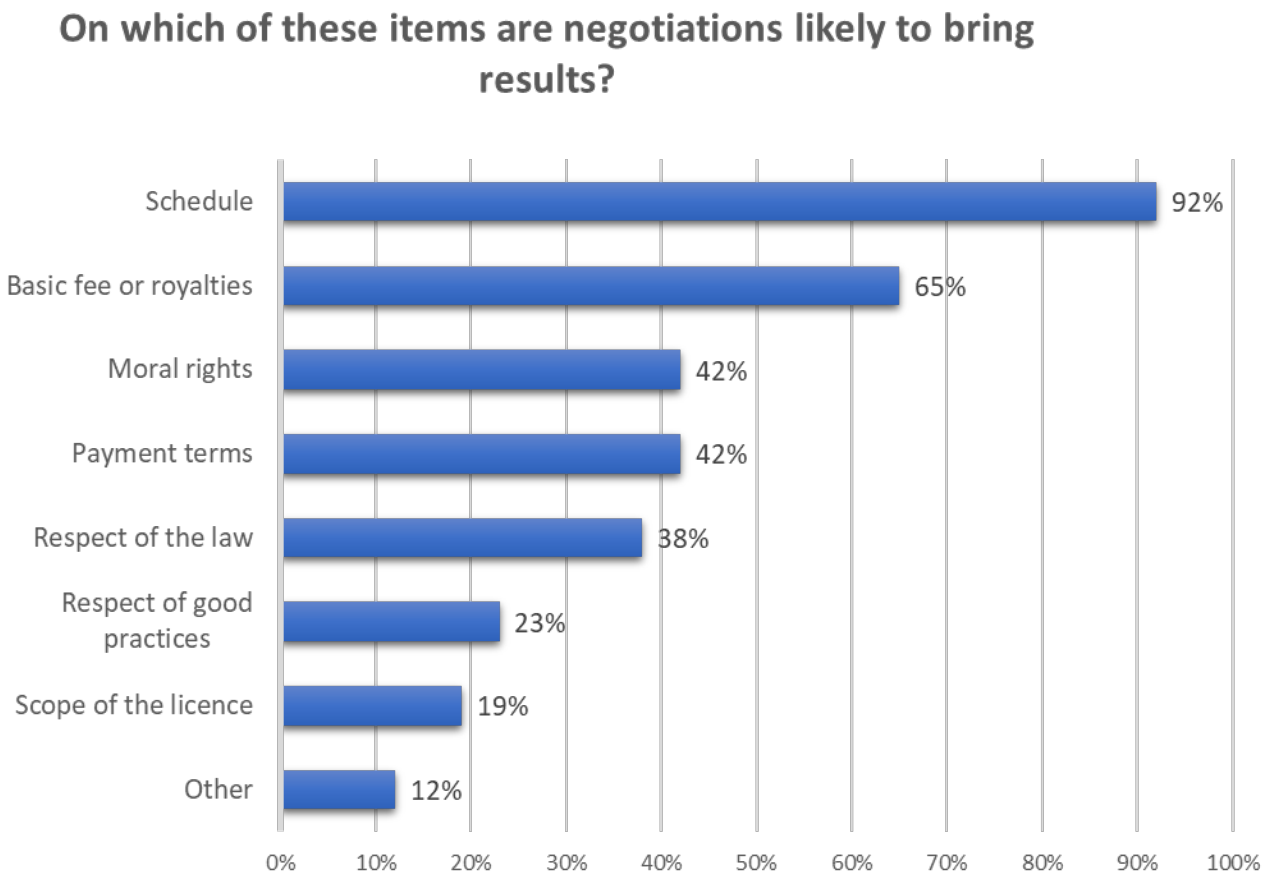
NB: The situation is all the more intricate since reasons *not* to negotiate range from the translator findind the proposed contract satisfying, to his lack of knowledge or weak bargaining position.

Remuneration and schedule as the main goals of a negotiation



Economic gain (i.e. negotiating the basic fee and/or the percentage of royalties) is mentioned by a sweeping 100% of respondents, followed by the schedule (81%) and payment terms (56%), while perhaps more abstract items get around 50% of answers (compliance with the national law, model contracts and codes of practices; scope of the licence; respect of moral rights).

Also mentioned as items subject to negotiation: duration of the licence, control of assignments to third parties, number of complimentary copies, clauses where liability for legal redress rests with the translator rather than the publisher.



A comparison with the answers to the next question (on items of negotiation likely to bring results, i.e. items that the publishers are ready to discuss) shows that **the translators expect the publishers to be comparatively unwilling to discuss the scope of the licence, good practice and remuneration**, while discussing the schedule is deemed more likely to bring results.

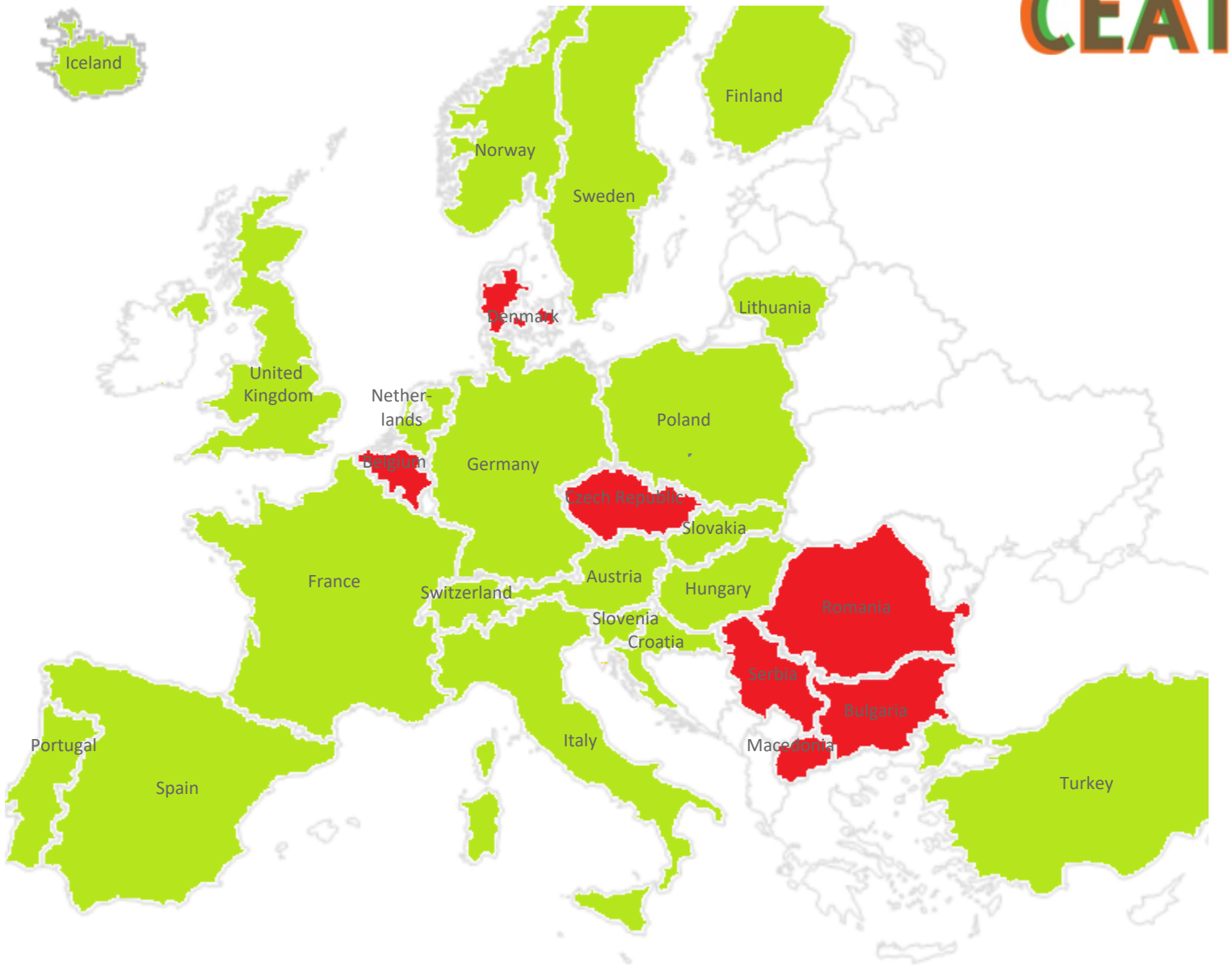
2. Scope and duration of the licensing of rights

Licenses are large, usually detailed, and include e-books and audiobooks

Detailed scope of the licensing, each licensed right being mentioned in the contract

Poland's comment is rather typical: "The law requires every field of use to be mentioned explicitly in the contract. In practice, it usually results in a long list of fields of use covering all possible areas entered by default into every contact, generally non-negotiable."

