

28.6.2017

A8-0102/ 001-031

**AMENDMENTS 001-031**

by the Committee on Legal Affairs

**Report**

**Max Andersson**

**A8-0102/2017**

Cross-border exchange between the Union and third countries of accessible format copies of certain works and other protected subject-matter for the benefit of persons who are blind, visually impaired or otherwise print disabled

Proposal for a regulation (COM(2016)0595 – C8-0380/2016 – 2016/0279(COD))

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**Amendment 1**

**Proposal for a regulation**

**Citation 1 a (new)**

*Text proposed by the Commission*

*Amendment*

- *having regard to Protocol No 2 of the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) on the application of the principles of subsidiarity and proportionality,*

**Amendment 2**

**Proposal for a regulation**

**Citation 1 b (new)**

*Text proposed by the Commission*

*Amendment*

- *having regard to Article 26 of the Charter of Fundamental rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD);*

### Amendment 3

#### Proposal for a regulation

##### Recital 1

###### *Text proposed by the Commission*

(1) Persons who are blind, visually impaired or otherwise print disabled continue to face many barriers to accessing books and other print material. The need to **increase the** number of works and other protected subject-matter in accessible formats available to those persons and improve their circulation and dissemination has been recognised at an international level. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (‘the Marrakesh Treaty’) was signed on behalf of the Union on 30 April 2014<sup>12</sup>. It requires contracting parties to provide exceptions or limitations to the exclusive rights of holders of copyright and related rights for the making and dissemination of copies in accessible formats of certain works and other subject-matter and for the cross-border exchange of those accessible format copies. The beneficiaries of the Marrakesh Treaty are persons who are blind, visually impaired or have a perceptual or reading disability, including dyslexia, preventing them from reading printed works to the same degree as persons without such disability, or are unable to hold or manipulate a book or to focus **and** move the eyes to the extent that would be normally acceptable for reading due to a physical disability.

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<sup>12</sup> Council Decision 2014/221/EU of 14 April 2014 on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for

###### *Amendment*

(1) Persons who are blind, visually impaired or otherwise print disabled continue to face many barriers to accessing books and other print material. The need to **make a much larger** number of works and other protected subject-matter in accessible formats **fully** available to those persons and **significantly** improve their circulation and dissemination has been recognised at an international level. The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (‘the Marrakesh Treaty’) was signed on behalf of the Union on 30 April 2014<sup>12</sup>, **having already been adopted by the World Intellectual Property Organization in 2013**. It requires contracting parties to provide exceptions or limitations to the exclusive rights of holders of copyright and related rights for the making and dissemination of copies in accessible formats of certain works and other subject-matter and for the cross-border exchange of those accessible format copies. The beneficiaries of the Marrakesh Treaty are persons who are blind, visually impaired or have a perceptual or reading disability, including dyslexia, preventing them from reading printed works to the same degree as persons without such disability, or are unable to hold or manipulate a book or to focus **or** move the eyes to the extent that would be normally acceptable for reading due to a physical disability.

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<sup>12</sup> Council Decision 2014/221/EU of 14 April 2014 on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for

Persons who are Blind, Visually Impaired, or otherwise Print Disabled. (OJ L115, 17.4.2014, p. 1.)

Persons who are Blind, Visually Impaired, or otherwise Print Disabled. (OJ L115, 17.4.2014, p. 1.)

#### **Amendment 4**

##### **Proposal for a regulation Recital 2**

###### *Text proposed by the Commission*

(2) Directive [...] endeavours to implement the Union's obligations under the Marrakesh Treaty in a harmonised manner in order to improve the availability of accessible format copies for beneficiary persons and their circulation within the internal market. The Directive requires Member States to introduce a mandatory exception to certain rights of right holders that are harmonised by Union law. The objectives of this Regulation are to implement the obligations in the Marrakesh Treaty with respect to the export and import of accessible format copies for the benefit of beneficiary persons between the Union and third countries that are parties to the Marrakesh Treaty, and to lay down the conditions for such export and import. Such measures may only be taken at Union level as the exchange of accessible format copies of works and other subject-matter concerns the commercial aspects of intellectual property. A Regulation is the only appropriate instrument.

###### *Amendment*

(2) Directive [...] endeavours to implement the Union's obligations under the Marrakesh Treaty in a harmonised manner in order to improve the availability of accessible format copies for beneficiary persons ***in all of the Member States of the Union*** and their circulation within the internal market. The Directive requires Member States to introduce a mandatory exception to certain rights of right holders that are harmonised by Union law. The objectives of this Regulation are to implement the obligations in the Marrakesh Treaty with respect to the export and import of accessible format copies for the benefit of beneficiary persons between the Union and third countries that are parties to the Marrakesh Treaty, and to lay down the conditions for such export and import. Such measures may only be taken at Union level as the exchange of accessible format copies of works and other subject-matter concerns the commercial aspects of intellectual property. A Regulation is ***therefore*** the only appropriate instrument.

