



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Sejm for its Reasoned 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 objectives of the proposal are to improve the functioning of collecting societies and to reduce the fragmentation of the EU Single Market for online music services. The Sejm expresses concerns that the proposal does not fulfil these objectives better than the Member States applying their national legislation and therefore does not meet the subsidiarity principle as set out in Article 5 (3) of the Treaty on European Union.

The Commission would like to put these concerns into perspective with further information.

The Commission takes note of the concerns of the Sejm related to Titles I and II of the proposed directive, namely that the objective of improving governance and transparency of collecting societies may be equally achieved at national level by Member States acting independently. The Commission is aware of the fact that some Member States have adequate rules to govern collecting societies. However, findings of its legislative and market analysis show that national rules diverge substantially between Member States and are not effective in securing that important principles of governance and transparency are uniformly or properly applied across the EU. This is illustrated by problems that rightholders face when trying to exercise their right of choice of the collecting society i.e. when they want to entrust only some rights or categories of rights to a collecting society or when they want to withdraw some rights or categories of rights from a collecting society. Rightholders are confronted also with problems when trying to compare efficiency of collecting societies based on comparable financial data. In addition the Commission has come across cases of poor handling of collected royalties. These are only examples of the problems that are being addressed in Titles I and II of the proposal. Further, in this regard it is important to note that on the basis of reciprocal

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representation agreements concluded by collecting societies all collecting societies in the EU represent and license the repertoire of other collecting societies in their own territory. It is therefore necessary to provide for the minimum and uniform standard of governance and transparency across the EU that would ensure the required level of trust between the collecting societies and the adequate protection of rightholders whose rights are managed on the basis of such reciprocal representation agreements. For these reasons, EU intervention is warranted and compatible with the subsidiarity principle.

The Sejm further mentions that the proposal may impede economic freedom by imposing new duties as well as private autonomy of collecting societies by imposing obligations to contract. The Commission would like to assure the Sejm that it has taken due care in proposing only such obligations and rules that are necessary and proportionate to the objectives of the proposal and which can be fulfilled by collecting societies without imposing disproportionate financial and administrative burdens on them. Moreover, as regards the obligation to accept members, it should be noted that in accordance with the proposal collecting societies would be required to lay down objective membership requirements and may refuse membership when these criteria are not fulfilled. In other words, collecting societies would not be able to discriminate among the rightholders.

The Sejm is also concerned that the proposal imposes internal organisational structures on collecting societies which are based on those typical for companies while collecting societies are often organised as associations. The Commission has, for achieving the objective to increase governance and transparency in collecting societies, aimed to propose rules that are compatible with all possible legal forms (as indeed collecting societies operate in various forms such as associations, companies, civil partnerships, etc.) and internal structures of collecting societies, without imposing a particular one. In this regard, the Commission found that regardless of the legal form in which collecting societies operate, they have some common features such as the body assembling all members and another body in which members are represented and vested with specific competencies. These common features (present also in associations, including those subject to Polish law) have been taken into account when drafting those provisions of the proposed directive which are related to the organisational structure of collecting societies. The Commission is convinced that the proposed rules are well-adapted to collecting societies operating as associations and do not in any way put into question such form of legal organisation of collecting societies.

In relation to the Sejm's concern regarding the possibility of outsourcing of certain functions of collecting societies, thereby allegedly lowering the standard of copyright protection, the Commission notes that the provision on the possibility of outsourcing of services related to the granting of multi-territorial licences expressly states that such outsourcing shall not affect the liability of the collecting society and hence the lowering of the copyright protection standard is excluded. The proposed provision is deemed necessary as it would allow collecting societies to make use of external expertise – often needed in technically challenging areas such as multi-territorial licensing for online uses of musical works - when this is most efficient. This would be in the interest of the rightholders and - according to the governance and transparency rules of the proposed directive - under their ultimate supervision.

The Sejm is of the opinion that the proposal does not meet the criteria of the subsidiarity principle with regard to Title III of the proposal related to the multi-territorial licensing by collecting societies of authors' rights in musical works for online uses. In this regard, the Commission would like to emphasise that the multi-territorial licensing of rights is by

definition a cross-border situation calling for a harmonised approach at European level. This is because of interdependencies between collecting societies involved in such licensing. Collecting societies very often hold only a share in the right that they are representing as lyrics may be co-written or music co-composed – these shares have to be properly identified for the purpose of invoicing users and paying the rightholders. As certain rightholders (mainly publishers) have withdrawn their rights from the collecting societies network, appropriate adjustments in the licensing have to be introduced by all collecting societies involved in the multi-territorial licensing to ensure that users do not pay twice for the same rights in the same repertoire for the same territories. In order to respond to these challenges and to contribute to the Digital Single Market, collecting societies involved in the multi-territorial licensing would be required to have adequate technical capabilities as listed in Title III of the proposed directive and would have to abide by the same set of rules. Member States could not adequately respond to these problems individually, unless they would simultaneously adopt identical rules. For these reasons, the Commission is of the opinion that the provisions of Title III of the proposed directive are also in compliance with the subsidiarity principle.

The Commission hopes that these clarifications address the concerns expressed by the Sejm and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*