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**'I/A' ITEM NOTE**

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Draft DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC (**first reading**)

- Adoption of the legislative act
- Statement

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**Statement by the Commission**

The Commission takes note that the text adopted by the European Parliament and the Council of the Directive laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes and amending Council Directive 93/83/EEC replaces the legal basis retained in its proposal (Article 114 of the Treaty on the Functioning of the European Union, TFEU) with the combined legal basis of Articles 53(1) and 62 TFEU.

The Commission considers that Articles 53(1) and 62 TFEU provide a specific legal basis, and can thus be considered ‘lex specialis’, for directives concerning access to activities of self-employed persons. Legislation exceeding that scope should more properly be based on the general legal basis related to the achievement of the internal market (Article 114 TFEU). The two legal bases (Article 114, and Articles 53(1) and 62 TFEU) could also have been used in conjunction, if necessary.

In a spirit of compromise and with a view to the immediate adoption of the proposal by the Union, the Commission supports the final text. However, it regrets the removal of Article 114 TFEU as the legal basis of the Directive and reaffirms that that provision of the TFEU shall be used in future internal market legislation concerning issues other than access to activities of self-employed persons.

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