



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Riksdag 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.

In its Reasoned Opinion, the Riksdag welcomes the Commission's initiative to establish minimum rules at EU level in this field, however expresses concerns that Title II of the proposal concerning management and transparency of collecting societies is not compliant with the subsidiarity principle. The Riksdag questions the necessity of the level of detail in relation to governance and transparency. It sees a risk that the rules as proposed would lead to increased costs for collecting societies, which may outweigh the advantages of the provisions of the directive and mentions that detailed regulation may entail a risk that the scope for well-functioning national solutions is reduced.

In relation to the general need for the Commission to act concerning management and transparency in light of the subsidiarity principle, the Commission has found in its analysis of the functioning of collective rights management in the EU that national rules diverge substantially between Member States and – although there are several Member States which have a well-functioning system of collecting societies - are often 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 also confronted 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 Title II of the proposal.

The problems set out above are transnational, as on the basis of reciprocal representation agreements concluded by collecting societies all collecting societies in the EU represent and license the repertoire of other collecting societies in their own

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territory. It is therefore necessary to provide for a certain 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.

As regards the level of detail of the governance and transparency provisions, the Commission would like to note that a part of the proposed rules codify already existing case-law of the Court of Justice in antitrust decisions. In addition to these already existing principles, the Commission has taken due care in proposing only such obligations and rules that are necessary and proportionate to the objectives of the proposal, namely to improve the functioning of collecting societies in the light of the problems outlined above.

Similarly, in relation to concerns that the implementation of the provisions may be too costly for collecting societies, the Commission would like to assure the Riksdag that it has only included obligations which can be fulfilled by collecting societies without imposing disproportionate financial burdens on them. Moreover, the proposal also provides for a possibility for Member States to exempt very small collecting societies, for which certain obligations would result in disproportionate costs, from a part of the provisions of the directive. The Commission would also like to highlight that, even if the rules of the proposal will have the effect of increasing – in particular on short term – costs for some collecting societies, the common framework of governance and transparency based on rightholders having the means to control the management of their royalties would overall foster the financial efficiency of collective societies. The directive would furthermore enhance competition, thereby giving an incentive to collecting societies to act efficiently to make their offer more attractive to rightholders. The Commission is therefore of the view that possible costs for some collecting societies to respect the provisions are not disproportionate and do not outweigh the advantages of the governance and transparency system as laid out in the proposed directive.

Finally, in relation to the scope for national solutions, the Commission is well aware of the fact that some Member States already have a well-functioning system of collecting societies. It does not aim to unnecessarily limit the discretion of the Member States in regulating collective management, but rather aims to create a level playing field for collecting societies across the EU. In this sense, the provisions of the proposed directive contain minimum rules which are necessary to achieve this goal and leave Member States room to adopt additional measures in their national laws.

The Commission hopes that these clarifications address the issues raised by the Riksdag and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*