

RESOLUTION
of the Sejm of the Republic of Poland

of 12 October 2012

on declaring the 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 uses in the internal market to be incompatible with the principle of subsidiarity

Pursuant to Article 148cc of the Standing Orders of the Sejm, the Sejm of the Republic of Poland declares that the 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 uses in the internal market (COM(2012) 372 final) is incompatible with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union. The proposal infringes the principle of subsidiarity inasmuch as the proposed directive does not guarantee that the objectives of the proposed action would be better achieved at the European Union level than as a result of measures taken at the national level. The reasoned opinion, stating the reasons why the Sejm considers that the proposal does not comply with the principle of subsidiarity, is annexed to this Resolution.

**Annex to the Resolution of the Sejm
of the Republic of Poland of 12 October 2012**

**Reasoned opinion of the Sejm of the Republic of Poland of ... 2012
stating the reasons why the Sejm considers that the 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 uses in the internal market does not comply with the principle
of subsidiarity**

Having considered the 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 uses in the internal market (COM(2012) 372 final), the Sejm of the Republic of Poland declares that the proposal does not comply with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union (TEU). The proposal infringes the principle of subsidiarity inasmuch as the proposed Directive does not guarantee that the objectives of the proposed action would be better achieved at the European Union level than as a result of measures taken at the national level.

As declared by the European Commission, the objectives of the Directive are: to improve the functioning of collecting societies managing copyright and related rights, to protect the interests of the members of collecting societies, rightholders and third parties, to coordinate national rules concerning the access to the activity of managing copyright and related rights and to improve the functioning of multi-territorial licensing (recitals 4-7 of the proposed Directive). In the opinion of the Sejm, the proposal does not fulfil these objectives “better” – within the meaning of Article 5(3) TEU and Article 5 of Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality enclosed to TEU and the Treaty on the Functioning of the EU (TFEU) – than the Member States applying their national legislation.

With respect to the governance and transparency of collecting societies it should be stated that the analysis of the proposal does not lead to the conclusion that the Member States are not able to satisfactorily regulate or supervise their domestic

civil law relationships between collecting societies and authors, as well as the internal organisation of such bodies. The proposal's aim to ensure the transparency of collecting societies may just as well be achieved at the national level, although this may in practice require amendments to national legislation. However, there are no grounds for claiming that such objective cannot be achieved by the Member States acting independently, and the Polish example shows that, at the present stage, such objective may be implemented fully or at an even better level than that provided for in the proposed Directive. Furthermore, the analysis of the proposal indicates that it may lead to:

- a lower level of protection of economic freedom by imposing new duties on collecting societies,
- a lower level of protection of private autonomy by imposing numerous, albeit not entirely precise, obligations to contract and by establishing regulations which unilaterally determine civil law relationships, and first of all by imposing the obligation on the Member States to define the legal form of collecting societies along the lines of limited company law (Article 7 of the proposed Directive), which undermines the current legal basis of such bodies, i.e. law on associations,
- a lower level of copyright protection, by allowing collecting societies unlimited possibilities of delegating their competences to other bodies (Article 27 of the proposed Directive).

With respect to granting multi-territorial licences of musical works for online uses, it has not been shown why European Union action in that field would be more effective. Neither has it been explained why the European Commission is not taking less afflictive measures leading to coordinating the cooperation of Member States with respect to granting licenses.

In the opinion of the Sejm, the explanatory memorandum presented by the European Commission on the proposed Directive's compliance with the principle of subsidiarity is not sufficient. The assumption of compliance indicated in recital 42 of the Directive is not rationally verifiable either.

In conclusion, in the opinion of the Sejm the 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 uses in the internal market (COM(2012) 372 final) is in breach of the principle of subsidiarity.