



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a 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 {COM(2012) 372 final} and apologises for the delay in replying.

The Commission welcomes the expressed support of the Bundesrat for the intention of the Commission to harmonise the legal framework for collecting societies and the granting of multi-territorial licenses of rights in musical works for online uses. Furthermore, the Commission appreciates the Bundesrat's support for the emphasis given to cultural diversity in the proposed directive.

The Commission takes note of the Bundesrat's suggestion to further reflect the interests of end consumers in the proposal and to include a reference in the proposal that no financial burden or inadequate disadvantages may be imposed on consumers by collecting societies. One of the aims of the Commission's proposal is to increase the services of collecting societies and lower licensing costs for the benefit of users which should in turn result in consumers having access to a wide range of cultural goods and services. The governance and transparency rules would not only increase the trust of rightholders, but also that of users. These points were reflected in the impact assessment and recitals 19, 22 and 29 of the proposed directive. It is in this manner that consumers' interests will be fostered. This is so in particular in view of the fact that, normally, collective management organisations licence commercial users and not consumers directly. Therefore, the Commission so far did not see the necessity to include a general provision in the text of the directive as such on the financial burden on consumers.

The Commission also acknowledges the Bundesrat's concern that due to the strict law in Germany for collecting societies, the proposal may not establish level playing field for all collecting societies in the EU. However the Commission is bound by the subsidiarity and proportionality principles and therefore can on the one hand only propose to regulate what can be better achieved at EU level and on the other hand cannot exceed what is necessary to achieve the objectives pursued. To introduce the requirements of

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German law governing collecting societies would be likely to be seen by many Member States as going beyond what is permitted under the subsidiarity and proportionality principles. Moreover, the Commission has found that it is not necessary to completely align all rules of Member States relating to collecting societies. The Commission believes it is sufficient to establish a common framework of governance and transparency based on rightholders having the means to control the management of their royalties and on improving the exercise of membership rights (as also reflected in the impact assessment).

In relation to the Bundesrat's suggestion to further highlight cultural diversity in the proposal by obliging collecting societies to engage in social, cultural or education activities, the Commission notes that, as the Bundesrat points out, the proposal takes this possibility into account by allowing for deductions of rights revenue spent on these activities, and by stating that collecting societies should provide an annual report on these activities. An actual obligation to engage in such activities does not seem indispensable to achieve the general objective of the directive to put in place an appropriate legal framework for the collective management of rights administered by collecting societies.

The Commission takes due note of the Bundesrat's concern that not all collecting societies are organised as associations and that the Commission should reflect upon various other possibilities of organisational structure in the course of the negotiations on the proposal. For achieving the objective to increase governance and transparency in collecting societies, the Commission has aimed to address all possible structures of collecting societies, without imposing a particular one, and to set standards which can be achieved by all of the possible legal forms of collecting societies. It would however like to assure the Bundesrat that it will, if necessary, consider during the negotiations improvements in the terminology used in the proposal in this regard.

In relation to the Bundesrat's suggestion to add an obligatory control by a public body in Article 8 of the proposal concerning the supervisory function, the Commission would like to mention that the supervisory function was introduced to foster the continuous monitoring of the management of the collecting societies and to give members the possibility to participate in this. Such a continuous monitoring would likely be difficult to achieve through intervention of public control bodies. An obligation as suggested by the Bundesrat to introduce an obligatory membership of representatives of consumer associations in the supervisory boards of collecting societies seems alien to a system which is based on rightholders running and controlling the collecting societies, which are first and foremost put in place to manage their rights.

In relation to the Bundesrat's concern on the efficiency of the proposal in relation to the achievement of a one-stop-shop for licensing and the fragmentation of repertoires between collecting societies and licensing agencies holding the repertoire of music publishers, the Commission would like to mention that competition law has to be respected. To provide for a further aggregation in the directive - such as by way of a centralised portal of repertoires - would therefore not be possible as set out in the impact assessment. The Commission's proposal has as an objective to increase all stakeholders' trust in collecting societies and therefore the Commission expects that publishers would entrust collecting societies with their repertoire once they have re-gained the required trust in the services of collective management.

The Commission hopes that these clarifications address the observations made by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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Vice-President*