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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed Regulation will allow the Union to fulfil an international obligation under the Marrakesh Treaty to Facilitate Access to Published Works for Persons who Are Blind, Visually Impaired, or Otherwise Print Disabled ('the Marrakesh Treaty'). The Marrakesh Treaty was adopted in 2013 at the World Intellectual Property Organisation (WIPO) with the aim of facilitating the availability and cross-border exchange of books and other print material in accessible formats around the world. It was signed by the Union¹ in April 2014. The Treaty requires the parties to provide exceptions or limitations to copyright and related rights for the benefit of blind, visually impaired and otherwise print disabled persons and allows for the cross-border exchange of special format copies of books, including audio books, and other print material among the countries that are parties to the Treaty.

The Union has thus made a political commitment to implement the Treaty, which both the Council and the European Parliament have since strengthened. The Commission separately presented a proposal for a Council Decision for the ratification of the Marrakesh Treaty by the Union in October 2014. In May 2015, the Council submitted a request to the Commission under Article 241 of the Treaty on the Functioning of the European Union (TFEU), in which it underlined its full commitment to the rapid entry into force of the Marrakesh Treaty and asked the Commission to submit, without delay, a legislative proposal to amend the Union legal framework in accordance with the Treaty.

The beneficiaries of the Marrakesh Treaty, i.e. persons who are blind, visually impaired, or otherwise print disabled face many barriers to accessing books and other print material protected by copyright and related rights. The availability of books in formats that are accessible to print-disabled persons is estimated to be between 7 %² and 20 %³ despite the fact that digital technology greatly facilitates accessible publishing⁴. Accessible formats include e.g. Braille, large print, e-books and audiobooks with special navigation, audio description and radio broadcasts.

The Marrakesh Treaty obliges the contracting parties, on the one hand, to bring their internal legal provisions into line with the Treaty and, on the other hand, to allow for the cross-border exchange of accessible format copies made under national exceptions or limitations with third countries that are parties to the Treaty. In order to implement the Marrakesh Treaty within the Union, Directive [...] requires Member States to introduce a mandatory exception to certain rights of right holders harmonised by Union law for the benefit of beneficiary persons and to ensure cross-border access to special format copies within the internal market. The purpose of the proposed Regulation is to implement the Union's obligations under the Marrakesh Treaty in respect of the exchange of accessible format copies between the Union and third countries that are parties to the Marrakesh Treaty, for the benefit of beneficiary persons.

¹ 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 LISU for the Royal National Institute of Blind People (RNIB), 'Availability of accessible publications - 2011 update', October 2011.

³ Catherine Meyer-Lereculeur 'Exception 'handicap' au droit d'auteur et développement de l'offre de publications accessibles à l'ère numérique', May 2013.

⁴ These figures refer to availability in some but not all accessible formats.

This proposed Regulation therefore ensures that accessible format copies that 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. In addition, the Regulation allows the import of accessible format copies made in accordance with the Marrakesh Treaty in third countries that are parties to the Treaty, for the benefit of beneficiary persons in the Union. Both beneficiary persons and authorised entities established in the Union should be able to obtain such copies and those copies should be able to circulate in the internal market under the same conditions as accessible format copies made in the Union in accordance with the national provisions adopted pursuant to Directive [...].

The proposed Regulation is also in line with the Union's obligations deriving from the United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD'). The EU has been bound by the UNCRPD since January 2011, pursuant to Council Decision 2010/48/EC⁵. The provisions set out in the UNCRPD have thus become an integral part of the Union's legal order. The right of access to information and the right of people with disabilities to participate in cultural life on an equal basis with others are enshrined in the UNCRPD. Its article 30 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. In its Concluding observations on the initial report of the European Union⁶, adopted on 4 September 2015, the United Nations Committee on the Rights of Persons with Disabilities has encouraged the Union to take all appropriate measures to implement the Marrakesh Treaty as soon as possible.

- **Consistency with existing policy provisions in the policy area**

The proposed Regulation relates to the exchange of accessible format copies of certain copyright protected content with third countries that are parties to the Marrakesh Treaty. Together with Directive [...], it therefore serves to implement the Marrakesh Treaty in Union law. The proposed Regulation will be the first piece of EU legislation to introduce provisions specifically on the international exchange of accessible format copies for beneficiary persons.

- **Consistency with other Union policies**

The proposed Regulation, together with Directive [...], fulfils the Union's commitments and obligations relating to the integration of persons with disabilities as set out above. It is consistent with other EU legislation and policy in this area.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is Article 207 of the Treaty on the Functioning of the European Union (TFEU).

⁵ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L23, 27.1.2010, p. 35).

⁶ CRPD/C/EU/CO/1, available at: http://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/EUR/CRPD_C_EU_CO_1_21617_E.doc.

- **Proportionality**

The Union is obliged to comply with its international obligations under the Marrakesh Treaty. This Regulation serves to implement the provisions contained in the Treaty on the exchange of accessible format works with third countries that are parties to the Treaty. Such measures can only be taken at Union level as the exchange of accessible format copies of works and other protected subject-matter concerns the commercial aspects of intellectual property. A Regulation is therefore the only appropriate instrument. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty on European Union, this Regulation does not go beyond what is necessary in order to achieve this objective.