In the other countries, such as Denmark in red, contracts will contain sweeping all-inclusive formulas.

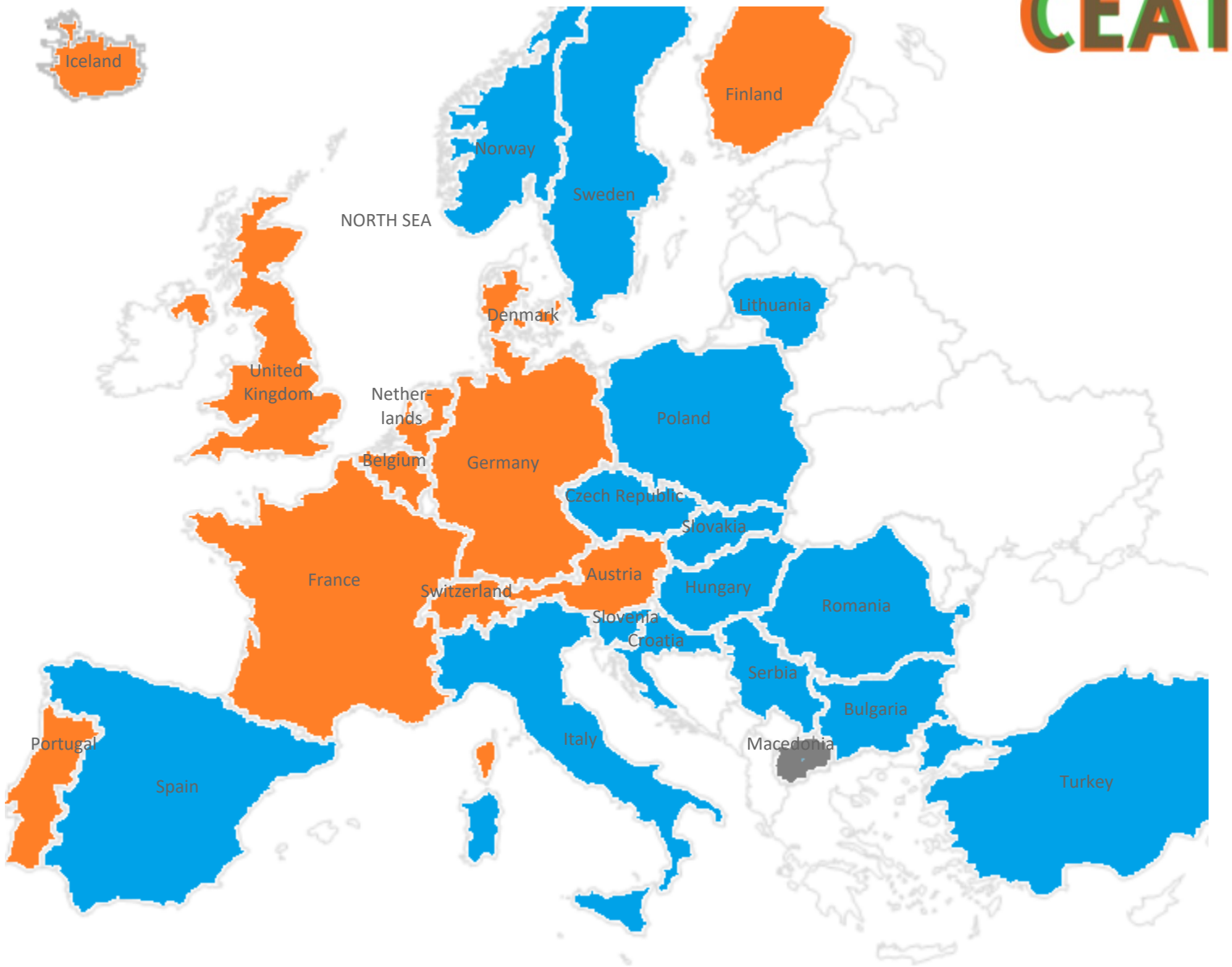


Usual duration of the licence: two main groups of countries

- **Rights usually licensed by contract for the duration of the intellectual property** (70 years after the death of the author – of the translator in the case of a translation): **11 countries**

- **License usually limited in time** (usually 5-10 years, up to 15 years for Spain and 20 for Italy): **15 countries**

- **Mixed situation : 1 country**



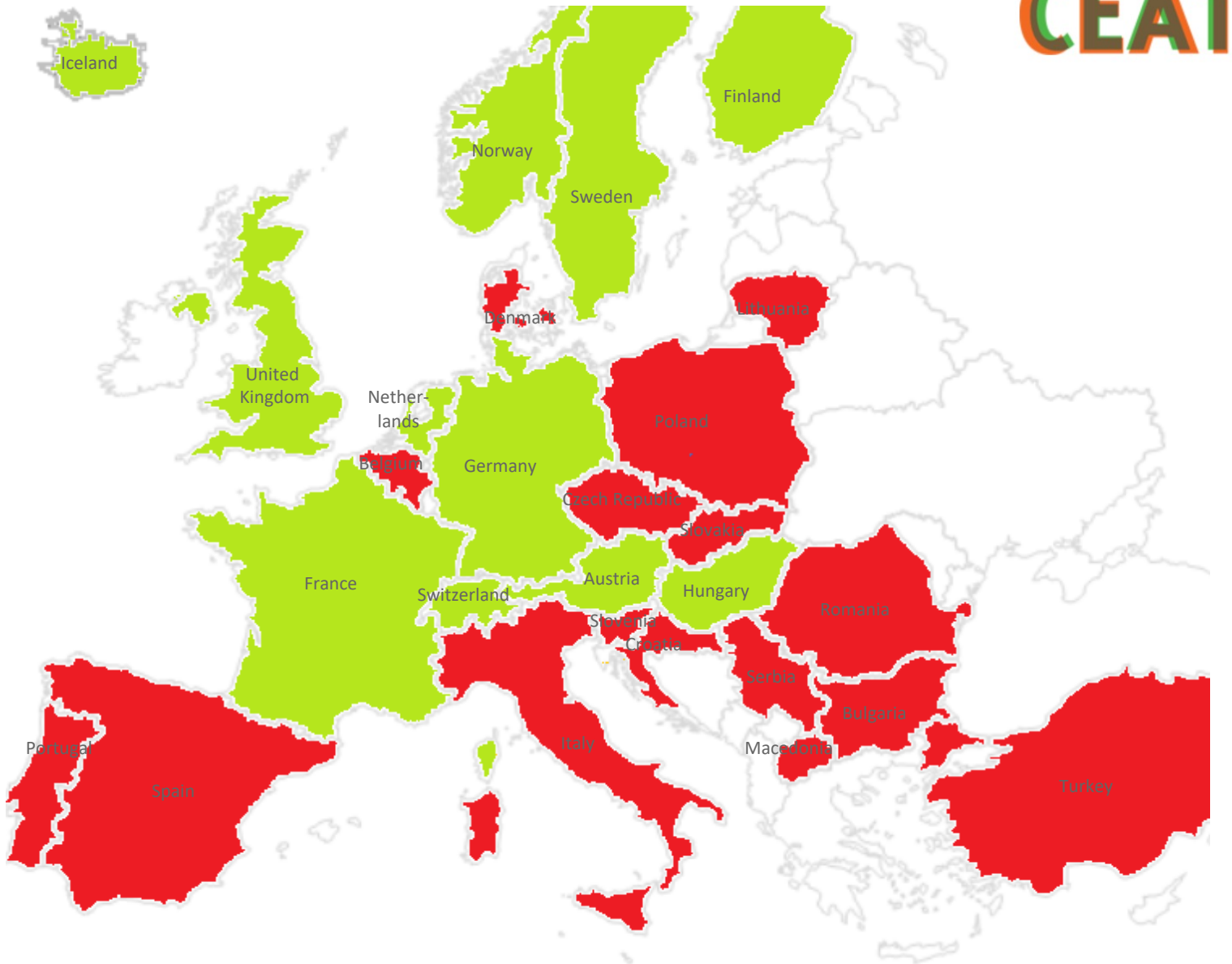
Reversion right

Reversion clause in the contract

In a majority of countries, contracts usually don’t contain a clause of reversion of the rights to the translator if and when the publisher loses the rights on the original work or for lack of exploitation.

