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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council
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
- Outcome of the European Parliament's first reading
(Strasbourg, 3 to 6 July 2017)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Mr Max ANDERSSON (Greens/EFA, SE) presented one compromise amendment (amendment 32) to the proposal for a Regulation, on behalf of the Committee on Legal Affairs. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 6 July 2017, the plenary adopted the amendment (amendment 32) to the proposal for a Regulation.

The Commission proposal as thus amended and the legislative resolution constitute the Parliament's first-reading position², it reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The text of the amendment adopted and the European Parliament's legislative resolution are set out in the Annex. The amendment is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol "■" indicates deleted text.

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**Cross-border exchange between the Union and third countries of accessible format copies of certain works and other protected subject-matter for the benefit of persons who are blind, visually impaired or otherwise print disabled
***I**

European Parliament legislative resolution of 6 July 2017 on the 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 (COM(2016)0595 – C8-0380/2016 – 2016/0279(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0595),
 - having regard to Article 294(2) and Article 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0380/2016),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 5 July 2017³,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 19 May 2017 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 59 and 39 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Culture and Education and the Committee on Petitions (A8-0102/2017),
1. Adopts its position at first reading hereinafter set out;

³ Not yet published in the Official Journal.

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 6 July 2017 with a view to the adoption of Regulation (EU) 2017/... 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 *114* thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

*Having regard to the opinion of the European Economic and Social Committee*⁴,

Acting in accordance with the ordinary legislative procedure⁵,

⁴ Opinion of 5 July 2017 (not yet published in the Official Journal).

⁵ Position of the European Parliament of 6 July 2017.

Whereas:

- (1) 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 2014⁶. It requires contracting parties to provide exceptions or limitations to copyright and related rights for the making and dissemination of copies, in accessible formats, of certain works and other protected subject-matter, and for the cross-border exchange of those copies.
- (2) *The beneficiaries of the Marrakesh Treaty are persons who are blind, persons who have a visual impairment which cannot be improved so as to give them visual function substantially equivalent to that of a person who has no such impairment, persons who have a perceptual or reading disability, including dyslexia or any other learning disability preventing them from reading printed works to substantially the same degree as persons without such disability, and persons who are unable, due to a physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, insofar as, as a result of such impairments or disabilities, those persons are unable to read printed works to substantially the same degree as persons without such impairments or disabilities.*

⁶ ***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).***

- (3) *Persons who are blind, visually impaired or otherwise print-disabled continue to face many barriers to accessing books and other printed material which are protected by copyright and related rights. The need to increase the number of works and other protected subject-matter in accessible formats available to such persons, and to significantly improve the circulation and dissemination of such works and other protected subject-matter has been recognised at international level.*
- (4) *According to Opinion 3/15⁷ of the Court of Justice of the European Union, the exceptions or limitations to copyright and related rights for the making and dissemination of copies in accessible formats of certain works and other subject-matter provided for by the Marrakesh Treaty have to be implemented within the field harmonised by Directive 2001/29/EC of the European Parliament and of the Council⁸. The same is true of the import and export arrangements prescribed by that treaty, inasmuch as they are ultimately intended to permit the communication to the public or the distribution, in the territory of a party, of accessible format copies published in the territory of another party, without the consent of the rightholders being obtained.*

⁷ *Opinion of the Court of Justice of 14 February 2017, 3/15, ECLI:EU:C:2017:114, paragraph 112.*

⁸ *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 L 167, 22.6.2001, p.10).*

- (5) Directive *(EU) 2017/... of the European Parliament and of the Council*⁹⁺ aims to implement the obligations that the Union has to meet under the Marrakesh Treaty in a harmonised manner in order to improve the availability of accessible format copies for beneficiary persons *in all of the Member States of the Union* and the circulation of such copies within the internal market, *and* requires Member States to introduce a mandatory exception to certain rights that are harmonised by Union law. *This* Regulation aims to implement the obligations *under* the Marrakesh Treaty with respect to the export and import *arrangements* for accessible format copies *for non-commercial purposes* 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 **in a uniform manner within the field harmonised by Directives 2001/29/EC and (EU) 2017/...** ⁺ *in order to ensure that those measures are applied consistently throughout the internal market and do not jeopardize the harmonisation of exclusive rights and exceptions contained within those Directives.*

⁹ *Directive (EU) 2017/... of the European Parliament and of the Council of ... 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 L ...)*

⁺ *OJ: please insert reference to Directive contained in document 2016/0278 (COD).*

- (6) This Regulation should ensure that accessible format copies of books, **including e-books**, journals, newspapers, magazines and other writings, **notation including** sheet music, and other printed material, **including in audio form, whether digital or analogue**, which have been made in any Member State in accordance with the national provisions adopted pursuant to Directive (EU) 2017/...⁺ can be **distributed, communicated, or made available, to a beneficiary person or authorised entity, as referred to in the Marrakesh Treaty, in** third countries that are parties to the Marrakesh Treaty. Accessible formats include, **for example**, Braille, large print, adapted e-books, audio books and radio broadcasts. **Taking into account the “non-commercial objective of the Marrakesh Treaty”¹⁰**, the distribution, communication **to the public** or making available to the public of accessible format copies to **persons who are blind, visually impaired or otherwise print-disabled** or to authorised entities in the third country should only be carried out on a non-profit basis by authorised entities established in a Member State.
- (7) 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 a Member State, **for non-commercial purposes for** the benefit of **persons who are blind, visually impaired or otherwise print-disabled**. It should be possible for those accessible format copies to **circulate** in the internal market under the same conditions as accessible format copies made in the Union in accordance with Directive (EU) 2017/...⁺.

