



European Economic and Social Committee

INT/824
Copyright / Accessibility

OPINION

European Economic and Social Committee

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

[COM(2016) 595 final – 2016/0279 (COD)]

Rapporteur: **Pedro ALMEIDA FREIRE**

Consultation	Council, 05/04/2017 European Parliament, 28/06/2017
Legal basis	Articles 114 and 304 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted at plenary	05/07/2017
Plenary session No	527
Outcome of vote (for/against/abstentions)	215/3/8

1. Conclusions and recommendations

- 1.1 The EESC agrees with the compromise proposed by the Presidency which makes a swift ratification of the Marrakesh Treaty¹ possible.
- 1.2 The Committee expects a quick implementation by the EU of the Marrakesh Treaty which is important and necessary for enabling many European citizens who are blind, visually impaired or otherwise print-disabled to access more accessible works and thus open the door for them to culture, education and employment, hence ensuring effective social inclusion.
- 1.3 The Committee supports the proposed Regulation² and the proposed Directive³ to implement the Marrakesh Treaty as they will establish a mandatory exception and ensure the making and exchange of such accessible format copies within the Single Market as well as outside of the EU.
- 1.4 The Committee welcomes the aim to permit the cross-border exchange of such copies between the EU and third countries that are parties to the Marrakesh Treaty.
- 1.5 An evaluation of the implementation of the Marrakesh Treaty in the EU should be carried out within a reasonable time frame.

2. Commission and Presidency proposals

- 2.1 The proposed Regulation has been adopted by the Commission on 14 September 2016, as part of the Copyright package⁴, which proposes a set of legislative measures with four objectives:
 - ensuring wider online access to content in the EU and reaching new audiences;
 - adapting certain exceptions to the digital and cross-border environment;
 - fostering a well-functioning and fair copyright marketplace,
 - allowing blind, visually impaired or otherwise print-disabled persons to have better access to works or other subject-matter.
- 2.2 With this Regulation the Commission is proposing legislation to implement the Marrakesh Treaty to facilitate access to published works for persons who are blind, have other visual impairments or are otherwise print disabled.
- 2.3 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

¹ [Marrakesh Treaty to Facilitate Access to Published Works for Persons who Are Blind, Visually Impaired, or Otherwise Print Disabled.](#)

² COM(2016) 595 final.

³ COM(2016) 596 final.

⁴ COM(2016) 593 final, COM(2016) 594 final, COM(2016) 596 final, [OJ C 125, 21.4.2017, p. 27.](#)

other print material in accessible formats around the world. It was signed by the Union⁵ in April 2014.

- 2.4 The proposed measures are important to ensure that in line with the United Nations Convention on the Rights of Persons with Disabilities ("the UNCRPD")⁶ copyright does not constitute an unreasonable or discriminatory barrier to the full participation in society of all citizens and will allow for the exchange of accessible format copies within the EU and with third countries that are parties to the Treaty, avoiding duplication of work and waste of resources.
- 2.5 The ratification process was, however, confronted with the legal question of whether the Union had exclusive competence to ratify the Treaty.
- 2.6 The Commission decided therefore to seek the opinion of the Court of Justice of the European Union in July 2015.
- 2.7 In the meantime, the Commission adopted its proposal COM(2016) 595 final on the basis of article 207 TFEU. The consultation of the EESC was therefore not mandatory.
- 2.8 On 14 February 2017, the Court of Justice⁷ has confirmed the exclusive competence of the EU and also stated that the Marrakesh Treaty does not fall within the common commercial policy.
- 2.9 At its meeting of 22 March, the Permanent Representatives Committee agreed on a Presidency compromise proposal in which it was decided to change the legal basis from Article 207 (common commercial policy) to Article 114 TFEU. As a consequence, the consultation of the EESC by the Council becomes mandatory.

3. **General comments**

3.1 **On the legal basis**

- 3.1.1 Taking into account the recent opinion of the Court of Justice, the EESC cannot but agree with the compromise proposed by the Presidency which makes a swift ratification of the Marrakesh Treaty possible.
- 3.1.2 In addition, the change of the legal basis makes the EESC opinion mandatory and gives more weight to the comments already made in this respect in our recent Opinion on the Copyright package⁸.

⁵ [OJ L 115, 17.4.2014, p. 1.](#)

⁶ [UNCRPD.](#)

⁷ [OJ C 112, 10.4.2017, p. 3, Opinion 3/15 of the Court \(Grand Chamber\) of 14.2.2017.](#)

⁸ [OJ C 125, 21.4.2017, p.27.](#)

3.2 **On the content**

3.2.1 In its Opinion on the Copyright package the EESC already referred to the current proposal. The Committee reiterates that swift ratification by the EU of the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, which entered into force on 30 September 2016, is important and necessary. The Treaty will enable many European citizens who are blind, visually impaired or otherwise print-disabled to access more accessible works and thus open the door for them to culture, education and employment, hence ensuring effective social inclusion.

3.2.2 The proposals for a Regulation and Directive, which were part of the Copyright package will allow the EU to fulfil an international obligation incumbent upon it under the Marrakesh Treaty. This is also consistent with the EU's obligations under the UN Convention of the rights of persons with disabilities.

3.2.2.1 The proposal for a Directive will establish a mandatory exception and ensure its functioning for the making and exchange of such accessible format copies within the Single Market.

3.2.2.2 This exception is for the exclusive use of beneficiary persons as strictly defined in Art.2(2) of the proposed Regulation.

3.2.2.3 The proposal for a Regulation will permit the cross-border exchange of such copies between the EU and third countries that are parties to the Marrakesh Treaty.

4. **Further comments**

4.1 The EESC agrees that the Regulation is the only appropriate instrument to eliminate the existing legal discrepancies in the Member States.

4.2 The Committee emphasises that the Member States should play an important role, as specified in the Directive, to promote and make available the accessible works to the beneficiary persons both in their own countries and in third countries that are part of the Marrakesh Treaty.

4.3 The EESC makes itself available to actively participate in the evaluation process provided both by the Regulation and the Directive.

4.4 In particular, the evaluation should take into account the option in the directive for Member States to apply compensation schemes for rights holders. As also provided for in the text of the directive, it should be closely monitored that such compensation schemes imply no negative effect for the availability and provision of accessible works to the beneficiary group.

Brussels, 5 July 2017

Georges DASSIS
The president of the European Economic and Social Committee
