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NOTE

From: Presidency
To: Permanent Representatives Committee

No. prev. doc.: 7321/15 PI 16
No. Cion doc.: 14617/14 PI 117

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
- Examination of the Presidency Compromise Proposal

1. On 25 March 2015, the Permanent Representatives Committee had an initial exchange of views on the best way forward regarding the above mentioned Commission proposal on the basis of the Presidency Note contained in doc. 7321/15.
2. Despite divergent views on the issue of competence, a simple majority of delegations expressed their readiness to go along with the Presidency's pragmatic approach, consisting in asking the Commission, in accordance with Article 241 TFEU, to submit without delay a legislative proposal setting out the amendments to the EU legal framework that are necessary to accommodate the requirements of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled ('the Marrakesh Treaty') and temporarily suspending the further examination of the proposed Council Decision until the Commission has presented the requested legislative proposal.

3. At the same time, a considerable number of delegations, reflecting upon some written proposals from the Member States submitted at the above mentioned meeting of the Permanent Representative Committee, indicated their willingness to proceed with the adoption of the Council Decision on the conclusion of the Marrakesh Treaty. During the discussions the Commission, the Council Legal Service and the delegations had divergent views as to the legal basis for the Marrakesh Treaty and the competence issue. Many delegations maintained that the Marrakesh Treaty falls within shared EU/national competence, in this regard also raising their concerns for the difficulties arising from Article 13(3) (b) of the Marrakesh Treaty on the voting rights of intergovernmental organisations, i.e., the European Union, at the Assembly. The Commission, the Council Legal Service and some delegations maintained that the Marrakesh Treaty falls within exclusive EU competence. Nevertheless, these delegations also have indicated flexibility in their approach.
4. The Presidency duly noted the views of the Member States and, guided by the need to find a solution that would ensure that the Marrakesh Treaty produces benefits for persons who are blind, visually impaired, or otherwise print disabled as soon as possible, committed to exploring the possibility of gaining support for the immediate adoption of the Council Decision on the conclusion of the Marrakesh Treaty.
5. In the light of the above, the Presidency hereby submits to delegations a compromise proposal for the Council Decision on the conclusion of the Marrakesh Treaty, as contained in the Annex to this Note. This pragmatic compromise proposal, while tackling the difficulties arising from Article 13(3)(b) of the Marrakesh Treaty, gives the opportunity to the Member States to conclude that Treaty alongside the European Union. The question as to whether the Presidency's approach is supported by the Commission still remains open.

6. The Permanent Representatives Committee is invited to consider whether it can endorse the Presidency's compromise proposal set out in the Annex to this Note. In the affirmative, the Permanent Representatives Committee is invited to suggest that the Council decide, under the "A" items at a forthcoming meeting, to forward the proposed Council Decision (following its finalisation by the legal/linguistic experts) to the European Parliament for its consent.

7. In the event that the Permanent Representatives Committee does not endorse the compromise proposal, the Presidency will proceed with the Presidency's approach as submitted during the meeting of the Permanent Representatives Committee of 25 March 2015, namely recommend that the Council ask the Commission, under the "A" items at a forthcoming meeting, to submit without delay a legislative proposal to amend the EU legal framework so that it complies with the Marrakesh Treaty and suspend the further examination of the proposed Council Decision until the Commission has presented the legislative proposal as described in the Presidency Note contained in 7321/15.

Presidency Compromise 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207, in conjunction with Article 218(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

Whereas:

1. Since 22 January 2011, pursuant to Council Decision 2010/48/EC², the European Union has been bound by the United Nations Convention on the Rights of Persons with Disabilities, whose provisions have become an integral part of the Union legal order.
2. On 26 November 2012, the Council authorised the Commission to negotiate, on behalf of the European Union, an international agreement within the World Intellectual Property Organization on improved access to books for print-impaired persons.

¹ OJ C , , p. .

² 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.)

3. The negotiations were successfully concluded at the diplomatic conference held in Marrakesh between 17 and 28 June 2013. 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.
4. In accordance with Council Decision 2014/221/EU,³ the Marrakesh Treaty was signed, on behalf of the European Union as regards matters falling within the Union’s competence, on 30 April 2014, subject to its conclusion at a later date.
5. The Marrakesh Treaty establishes a set of international rules which ensure that there are limitations or exceptions to copyright at national level for the benefit of people who are blind, visually impaired, or otherwise print-disabled. The relevant copyright provisions have been harmonised by Union law, as they affect the functioning of the internal market. The Treaty will also enable the cross-border exchange of copies of published works that have been made in an accessible format under limitations or exceptions to copyright, and therefore also falls within the area of commercial policy. The Treaty will facilitate access to published works for its beneficiaries in and outside the European Union.
6. The Marrakesh Treaty should be approved on behalf of the European Union.
7. **The Union should endeavour to regularise the issue of its voting rights, in order to avoid the operational difficulties linked to the voting rights in the Assembly as laid down in Article 13 (3) (b) of the Marrakesh Treaty, so that its full participation in the vote is ensured. It is therefore appropriate that the Member States conclude the Marrakesh Treaty alongside the Union.**

³ 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.)

HAS ADOPTED THIS DECISION:

Article 1

The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled is hereby approved on behalf of the European Union.

The Member States shall conclude the Marrakesh Treaty alongside the Union in order to avoid the operational difficulties linked to the voting rights of the Union in the Assembly as laid down in Article 13 (3) (b) of that Treaty.

The text of the Marrakesh Treaty is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to deposit, on behalf of the European Union, the instrument of ratification provided for in Article 19 of the Marrakesh Treaty in order to express the Union's consent to be bound by the Treaty.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council

The President