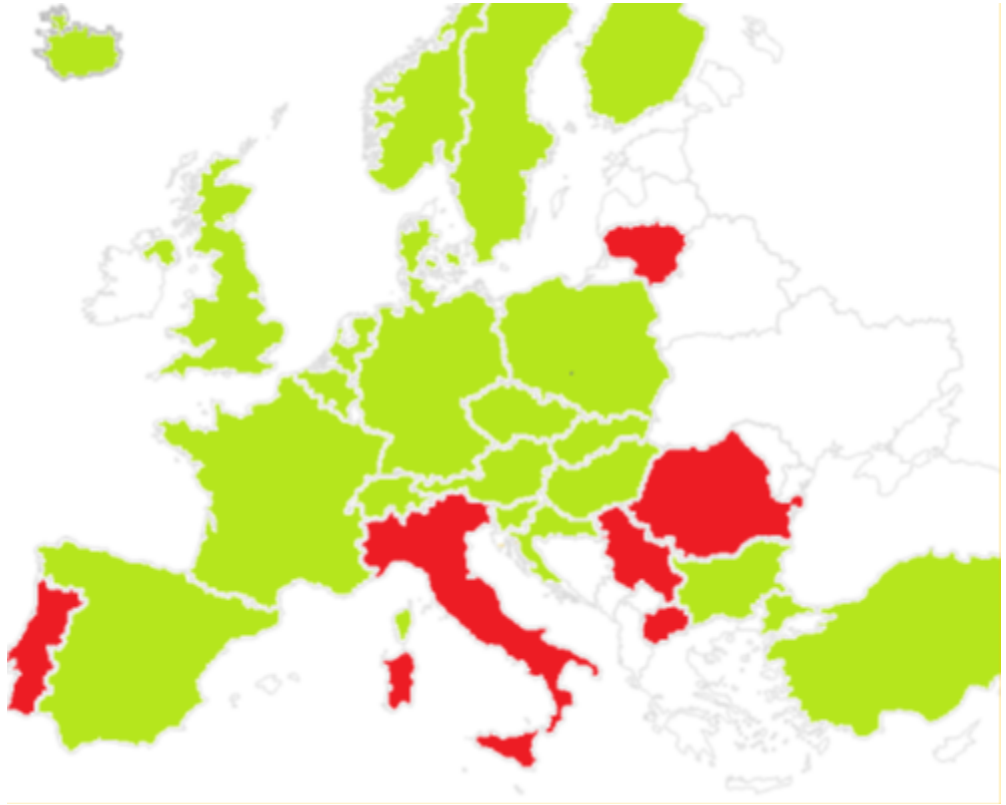
Yet, it is important to note that in some of those countries (Croatia, Denmark, Italy, Romania…), the law itself gives all authors (and therefore translators) the right to terminate the contract in case of non-use of their work.

The revocation right should become the rule with the implementation of the DSM directive (article 22).

