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

Subject: Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market
- Adoption of the legislative act (LA + S)
= Statements

Statement of the Netherlands and Germany

The directive foresees the establishment of an expert group (article 41), which shall carry out certain tasks relating to the application of the Directive by the Member States.

For reasons of clarification the Netherlands and Germany would like to underline that the expert group is established by the legislator and, therefore, is not covered by the Framework Agreement on relations between the European Parliament and the European Commission (OJ L 304/47).

Furthermore, the Netherlands and Germany would like to underline that the Treaty on the European Union, nor the Treaty on the Functioning of the European Union, foresee in a role for the European Parliament with regard to tasks relating to the application of directives and regulations.

Statement of the Republic of Slovenia

Slovenia supports the unification of the collective management of rights to guarantee the effective and transparent functioning of collective management organisations in the EU. The promotion and facilitation of multi-territorial rights could have a positive impact on the availability of new offers for both consumers and service providers.

In spite of the above, Slovenia has expressed reservations throughout the procedure about certain substantive provisions in the draft Directive. Slovenia's position is that it is essential for Member States to continue using the regime for issuing authorisation to collective management organisations operating in their respective territories, and also to supervise their activities. The free performance of the services of collective management organisations across the borders of a Member State, in which the organisation has its seat, might lead to a division of one repertoire managed by one collective management organisation into several repertoires managed by several organisations. Slovenia believes that this would benefit neither copyright holders nor consumers.

Slovenia also advocates a clearer regulation of responsibilities of the relevant authorities that coordinate the activities of collective management organisations with national legal systems adopted on the basis of this Directive. It would be prudent to task the authority of the country, in which the organisation operates, with the supervision of the functioning of collective management organisations, as the substantive law is not uniform throughout the EU.

Due to the above, Slovenia has advocated prior authorisation and supervisory regimes for collective management organisations established in other Member States. On the basis of including introductory statement No. 37 in the text of the Directive on a regime for the prior issue of authorisation and supervision in a Member State, and in the spirit of compromise, Slovenia hereby accepts the final compromise agreement on the draft Directive.

Statement by Latvia

The Republic of Latvia draws attention that the legal term '*veikt uzņēmējdarbību*' used in the Latvian language version of the Directive with respect to the place of establishment of Collective Rights Management Organizations means 'to carry out entrepreneurship/business activity' and consequently is substantially different from the legal meaning of the term '*to be established*' used in the English and other language versions of the Directive. The Republic of Latvia notes that inconsistent or incorrect usage of legal terminology of such substantive importance leads to legal ambiguity and therefore creates the risk of disrupting legal parallelism amongst the language versions of the Directive. The Republic of Latvia notes that the term 'to be established' in analogous context appears in Article 49 of the Treaty on the Functioning of the European Union, where it is being translated into Latvian as '*izveidot*'. The latter term '*izveidot*' more precisely describes the act of being established covered by the Directive.

The Republic of Latvia intends to initiate the corrigendum procedure regarding the Directive in order to ensure consistent and correct use of terminology.”

Statement by the Republic of Poland

The Republic of Poland welcomes the positive results achieved as regards the rules pertaining to the improvement of the functioning, governance and transparency of collective management organisations.

Poland also welcomes the fact that the Directive will not have an impact on the prior authorisation schemes that Member States apply in relation to collective management organisations operating on their territory.

Poland believes that any new measure harmonising copyright law in the EU should be carefully analysed in the light of its compliance with article 167 TFEU and with the UNESCO Convention on the protection of cultural diversity. In this context, Poland still has doubts on the system of multiterritorial licensing introduced in Title III of the Directive. Despite the equal treatment safeguard for the repertoire transferred to another collective management organisation, it is very likely that the system will in any case lead to the reinforcement of the position of the biggest organisations representing the most popular anglo-american repertoire. This would in turn be detrimental to the repertoires with limited linguistic presence in the EU and would cause harm to the principle of safeguarding cultural diversity. Moreover, new online businesses may not be interested in acquiring licences for multi-repertoire and multiterritorial coverage. They very often face other types of barriers than licensing that prevent them from launching a multi-territorial or a pan-European service, such as the need to adapt their commercial strategy to national markets and regulatory framework (e.g. data protection, consumer law), the lack of broadly accessible electronic payment methods (e.g. credit card payments), the high level of exclusive rights infringements and the need to respond to the expectations of a local audience. As a result, the system does not really allow for the completion of a genuine digital single market as it does not guarantee equal access for consumers to legal online music offers in all Member States.

Lastly, Poland has been constantly raising its objections in relation to the inclusion of the ‘value of the service provided by collective management organisations’ as a criterion to set the tariffs in article 15. Such a criterion, which is not clearly defined, may lead to problems of interpretation or to the risk of abuse in setting the tariffs, especially in the systems where collective management organisations operate on a non-profit basis.

On the basis of the arguments presented above, the Republic of Poland decided to abstain from voting on the Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market.