⁺ **OJ: please insert reference to Directive contained in document 2016/0278 (COD).**

¹⁰ **Opinion of the Court of Justice of 14 February 2017, 3/15, ECLI:EU:C:2017:114, paragraph 90..**

- (8) In order to improve the availability of accessible format copies and to prevent the ***unauthorised*** dissemination of works or other subject-matter, authorised entities which engage in the distribution, ***communication to the public*** or making available to the public of accessible format copies should comply with certain obligations. ***Initiatives by Member States to promote the objectives of the Marrakesh Treaty and the exchange of accessible format copies with third countries that are parties to that treaty, and to support authorised entities to exchange and make information available, should be encouraged. Such initiatives could include the development of guidelines or best practices on the making and dissemination of accessible format copies in consultation with representatives of authorised entities, beneficiary persons and rightholders.***

- (9) It is essential that any processing of personal data under this Regulation 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 (*the ‘Charter’*), and it is imperative that any such processing also be in compliance with **Directives 95/46/EC¹¹ and 2002/58/EC¹²** of the European Parliament and the Council, 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 .
- (10) The United Nations Convention on the Rights of Persons with Disabilities (the ‘UNCRPD’), to which the Union is a party, guarantees persons with disabilities the right of access to information **and education** 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.
- (11) ***Under the Charter, all forms of discrimination, including on grounds of disability, are prohibited and the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community is recognised and respected by the Union.***
- (12) ***Since the objective of this Regulation, namely to implement in a uniform manner the obligations under the Marrakesh Treaty with respect to the export and import between***

¹¹ ***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). That Directive will be repealed and replaced, with effect from 25 May 2018, by Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard 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).***

¹² ***Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).***

the Union and third countries that are parties to the Marrakesh Treaty of accessible format copies of certain works and other subject-matter for non-commercial purposes for the benefit of beneficiary persons, and to lay down the conditions for such export and import, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- (13) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter *and the UNCRPD*. This Regulation should be interpreted and applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down uniform 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 rightholder, for the benefit of persons who are blind, visually impaired or otherwise print-disabled, ***within the field harmonised by Directives 2001/29/EC and (EU) 2017/...*** ⁺, ***in order to prevent jeopardizing the harmonisation of exclusive rights and exceptions in the internal market.***

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

- (1) ‘work or other subject-matter’ means a work in the form of a book, journal, newspaper, magazine or other kind of writing, ***notation*** including sheet music, and related illustrations, in any media, including in audio ***form*** such as audiobooks ***and in digital format***, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;
- (2) ‘beneficiary person’ means, ***regardless of any other disabilities, a person who:***
 - (a) is blind;
 - (b) 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 who is, as a result, unable to read printed works to substantially the same degree as a person without such an impairment;***

⁺ ***OJ: please insert reference to Directive contained in document 2016/0278 (COD).***

- (c) 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) 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 such person to have access as feasibly and comfortably as a person without any of the *impairments or* disabilities referred to in point 2;
- (4) ‘authorised entity established in a Member State’ means an *entity that is authorised or recognised by a Member State* to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis. *It also includes a public institution or non-profit organisation that provides the same services to beneficiary persons as one of its primary activities, institutional obligations or as part of its 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 of a work or other subject-matter made in accordance with the national legislation adopted pursuant to Directive *(EU) 2017/...* ⁺.

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 obtain or access and thereafter use, in accordance with the national legislation adopted pursuant to Directive (EU) 2017/... ⁺, an accessible format copy of a work or other subject-matter 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.

⁺ ***OJ: please insert reference to Directive contained in document 2016/0278 (COD).***

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 ***establish and follow its own practices*** to ensure that it:
 - (a) distributes, communicates and makes available accessible format copies only to beneficiary persons or other authorised entities;
 - (b) takes appropriate steps to discourage the ***unauthorised*** reproduction, distribution, communication ***to the public*** and making available to the public of accessible format copies;
 - (c) demonstrates due care in, and maintains records of, its handling of works or other subject-matter and of accessible format copies thereof; and
 - (d) publishes and updates, on its website if appropriate, ***or through other online or offline channels***, information on ***how*** it complies with the obligations laid down in points (a) to (c);

An authorised entity established in a Member State shall establish and follow the practices referred to in the first subparagraph in full respect of the rules applicable to the processing of personal data of beneficiary persons referred to in Article 6.

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 ***in an accessible way***, on request, to beneficiary persons, ***other authorised entities*** or rightholders:

- (a) the list of works or other subject-matter for which it has accessible format copies and the available formats; and
- (b) the name and contact 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 *Directives* 95/46/EC and 2002/58/EC.

Article 7

Review

By ...[six years after the date of entry into force of the Directive contained in document 2016/0278(COD)], the Commission shall carry out an evaluation of this Regulation and present the main findings in a report to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by proposals for amending this Regulation.

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

Article 8

Entry into force *and application*

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

■

It shall apply from... [twelve months after the date of entry into force of the Directive contained in document 2016/0278(COD)].

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

Done at ,

For the European Parliament

For the Council

The President

The President