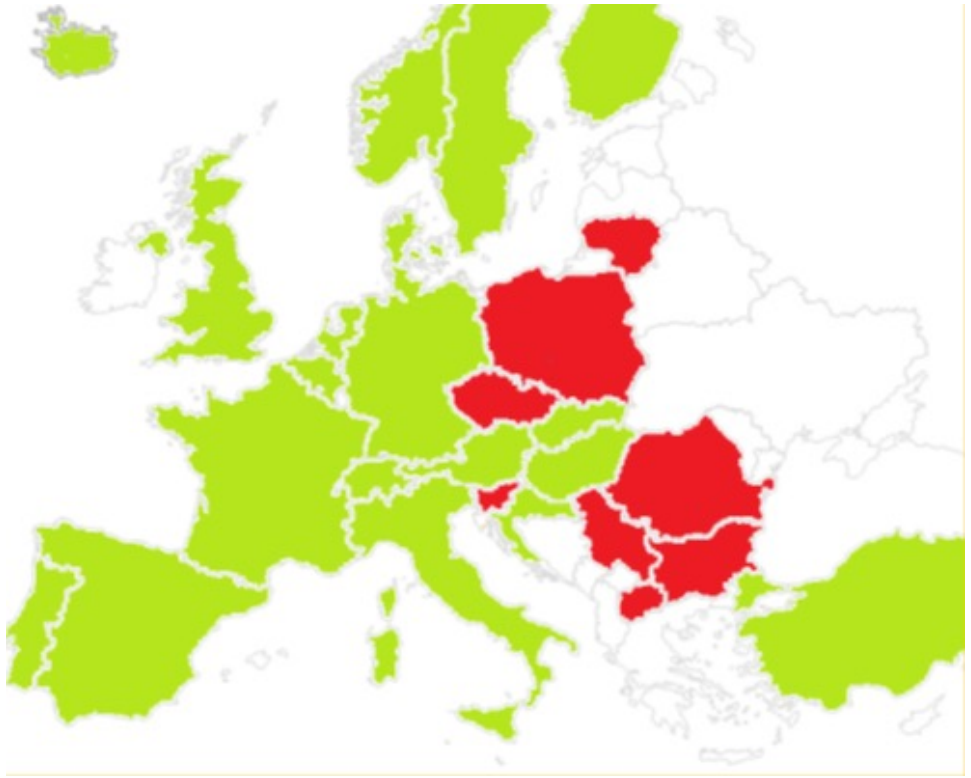


3. Respect of the translator’s moral rights

Editing process in accordance with the translator's moral right



Proofreading and/or approval before publication by the translator



Yes

No

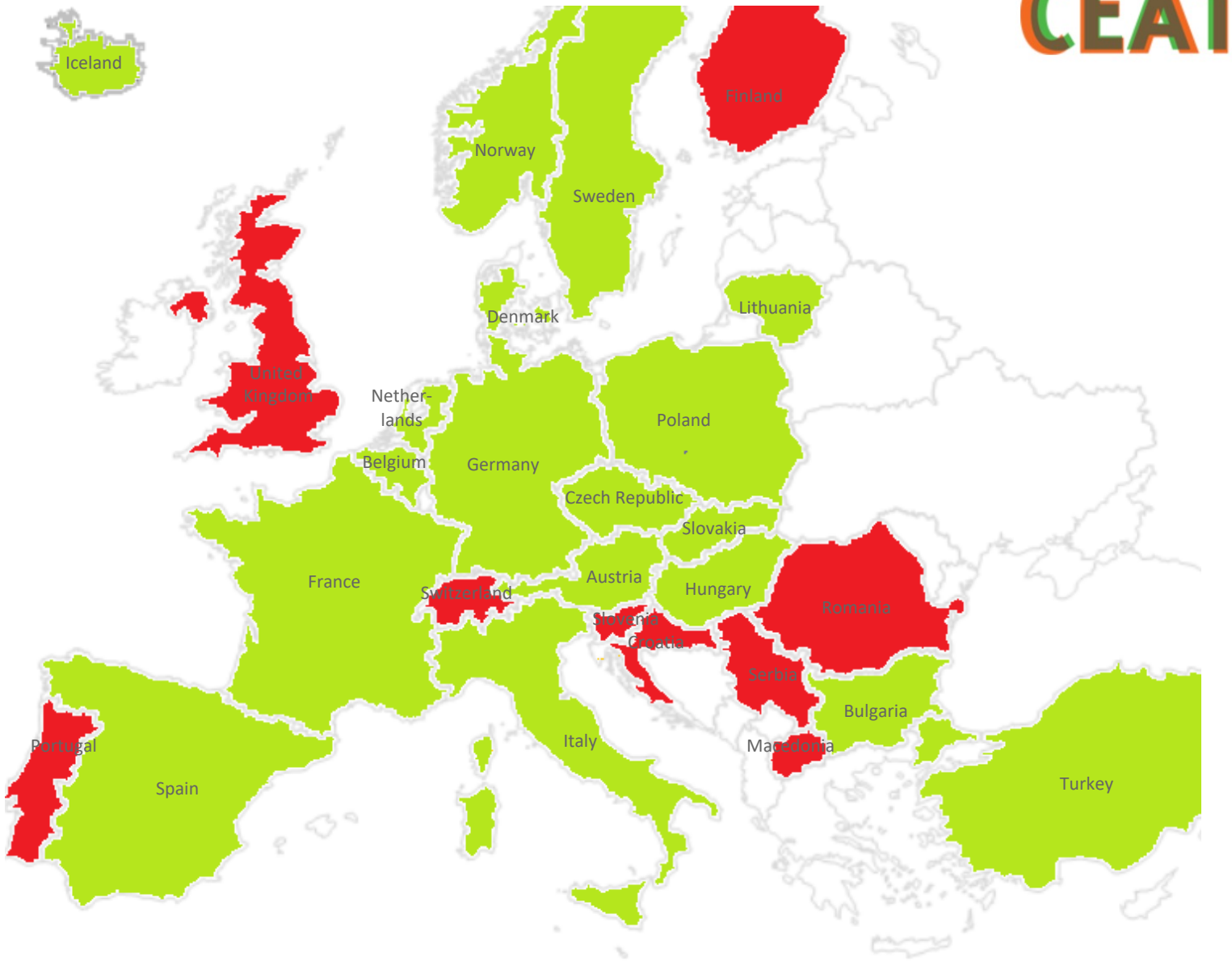
In ¾ of countries, **the translator's right to the integrity of their work is usually recognized in the contracts, and generally respected**, though that can depend on the professionalism and good will of the publisher.
Respondents underline that it is **important for the individual translator to play an active role** (asking to see and approve the modifications, as well as the final text, with enough time to do so).
Some countries, such as Italy, have registered real progress on that front in the last few years.

Revision process

Revision process provided for in the contract

In ¾ of countries, the contract usually provides for a revision process should the publisher contest the quality of the translation.

Yet, several countries underline that it is a rare occurrence (in Finland, it is even “almost unheard of that the publisher should reject the translation because of quality issues”!).



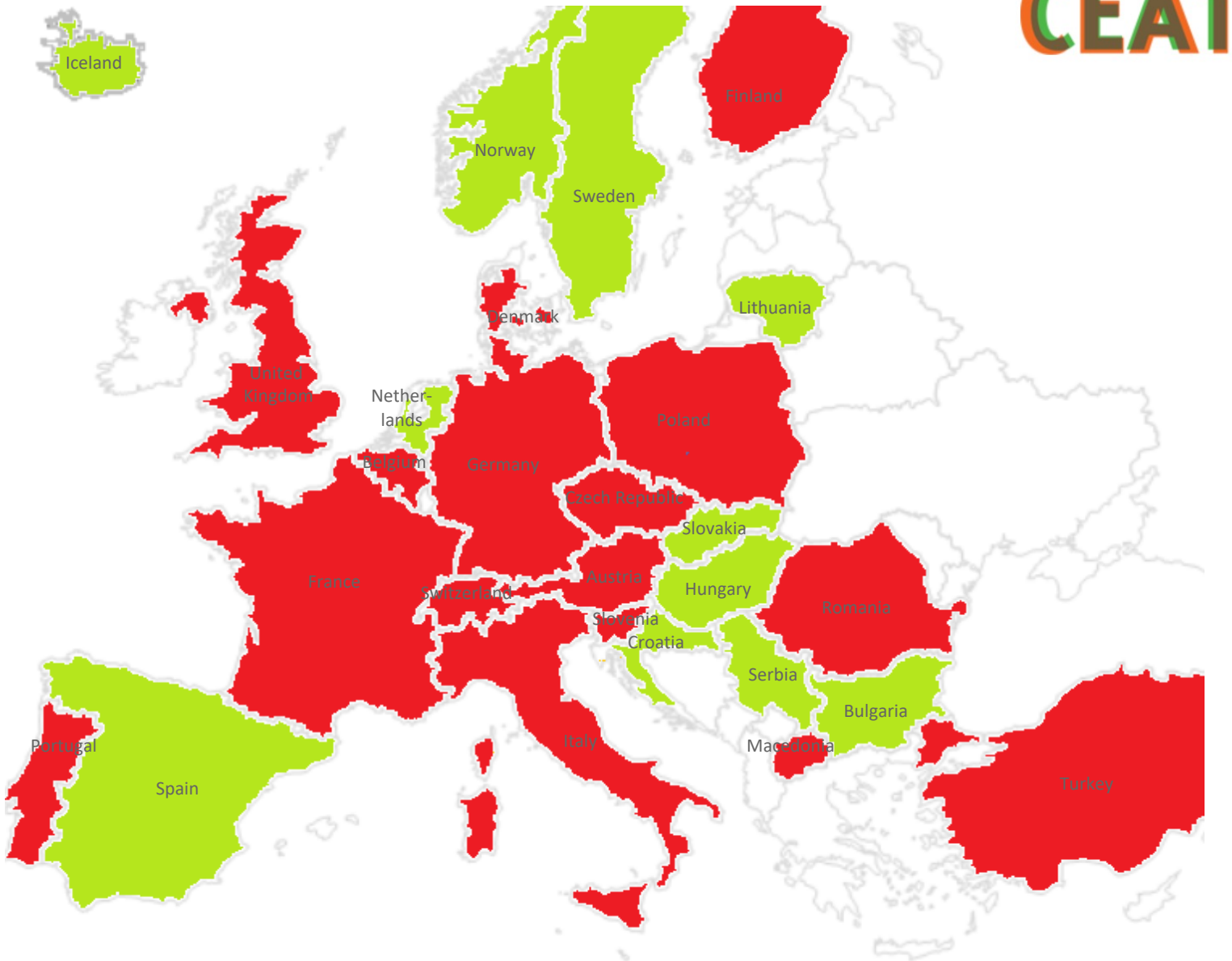
Conciliatory procedures

Conciliatory procedures usually provided for in the contract in case of dispute

A large majority of countries lack such procedures.

In France, Spain or Switzerland, there is a mediation system established between the translators' and publishers' associations.

"Alternative dispute resolution procedures" (i.e. out-of-court solutions) should be developped with the implementation of the DSM directive (article 21).



Naming of the translator in the published book

Name of the translator usually mentioned on the title page

All countries have answered that the name of the translator is usually mentioned on the title page of the book.

Mentioning it on the front cover is a growing trend in many countries, and it is considered as a best practice to be promoted.

Naming the translator on all publicity material: still progress to be made

Is the name of the translator mentioned in the publisher's catalogue and publicity material?

Almost always
Most of the times
Sometimes
Rarely
Almost never

Progress needs to be made on that front, and the situation seems to vary greatly from one publisher to another.

That item can typically feature within codes of good practices, cosigned or not with publishers.

