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NOTE

From: General Secretariat of the Council
To: Delegations

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Subject: Proposal for a Council Decision on the conclusion, 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

- Open issues

Delegations will find in the Annex a Presidency Note on the open issues related to the conclusion (ratification) of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled, as the basis for discussion at the meeting of the Working Party on Intellectual Property (Copyright) on 29 January 2015.

I. State of play

The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled ("the Marrakesh Treaty") was adopted on 27 June 2013 at the diplomatic conference held in Marrakesh under the auspices of the World Intellectual Property Organisation (WIPO). The Council authorised the signing of the Marrakesh Treaty on behalf of the European Union¹ on 14 April 2014. The signing took place in Geneva on 30 April 2014.

On 21 October 2014 the Commission submitted a proposal for a Council Decision authorising the conclusion (ratification) of the Marrakesh Treaty on behalf of the European Union ("the Proposal")². At a first exchange of views on the Proposal, which took place in the Working Party on Intellectual Property on 24 November 2014, delegations confirmed their support for the objectives of the Marrakesh Treaty and their wish for an early entry into force of the Treaty. A large number of delegations, however, voiced concerns regarding the following two issues:

- Timing of ratification of the Marrakesh Treaty by the EU;
- Legal basis of the proposed Council Decision on the conclusion, on behalf of the European Union, of the Marrakesh Treaty ("the Council Decision") in conjunction with the issue of competence (exclusive versus shared).

¹ OJ L 115, 17.4.2014, p. 1

² 14617/14.

II. Open issues

a) Timing of ratification of the Marrakesh Treaty by the EU

At the last Working Party meeting, several delegations questioned the appropriateness of proceeding with the ratification of the Marrakesh Treaty on behalf of the EU prior to adopting the changes to the EU legal framework deemed necessary in order to accommodate the requirements of the Treaty. It has been argued by the delegations that even if the Council adopts the proposed Council Decision, the EU would not be able to deposit the relevant instrument of ratification before it has adapted the EU legal framework accordingly.

The Commission acknowledged at the meeting that it may be useful to introduce some elements of the Marrakesh Treaty in EU legislation. However, the Commission has not taken a decision yet on the precise nature of such changes or on the timing of the relevant legislative proposal as a result of which at this point there is no information regarding Commission's position on the foregoing.

The Presidency invites delegations to consider whether and how the ratification process of the Marrakesh Treaty can be taken forward under the above described circumstances.

b) Legal basis of the Council Decision in conjunction with the issue of competence (exclusive versus shared)

According to the views of the Commission and of the Council's Legal Service, as expressed at the meeting of the Working Party on Intellectual Property on 24 November 2014, the Marrakesh Treaty falls under exclusive EU competence. The Council's Legal Service considers that the substantive legal basis for the Council Decision on the ratification (conclusion) of the Marrakesh Treaty has to be solely Article 207 of the Treaty on the Functioning of the European Union (TFEU). The Commission has proposed that the Council Decision should be based on Articles 114 and 207 of the TFEU.

The vast majority of the delegations that took the floor consider that the Marrakesh Treaty falls under shared EU/Member States' competence. This would have as a consequence that Member States are entitled to ratify the Marrakesh Treaty on their own behalf, independently of the EU. In this regard, several delegations referred to their statements arguing on the shared competence entered in the Council's minutes upon adoption of the Council's Decision on the signing of the Marrakesh Treaty³.

Delegations are invited to express their view on whether the Marrakesh Treaty falls under exclusive competence of the EU or shared EU/Member States' competence.

Delegations are also invited to provide their views on the best ways forward, in particular, and considering also the specific nature of the Marrakesh Treaty, on how to resolve the issue of the competence.

³ 8305/14 ADD 1.