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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council 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 - Presidency compromise proposal

Delegations will find in the Annex a 2nd version of Presidency compromise proposal, for discussion at the meeting of the Working Party on Intellectual Property (Copyright) on 13 December 2016.

Changes in relation to the previous version are highlighted.

Presidency compromise  
proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207 thereof,

Having regard to the proposal from the European Commission,  
After transmission of the draft legislative act to the national parliaments,  
Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Persons who are blind, visually impaired or otherwise print disabled continue to face many barriers to accessing books and other print material. The need to increase the number of works and other protected subject-matter in accessible formats available to those persons and improve their circulation and dissemination has been recognised at an international level. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled ('the Marrakesh Treaty') was signed on behalf of the Union on 30 April 2014<sup>1</sup>. It requires contracting parties to provide exceptions or limitations to the exclusive rights of holders of copyright and related rights for the making and dissemination of copies in accessible formats of certain works and other subject-matter and for the cross-border exchange of those accessible format copies. The beneficiaries of the Marrakesh Treaty are persons who are blind, have a visual impairment which cannot be improved so as to give those persons visual function substantially equivalent to that of a person who has no such impairment or have a perceptual or reading disability, ~~including dyslexia~~, or are unable, due to a physical disability, ~~including tetraplegia or paraplegia~~, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, in so far ~~and who~~, as a result of such impairments or disabilities, those persons cannot read printed works to substantially the same degree as persons without such impairments or disabilities.

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<sup>1</sup> Council Decision 2014/221/EU of 14 April 2014 on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled. (OJ L115, 17.4.2014, p. 1.)

- (2) Directive [...] endeavours to implement the Union's obligations under the Marrakesh Treaty in a harmonised manner in order to improve the availability of accessible format copies for beneficiary persons and their circulation within the internal market. The Directive requires Member States to introduce a mandatory exception to certain rights of right holders that are harmonised by Union law. The objectives of this Regulation are to implement the obligations in the Marrakesh Treaty with respect to the export and import of accessible format copies for the benefit of beneficiary persons between the Union and third countries that are parties to the Marrakesh Treaty, and to lay down the conditions for such export and import. Such measures may only be taken at Union level as the exchange of accessible format copies of works and other subject-matter concerns the commercial aspects of intellectual property. A Regulation is the only appropriate instrument.
- (3) The Regulation should ensure that accessible format copies of books, journals, newspapers, magazines and other writings, notations including sheet music, and other print material, which have been made in any Member State in accordance with the national provisions adopted pursuant to Directive [...] may be exported to third countries that are parties to the Marrakesh Treaty. Accessible formats include for example Braille, large print, adapted e-books, audiobooks and radio broadcasts. The distribution, communication to the public or making available of accessible format copies to print disabled persons or to authorised entities in the third country should only be carried out on a non-profit basis by authorised entities established in the Union.
- (4) This Regulation should also allow for the importation of and access to accessible format copies made in accordance with the implementation of the Marrakesh Treaty from a third country, by beneficiary persons in the Union and authorised entities established in the Union, for the benefit of print disabled persons. It should be possible for those accessible format copies to be circulated in the internal market under the same conditions as accessible format copies made in the Union in accordance with Directive [...].

- (5) In order to improve the availability of accessible format copies and to prevent the illegal dissemination of works and other subject-matter, authorised entities which engage in the distribution or making available of accessible format copies should comply with certain obligations.
- (6) Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council<sup>2</sup>, which govern the processing of personal data, as may be carried out by authorised entities within the framework of this Regulation and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States.
- (7) The United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD'), to which the EU is a party, guarantees people with disabilities the right of access to information and the right to participate in cultural, economic and social life on an equal basis with others. The UNCRPD requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
- (8) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. This Regulation should be interpreted and applied in accordance with those rights and principles,

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<sup>2</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31). This Directive is repealed with effect from 25 May 2018 and shall be replaced by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1-88).

HAVE ADOPTED THIS REGULATION:

### *Article 1*

#### *Subject matter and scope*

This Regulation lays down rules on the cross-border exchange of accessible format copies of certain works and other subject-matter between the Union and third countries that are parties to the Marrakesh Treaty without the authorisation of the right holder, for the benefit of persons who are blind, visually impaired or otherwise print disabled.

### *Article 2*

#### *Definitions*

For the purposes of this Regulation the following definitions shall apply:

- (1) ‘work or other subject-matter’ means a work in the form of a book, journal, newspaper, magazine or other writing, notation including sheet music, and related illustrations, in any medium, including in audio form such as audiobooks, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;
- (2) ‘beneficiary person’ means:
  - (a) a person who is blind;
  - (b) a person who has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment, and is, as a result, unable to read printed works to substantially the same degree as a person without such impairment;
  - (c) a person who has a perceptual or reading disability, and is, as a result, unable to read printed works to substantially the same degree as a person without such disability; or
  - (d) a person who is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading.

- (3) 'accessible format copy' means a copy of a work or other subject-matter in an alternative manner or form that gives a beneficiary person access to the work or other subject-matter, including allowing for the person to have access as feasibly and comfortably as a person without a visual impairment or any of the disabilities referred to in paragraph 2;
- (4) 'authorised entity' means an organisation providing education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, as its main activity or as one of its main activities or as part of their public-interest missions.

### *Article 3*

#### *Export of accessible format copies to third countries*

An authorised entity established in a Member State may distribute, communicate or make available to beneficiary persons or to an authorised entity established in a third country that is a party to the Marrakesh Treaty an accessible format copy made in accordance with the national legislation adopted pursuant to Directive [...].

### *Article 4*

#### *Import of accessible format copies from third countries*

A beneficiary person or an authorised entity established in a Member State may import or otherwise may obtain or may access and thereafter use, in accordance with the national legislation adopted pursuant to Directive [...], an accessible format copy that has been distributed, communicated or made available to beneficiary persons or to authorised entities, by an authorised entity in a third country that is a party to the Marrakesh Treaty.

## *Article 5*

### *Obligations of authorised entities*

1. An authorised entity established in a Member State carrying out the acts referred to in Articles 3 and 4 shall ensure that:
  - (a) it distributes, communicates and makes available accessible format copies only to beneficiary persons or other authorised entities;
  - (b) it takes appropriate steps to discourage the unlawful reproduction, distribution, communication to the public and making available of accessible format copies;
  - (c) it demonstrates due care in, and maintains records of, its handling of works and other subject-matter and of their accessible format copies; and
  - (d) it publishes and updates, on its website if appropriate, information on the manner in which it complies with the obligations laid down in points (a) to (c).
2. An authorised entity established in a Member State carrying out the acts referred to in Articles 3 and 4 shall provide the following information, on request, to any beneficiary person or right holder:
  - (a) the list of works and other subject-matter of which it has accessible format copies and the available formats; and
  - (b) the name and details of the authorised entities with which it has engaged in the exchange of accessible format copies pursuant to Articles 3 and 4.

## *Article 6*

### *Protection of personal data*

The processing of personal data carried out within the framework of this Regulation shall be carried out in compliance with Directive 95/46/EC.



## *Article 7*

### *Review*

No sooner than [five years after the date of application], the Commission shall carry out an evaluation of this Regulation and present the main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by proposals for the amendment of this Regulation.

Member States shall provide the Commission with the necessary information for the preparation of the evaluation report.

## *Article 8*

### *Entry into force*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

## *Article 9*

### *Application in time*

This Regulation shall be applicable as of [date of transposition of Directive [...]].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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