4. Remuneration

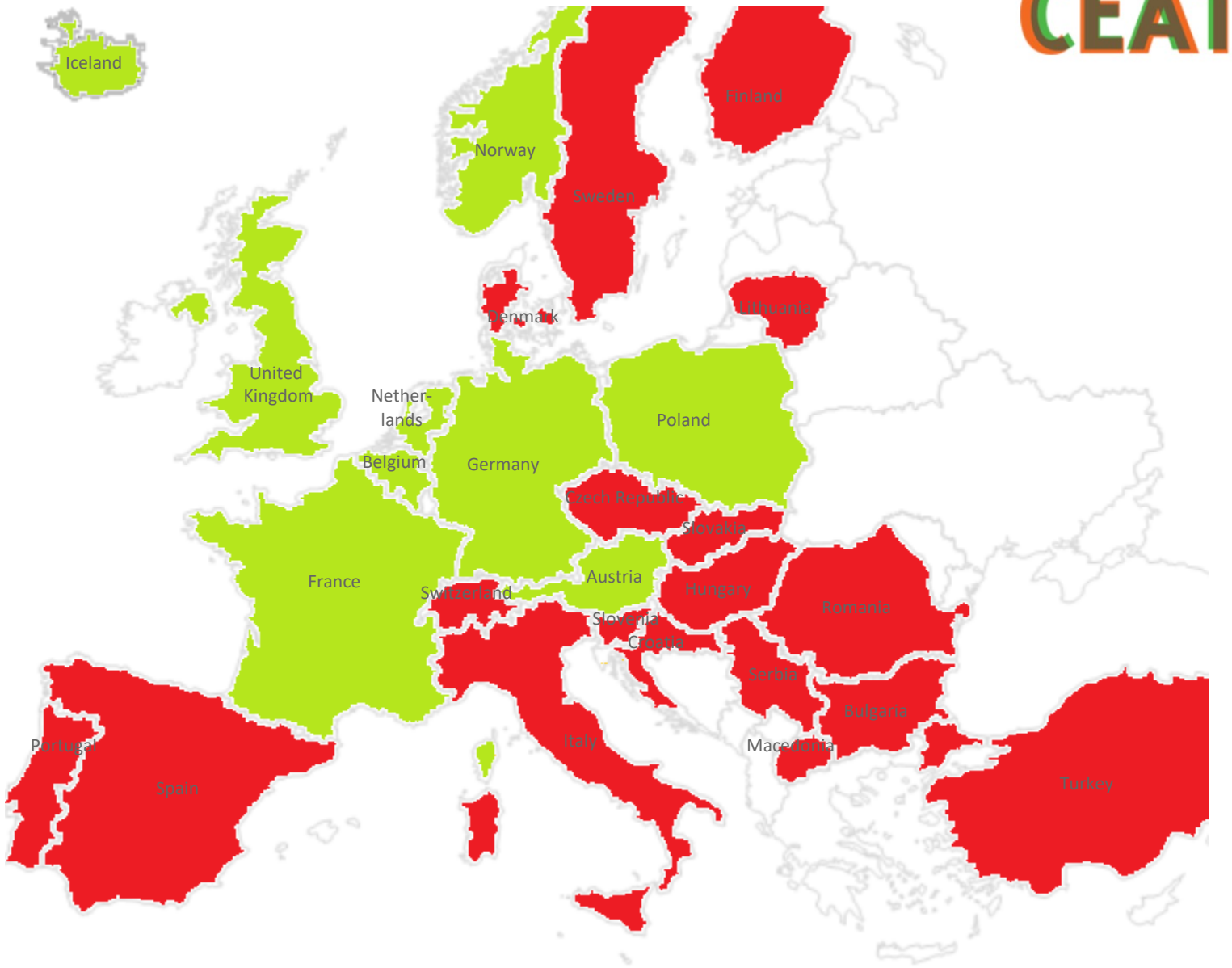
In 2/3 of countries, no advance is usually given on signing the contract.

Advance

No advance

In those countries where the advance is common practice, it represents a quarter to a half of the initial fee.

In some countries where it is not common practice (such as Finland, Slovenia, Spain, Lithuania…), it can be negotiated on an individual basis.



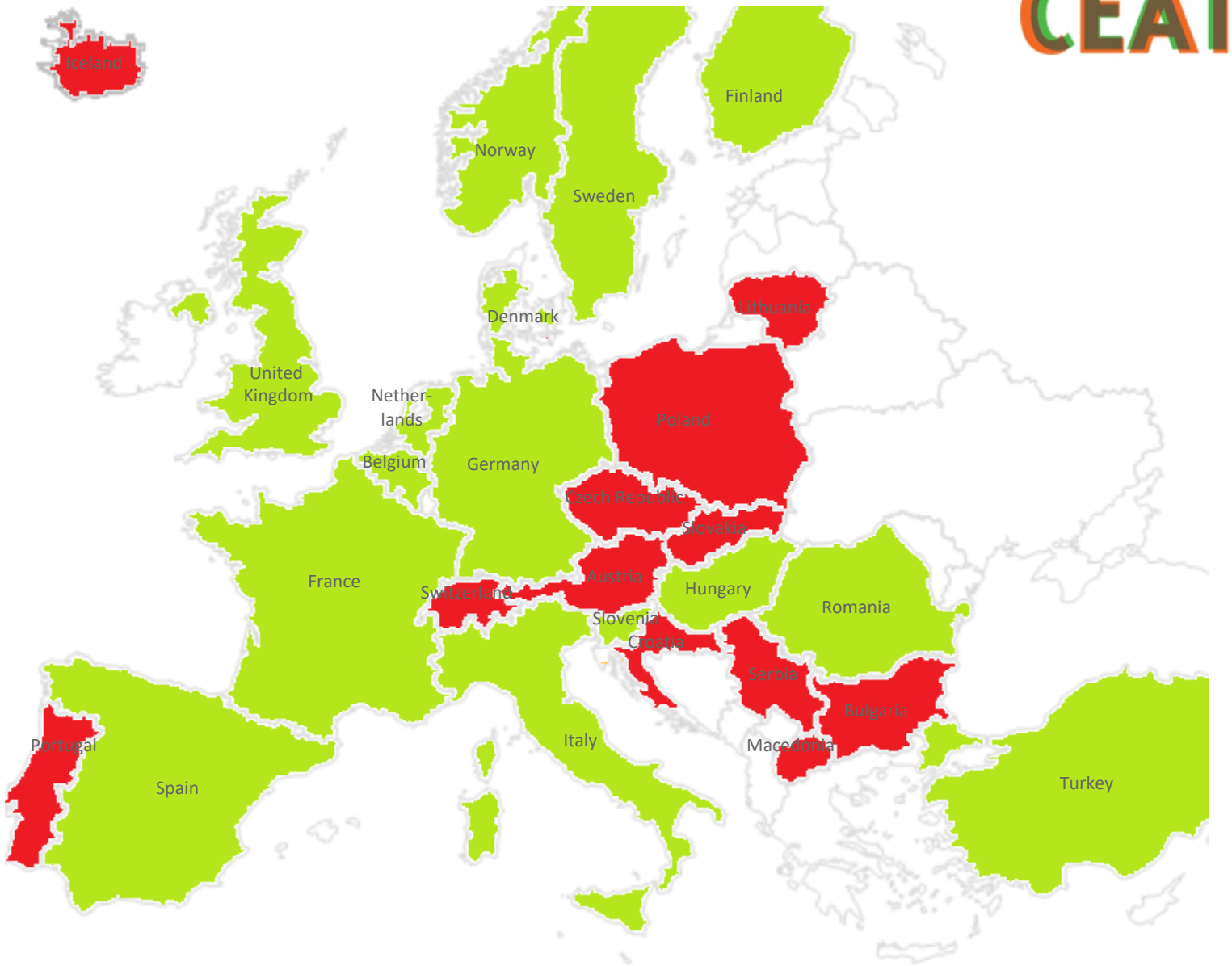
In half the countries, the initial fee is usually not completely paid 60 days after the delivery.

