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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, 29 October 2012

15377/12

RESTREINT UE/EU RESTRICTED

PI 129

NOTE

from :	Presidency
to :	Permanent Representatives Committee
No. Cion prop. :	14961/12 PI 122 EU RESTRICTED
Subject :	Draft 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 - Presidency compromise proposal

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 last WIPO General Assemblies in October 2012, it was agreed that the drafting had reached a mature enough stage for an extraordinary WIPO General Assembly in December 2012 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 meetings of the Working Party on Intellectual Property (Copyright) on 5 July and 13 September 2012.
6. On 26 September 2012, the Permanent Representatives Committee (Part I), following a presentation by the Commission of the issues at stake, had a brief exchange of views.

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.

7. In the light of the views expressed by delegations and the Commission, the Presidency circulated a first compromise proposal⁵, which was examined by the above mentioned Working Party on 24 October 2012. While there was broad agreement amongst delegations on the need for the European Union and its Member States to participate in the ongoing WIPO negotiations in a coordinated manner, a number of concerns were expressed as regards both the form and the substance of the proposed Decision.
8. The Presidency compromise proposal contained in the Annex to this Note aims at meeting these concerns.
9. As regards the form, the proposed Decision shall be adopted by the Council alone and covers solely matters falling under exclusive EU competence.
10. As regards the substance, the negotiating directives have been reworded to allow the Commission, in its role as the EU negotiator, sufficient flexibility. Moreover, the new, more general wording accommodates delegations' concerns in relation to some of the issues being negotiated in WIPO.
11. The Permanent Representatives Committee is invited to resolve any outstanding issues and to finalise the draft Decision, to be submitted to the Council for adoption following the usual legal linguistic scrutiny.

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**- DRAFT -
DECISION
OF THE COUNCIL**

on the participation of the European Union in negotiations for
an international agreement within the World Intellectual Property Organisation
on improved access to books for print impaired persons

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218
(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas,

- (1) At present only a limited number of published books are available in accessible formats for visually impaired and print-disabled persons throughout the world.
- (2) There is therefore a need to ensure improved access to books for persons with print disabilities at an international level in order to allow for their full and equal participation in society.
- (3) It is equally important to keep a high level of copyright protection to maintain and foster substantial investment in creativity and innovation as well as literary and artistic creation.

- (4) The UN Convention on the Rights of Persons with Disabilities has entered into force for the EU on 22 January 2011 and it contains clear obligations related to the right of persons with disabilities to access information (Article 21 and 30).
- (5) Discussions on an international instrument ensuring improved access to books for visually impaired persons have been on-going in the World Intellectual Property Organisation (WIPO) for several years.
- (6) The WIPO General Assembly in October 2012 decided to convene an extraordinary session to be held in December 2012 to evaluate the latest version of the draft international instrument, as it will stand by that time, and to make a decision on whether to convene a Diplomatic Conference in 2013.
- (7) The Commission should be authorised to negotiate, on behalf of the Union, an international agreement within the World Intellectual Property Organisation on improved access to books for print impaired persons as regards matters falling within the Union's exclusive competence,

HAVE ADOPTED THIS DECISION:

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Article 1

1. The Commission is hereby authorised to negotiate an international agreement in the context of the World Intellectual Property Organisation on improved access to books for print impaired persons and to conduct these negotiations on behalf of the Union to the extent that the subject matter falls within the Union's exclusive competence, in consultation with the Intellectual Property Working Party (Copyright) (the "special committee").
2. The Commission shall conduct the negotiations in question in accordance with the negotiating directives set out in the Annex to this Decision to the extent that these directives refer to subject matter falling within the Union's exclusive competence.
3. The Commission shall cooperate closely with the Member States during the negotiating process, with a view to aiming for unity in the international representation of the Union and its Member States.
4. The Commission shall make sure that documents relating to the negotiations are circulated to the special committee in due time. It shall report to the Council and/or to the special committee in an open and transparent way on the outcome of the negotiations before and after each negotiating session and, where appropriate, on any problems that may arise during the negotiations.

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Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council

The President

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NEGOTIATING DIRECTIVES

1. The Commission shall conduct the negotiations in such a way as to ensure that the final agreed provisions are compatible with Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society¹, and with the commitments assumed by the European Union and its Member States within the framework of the TRIPS Agreement (Trade-related aspects of intellectual property rights)², the WIPO Copyright Treaty³ and the UN Convention on the Rights of Persons with Disabilities⁴.
2. The Commission shall ensure that the future international agreement:
 - a) does not go beyond the exceptions and limitations which are necessary for enabling visually impaired and print-disabled persons to have access to copyright works on an equal basis with others;
 - b) complies with the three-step test obligations provided for in international agreements;
 - c) establishes that the distribution and making available of accessible format copies is limited to visually impaired and print-disabled persons;
 - d) takes into account the availability of accessible format copies in the market;
 - e) contains appropriate provisions enabling the European Union to become a Contracting Party thereto.
3. These negotiating directives may be adapted in line with progress made in the course of negotiations.

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¹ OJ L 167, 22.06.2001, p. 10-19.

² Agreement on Trade-Related Aspects of Intellectual Property Rights, Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco on 15 April 1994; http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm

³ WIPO Copyright Treaty, adopted in Geneva on December 20, 1996;
http://www.wipo.int/treaties/en/ip/wct/trtdocs_wo033.html

⁴ <http://www.un.org/disabilities/convention/conventionfull.shtml>