- **Choice of the instrument**

The proposed instrument is a Regulation, in accordance with Article 207 of the TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The purpose of the proposed Regulation is to fulfil new international obligations as regards Union law. A retrospective evaluation of existing European law in this area is therefore not relevant and not required in this context. Available information on related European legislation was however taken into account, notably the results of public consultations and existing expert input.

- **Stakeholder consultations**

No specific stakeholder consultation was carried out for the purposes of the proposed Regulation, which implements provisions established at international level. The extensive public consultation on the review of the EU copyright rules carried out by the Commission between December 2013 and March 2014 also included a section on limitations and exceptions for the benefit of persons with disabilities and on the access to and circulation of works in accessible formats, which also referred to the Marrakesh Treaty⁷. Among other aspects, the views expressed by end users, consumers and institutional users (including organisations serving the needs of people with disabilities and libraries) pointed to a diverging scope of national exceptions or limitations, making it difficult to have legal certainty when exporting and importing accessible format copies made under a national copyright exception or limitation. Those institutional respondents were consistently of the opinion that the Marrakesh Treaty would satisfactorily address these concerns. Right holders and collective management organisations generally felt that there were no problems arising from the national implementation of the optional exception or limitation provided for in Union legislation. They also remarked that the existing market mechanisms were effectively addressing the problem of access to works for persons with disabilities. This view was not shared by end users, consumers or institutional users.

⁷ Report on the responses to the Public Consultation on the Review of the EU Copyright Rules, July 2014, p. 61-63. http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm

- **Collection and use of expertise**

No expertise was collected specifically in preparation of this proposal. The Commission took into account a 2013 study on the application of Directive 2001/29/EC⁸, which assessed *inter alia* the application in 11 Member States of the EU optional exception or limitation for persons with a disability in Article 5(3)(b) of that Directive.

- **Impact assessment**

The proposed Regulation will address the implications of the Marrakesh Treaty for the exchange of accessible format copies with third countries and aims to bring Union law into line with the Treaty in that respect. The Better Regulation Guidelines⁹ do not require an impact assessment to be carried out when the Commission has no discretion over the policy content.

- **Fundamental rights**

The proposed Regulation supports 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, as enshrined in Article 26 of the Charter of Fundamental Rights of the European Union ('the Charter'). The Regulation also reflects the Union's commitments under the UNCRPD. The UNCRPD 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. In view of this, it is justified to restrict the property rights of rightholders in light with the Union's obligations under the Charter¹⁰.

The proposal would have a limited impact on copyright as property right as recognised in the Charter (Article 17(2))¹¹. In this context, it is noteworthy that Directive [...] has introduced a mandatory copyright exception for the benefit of the beneficiary persons of this proposal. The impact of this Regulation will thus be limited to regulating the exchange of accessible format copies with third countries that are parties to the Marrakesh Treaty.

4. BUDGETARY IMPLICATIONS

The proposal has no impact on the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

In accordance with Better Regulation Guidelines and no sooner than five years after the date from which the Regulation shall apply, the Commission shall carry out an evaluation of the 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

⁸ "Study on the application of Directive 2001/29/EC on copyright and related rights in the information society", December 2013, De Wolf and partners, available at: http://ec.europa.eu/internal_market/copyright/docs/studies/131216_study_en.pdf, p. 417 et seq.

⁹ SWD(2015) 111 final.

¹⁰ Article 52(1) of the Charter allows for restrictions interfering with the exercise of the freedoms of the Charter: those restrictions must (i) be provided for by law; and (ii) respect the essence of those rights and freedoms. In addition, the limitations are (iii) 'subject to the principle of proportionality' and 'may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others'.

¹¹ OJ C 83, 30.3.2010, p. 389–403.

the amendment of the Regulation. In the same way, it will also carry out an evaluation of Directive [...].

- **Detailed explanation of the specific provisions of the proposal**

Article 1 specifies the subject-matter and the scope of the proposal. The proposed Regulation will regulate the exchange of accessible format copies of certain works and other subject-matter protected by copyright or related rights between the Union and third countries, in accordance with the Marrakesh Treaty.

Article 2 gives the definitions of the terms ‘work or other subject-matter’, ‘beneficiary person’, ‘accessible format copy’ and ‘authorised entity’ that apply for the purposes of the proposed Regulation.

Article 3 contains provisions on the export of accessible format copies from the Union to third countries.

Article 4 contains provisions on the import of accessible format copies from third countries to the Union.

Article 5 serves to specify the obligations that authorised entities are required to fulfil when exchanging accessible format copies with third countries.

Article 6 sets out the applicable rules for the protection of personal data.

Article 7 sets out the arrangements on the evaluation of this Regulation, in accordance with Better Regulation rules.

Article 8 specifies the Regulation's entry into force and Article 9 its application in time.

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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 2014¹². 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, visually impaired or have a perceptual or reading disability, including dyslexia, preventing them from reading printed works to the same degree as persons without such disability, or are unable to hold or manipulate a book or to focus and move the eyes to the extent that would be normally acceptable for reading due to a physical disability.
- (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

¹² 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.)

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, 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 Braille, large print, adapted e-books, audio books and radio broadcasts. The distribution, communication 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 the Council¹³, which governs 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.

¹³ 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).

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, including sheet music, and related illustrations, in any media, 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;
 - (c) a person who has a perceptual or reading disability, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person without an impairment or 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 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 obtain or 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 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