Paid before 60 days

Not paid before 60 days

Even in countries when the initial fee is usually paid within 60 days, the situation can vary greatly from publisher to publisher.

In some countries (Iceland, Czech Republic), the final instalment is paid when the book is published, which can be considerably later than 60 days after the delivery.



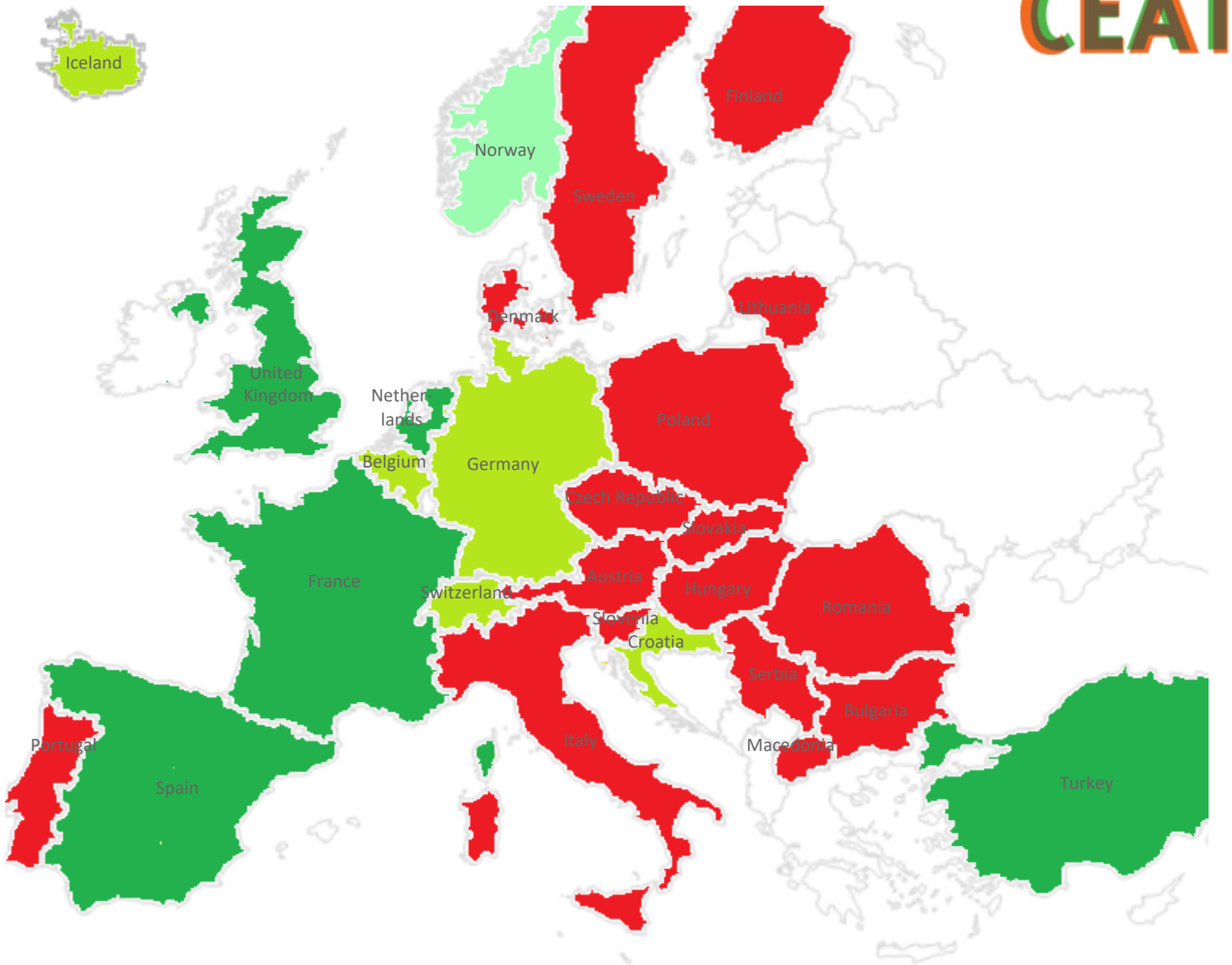
In 16 countries, translators don’t receive royalties, even in case of a best-seller

Royalties after a specified time

Royalties after a specified number of copies sold

Royalties after the initial fee has been compensated

No royalties



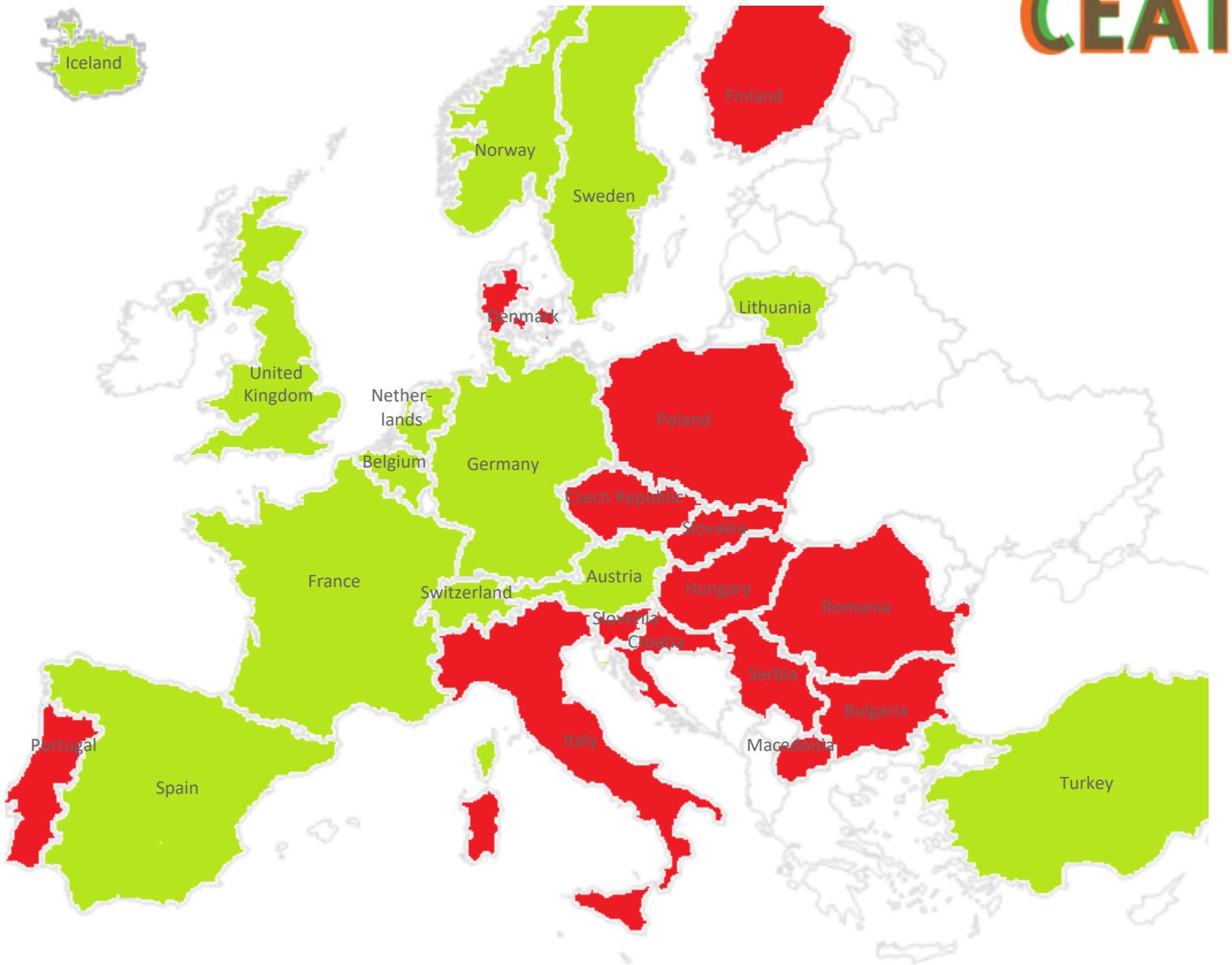
- **The lack of royalties (lump sum payment) potentially goes against the principle of proportionality set forth in the DSM directive (article 18)**, and should be remedied as part of its implementation.
- But this should be done **without renouncing decent basic fees**, especially as in countries where royalties are usually provided for in the contract, the percentages are so low (for instance, 1-2% of the book price) or thresholds so high (number of copies sold), that translators rarely get anything on top of the basic fee.
- Translators should be able to make a fair revenue for their work *and* **benefit from it when the book is a success**.
- Empirically, there is also a direct link between royalties and **transparency** on the exploitation of the work (see below).

