



Council of the
European Union

Brussels, 25 October 2017
(OR. en)

13930/12
DCL 1

PI 108

DECLASSIFICATION

of document:	ST13930/12 RESTREINT UE/EU RESTRICTED
dated:	20 September 2012
new status:	Public
Subject:	Recommendation for a Council Decision authorising the Commission to negotiate an international agreement within the World Intellectual Property Organization on improved access to books for print impaired persons - Exchange of views on competence and nature of the envisaged legal instrument

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



COUNCIL OF
THE EUROPEAN UNION

Brussels, 20 September 2012

13930/12

RESTREINT UE/EU RESTRICTED

PI 108

NOTE

from : General Secretariat
to : Permanent Representatives Committee

No. Cion prop. : 11180/12 PI 73 RESTREINT UE

Subject : Recommendation for a Council Decision authorising the Commission to negotiate an international agreement within the World Intellectual Property Organization on improved access to books for print impaired persons
- Exchange of views on competence and nature of the envisaged legal instrument

I. INTRODUCTION

1. Discussions within the World Intellectual Property Organization (WIPO) on how to provide better access to information, culture and communication for the visually impaired persons/persons with print disabilities by expanding the number of copyrighted works in accessible formats and improving access to those works have been ongoing since 2009.

2. The European Union has contributed to these discussions by tabling in June 2010 a Draft Joint Recommendation concerning the improved access to works protected by copyright for persons with a print disability.¹ In June 2011, the European Union and its Member States have also participated actively in the drafting of a proposal on an international instrument on limitations and exceptions for persons with print disabilities.² The latest draft of that text³ provides inter alia for a definition of visually impaired persons/persons with print disabilities (beneficiaries) as well as for a mandatory exception or limitation to the rights of reproduction, distribution and the right of making available to the public of works in accessible format copies for the benefit of the beneficiaries.
3. At the latest meeting of the WIPO Standing Committee on Copyright and Related Rights (SCCR), it was agreed that the drafting had reached a mature enough stage for an extraordinary WIPO General Assembly in December 2012 (following two additional SCCR meetings in October and November 2012 respectively) to be called upon to decide whether a diplomatic conference should be convened in 2013 on this subject.
4. In this context, the Commission submitted in June 2012 to the Council the above mentioned recommendation⁴, requesting authorisation to open and conduct negotiations on behalf of the European Union on an international agreement in the context of WIPO.
5. This recommendation was examined at the meeting of the Working Party on Intellectual Property (Copyright) on 13 September 2012. In the light of this views expressed during this examination, the Presidency decided to refer the two questions set out below to the Permanent Representatives Committee for political guidance.

¹ WIPO document SCCR/20/12.

² WIPO document SCCR/22/15 REV 1.

³ The latest draft of such a legal instrument circulated in WIPO is set out in document SCCR/24/9.

⁴ 11180/12 EU RESTRICTED.

II. MAIN OUSTANDING ISSUES

A) Competence to negotiate

6. According to the Commission, the European Union disposes of full and exclusive competence to conduct the negotiations in question. First, the subject matter dealt with is "largely covered by EU rules". As the Commission Legal Service specified at the above mentioned Working Party meeting, the provisions of the envisaged legal instrument are covered by Directive 2001/29/EC. Secondly, some of the provisions would fall within the scope of Article 207 TFEU (common commercial policy).
7. Several delegations, however, were of the view that the envisaged legal instrument falls under both EU and national competence, on the grounds that the exception provided for by Directive 2001/29/EC is an optional one and leaves each Member State free to determine whether and how this will be implemented (scope, beneficiaries etc).

B) Nature of the legal instrument

8. In the absence of consensus so far, the nature of the final legal instrument, i.e. whether this will be a legally binding Treaty or a soft-law instrument, such as a Joint Recommendation as originally suggested by the European Union, remains open in WIPO.
9. With its recommendation, the Commission requests authorisation to negotiate a legally binding text (Treaty), considering that the emerging consensus in Geneva around such an option would risk putting the European Union in isolation were it to continue insisting on a non legally binding text. It should be noted in this context that the European Parliament has also expressed its support for a legally binding text.

10. While a number of delegations would be open to a future Treaty on the principle, other delegations are opposed to it, arguing that this would open the way for requests by developing countries for more Treaties on exceptions or limitations to copyright and related rights, thus weakening the position of EU rightholders and tilting the balance achieved so far at international level.

III. CONCLUSION

11. The Permanent Representatives Committee is invited to discuss the two main outstanding issues set out above with a view to providing political guidance for the finalisation of the Council's position on the Commission's Recommendation under examination.

=====

DECLASSIFIED