In half of the countries, translators don't get any extra remuneration for secondary uses (paperback, e-book, audiobook, streaming services…).

Extra remuneration (extra fee or share of the revenues)

The lack of extra remuneration for secondary uses is closely correlated with the lack of royalties (the only exceptions being Austria, Croatia and Lithuania).

This compounds the lack of proportionality of the remuneration.



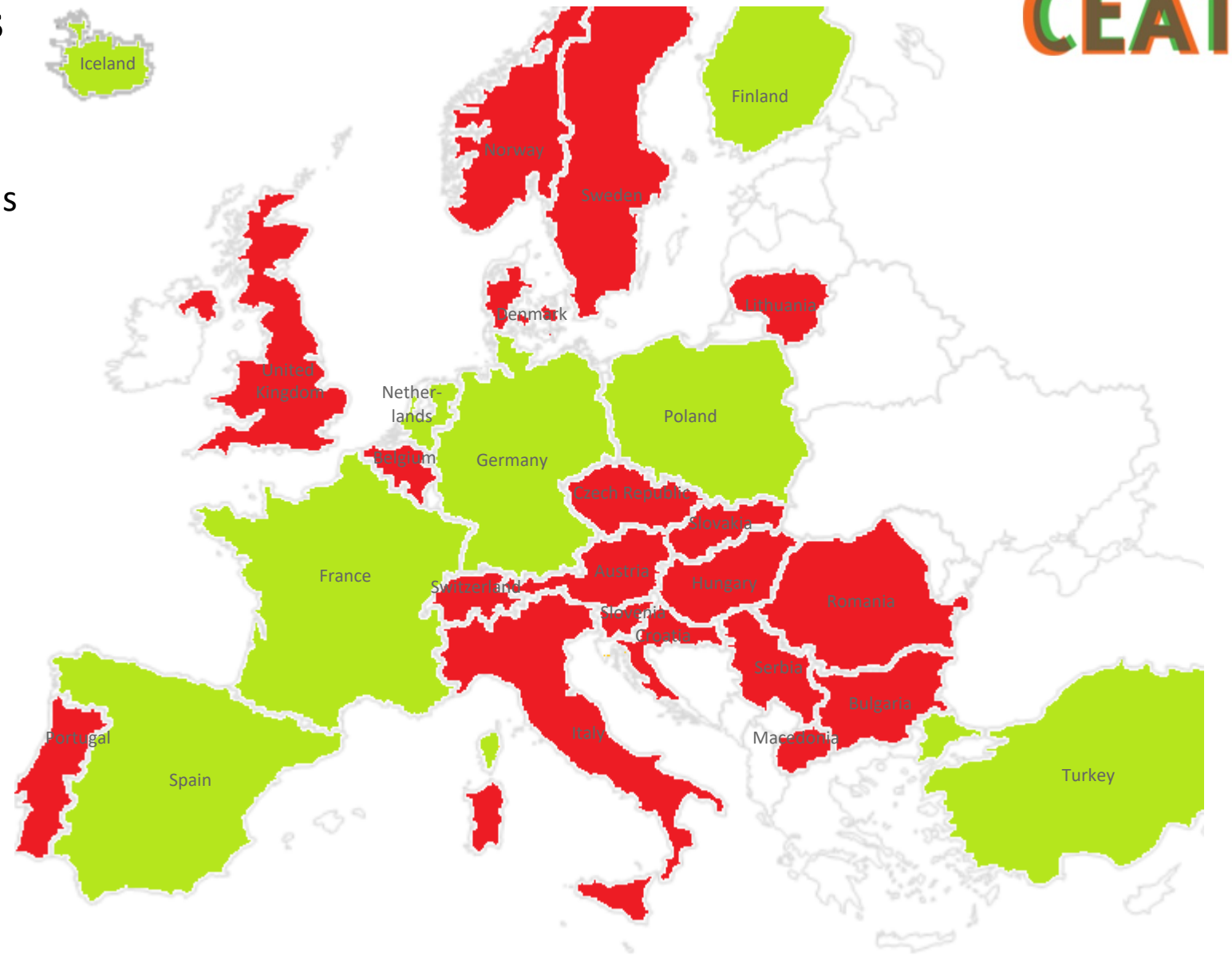
In 2/3 of countries, there is no legal contract adjustment mechanism

when the original remuneration turns out to be disproportionately low compared to the subsequent revenues generated.

Contract adjustment mechanism

Beware: In countries where such a system does exist (Finland, France, Iceland, Poland, Spain), it is rendered mostly ineffective by the unawareness of translators, the burden of the proof, costly procedures, erratic rulings, too-high thresholds, etc.

This should change with the implementation of the DSM directive (article 20).

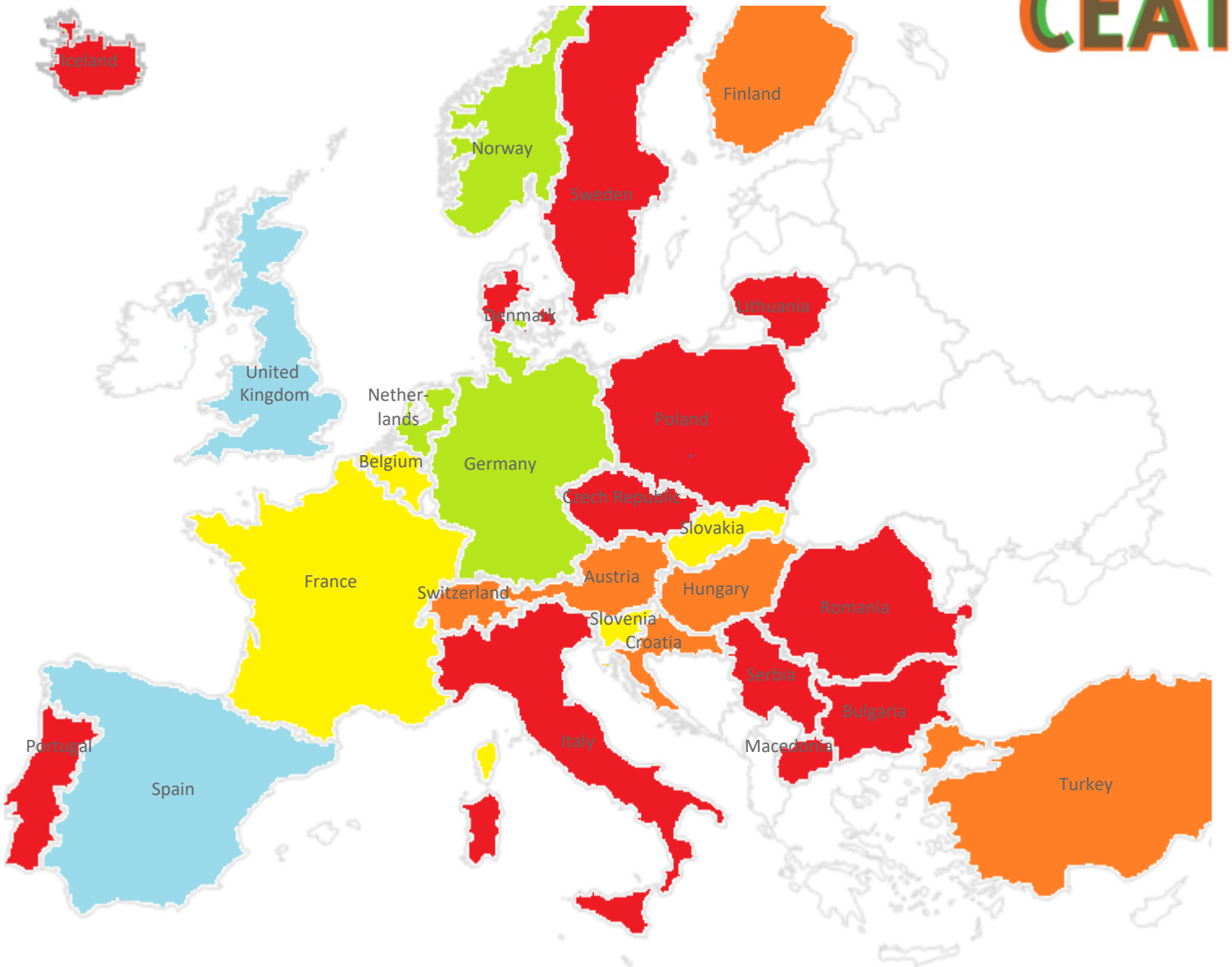


5. Transparency

In 12 countries, translators almost never get exploitation reports. Elsewhere, the picture is very mixed.

Do translators receive detailed and at least yearly reports?

Almost always
Most of the times
Sometimes
Rarely
Almost never



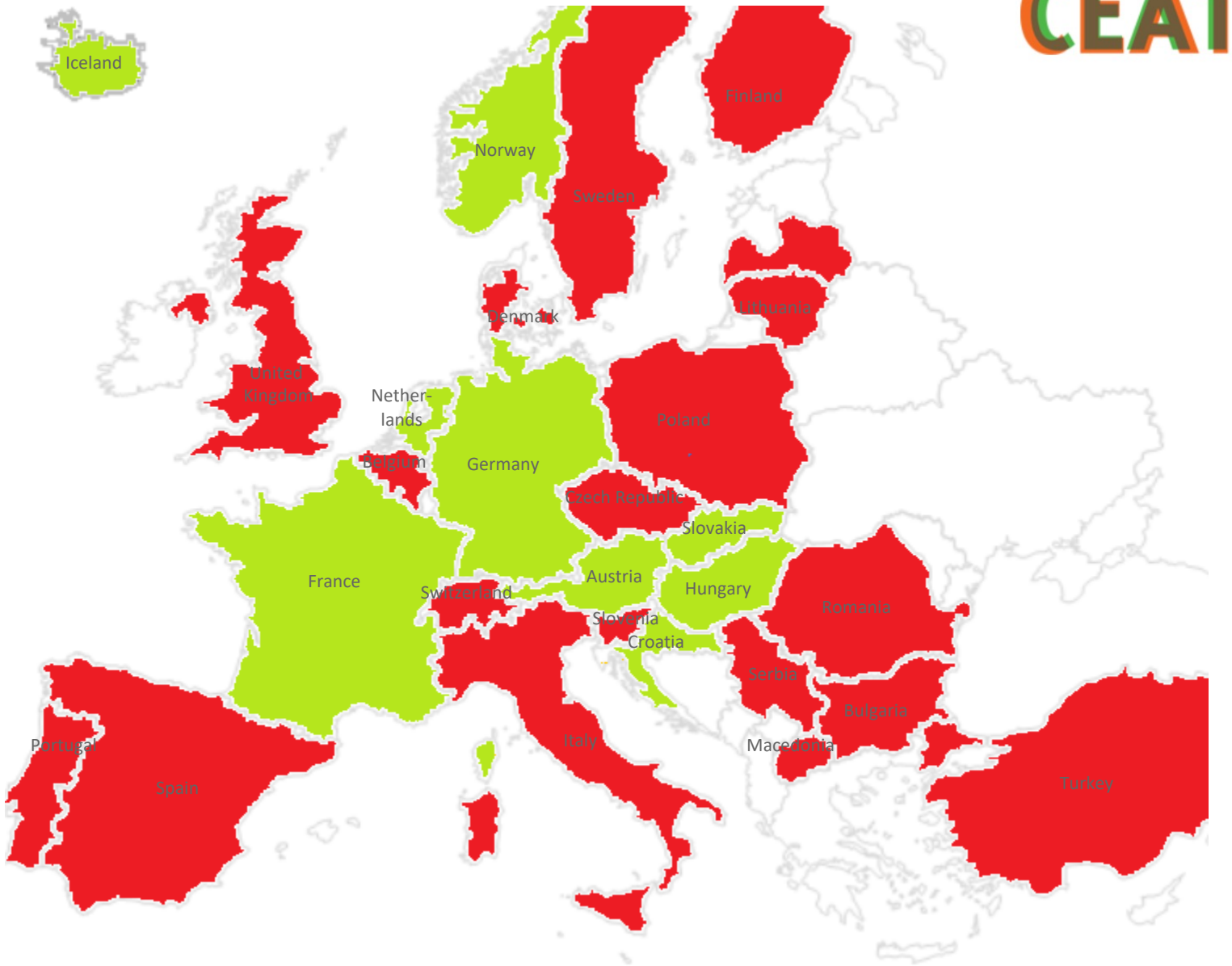
There is a close correlation between the absence of royalties and the absence of reports, both being in contradiction with the principles of the 2019 DSM directive on copyright.

Until now, in 2/3 of countries, no minimal level of transparency had been defined either by law or collective bargaining with the publishers.

Minimum standards defined by law or collective agreement

No legal framework regarding transparency

This should obviously change with the implementation of the DSM directive (article 19).



Conclusion:

In accordance with the Berne convention, European literary translators are recognized as authors, and they enjoy moral rights.

Their associations do a good job of providing model contracts and codes of good practices, as well as negotiating standard contracts whenever possible.

Yet, in most European countries, the legal framework of the translation contract is relatively weak, we lack collective bargaining (to negotiate standard contracts, remuneration, transparency), and the current situation of literary translators is a far cry from the principles put forward in the DSM directive, especially when it comes to remuneration and transparency.

Remuneration

Says the DSM directive:

Member States shall ensure that where authors and performers license or transfer their exclusive rights for the exploitation of their works or other subject matter, they are entitled to receive appropriate and proportionate remuneration. (article 18.1)

The current situation of literary translators:

In a majority of countries, literary translators suffer from unfair payment schedules and receive a once and for all lump sum - no royalties, no extra remuneration for secondary uses - regardless of the success of their work.

Transparency

Says the DSM directive:

- *Authors and performers need information to assess the economic value of their rights (…).* (Recital 74)
- *Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due.* (Article 19.1)

The current situation of literary translators:

In 2/3 of the European countries, literary translators "rarely" or "almost never" receive exploitation reports on their works, and no minimal level of transparency has been defined by law or through collective bargaining with the publishers.

Apart from the principle of an appropriate and proportionate remuneration for the authors contained in the DSM directive (article 18) and the transparency obligation (article 19), this survey shows that there is also ample room for progress regarding contract adjustment mechanisms, alternative dispute resolution procedures and the right of revocation (articles 20 to 22 of the directive).

The implementation of the DSM directive, which puts collective action and collective bargaining in the spotlight, is a unique opportunity to rebalance the contractual relationship and put an end to sweeping buy-out contracts for literary translators.

To follow-up, see:

- CEATL's own contractual recommendations: Guidelines for fair translation contracts – CEATL

- The results of the survey conducted in 2020 by CEATL's Working Conditions working group, with data on the translators' profile, income and other: Working conditions survey results – CEATL

- CEATL translator's rights matrix on our website: an interesting tool to get the big picture at a glance and seek out patterns - such as the correlation between a time-limited cession and the absence of royalties, or the even tighter correlation between the absence of royalties and the absence of transparency and extra remuneration for secondary rights.

For any question, please contact WG coordinator Cécile Deniard: ceciledeniard@yahoo.fr