#### **Amendment 5**

##### **Proposal for a regulation Recital 3**

###### *Text proposed by the Commission*

(3) The Regulation should ensure that accessible format copies of books, journals, newspapers, magazines and other writings,

###### *Amendment*

(3) The Regulation should ensure that accessible format copies of books, ***e-books***, journals, newspapers, magazines and other

sheet music and other print material, which have been made in any Member State in accordance with the national provisions adopted pursuant to Directive [...] may be exported to third countries that are parties to the Marrakesh Treaty. Accessible formats include Braille, large print, adapted e-books, audio books and radio broadcasts. The distribution, communication or making available of accessible format copies to print disabled **persons** or to authorised entities in the third country should only be carried out on a non-profit basis by authorised entities established in the Union.

writings, sheet music and other print material, which have been made in any Member State in accordance with the national provisions adopted pursuant to Directive [...] may be **disseminated and** exported to third countries that are parties to the Marrakesh Treaty. Accessible formats include Braille, large print, adapted e-books, audio books and radio broadcasts. The distribution, communication or making available of accessible format copies to **persons who are blind, visually impaired or otherwise** print disabled or to authorised entities in the third country should only be carried out on a non-profit basis by authorised entities established in the Union.

## Amendment 6

### Proposal for a regulation

#### Recital 4

*Text proposed by the Commission*

(4) This Regulation should also allow for the importation of and access to accessible format copies made in accordance with the implementation of the Marrakesh Treaty from a third country, by beneficiary persons in the Union and authorised entities established in the Union, for the benefit of **print-disabled persons**. It should be possible for those accessible format copies to be circulated in the internal market under the same conditions as accessible format copies made in the Union in accordance with Directive [...].

*Amendment*

(4) This Regulation should also allow for the importation of and access to accessible format copies made in accordance with the implementation of the Marrakesh Treaty from a third country, by beneficiary persons in the Union and authorised entities established in the Union, for the benefit of **persons who are blind, visually impaired or otherwise print disabled**. It should be possible for those accessible format copies to be circulated in the internal market under the same conditions as accessible format copies made in the Union in accordance with Directive [...].

## Amendment 7

### Proposal for a regulation

#### Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

*(4a) This Regulation should ensure that, in accordance with Article 9 of the Marrakesh Treaty, the contracting parties provide financial and human resources to facilitate international cooperation between authorised entities, the adequate availability of accessible format copies and the cross-border exchange of such copies.*

## **Amendment 8**

### **Proposal for a regulation Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

*(4b) In order to foster the export of accessible format copies and born accessible publications, namely publications produced by rightholders in accessible format, a single online database should be established in the Union. The database should be publicly accessible from third countries that are parties to the Marrakech Treaty. To facilitate the import of the same publications, it is important that that database be interoperable with the ABC TIGAR (Trusted Intermediary Global Accessible Resources) database hosted by WIPO.*

#### *Justification*

*The new recital calls on the European Commission to facilitate the exchange of information through granting accessibility to the database called for in Directive [...] to third countries that are parties to the Marrakech. This new initiative should build on and remain interoperable with the existing worldwide database developed by the Accessible Book Consortium, hosted by WIPO.*

## **Amendment 9**

### **Proposal for a regulation Recital 5**

*Text proposed by the Commission*

*Amendment*

(5) In order to improve the availability of accessible format copies and to prevent the illegal dissemination of works and other subject-matter, *authorised* entities which engage in the distribution or making available of accessible format copies *should comply with certain obligations*.

(5) In order to improve the availability of accessible format copies and to prevent the illegal dissemination of works and other subject-matter, *Member States should facilitate the agreement of best practice guidelines between representative groups of authorised* entities that engage in the *production*, distribution or making available of accessible format copies, *and users and rightholders. Government guidelines or best practices with regard to the provision of accessible format copies to beneficiary persons under the terms of the Marrakesh treaty should be developed in consultation with representative groups of authorised entities, such as library associations and library consortia, together with other authorised entity producers of accessible format copies, as well as with users, civil society actors and rightholders.*

## Amendment 10

### Proposal for a regulation Recital 6

#### *Text proposed by the Commission*

(6) Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and the Council<sup>13</sup>, which *governs* the processing of personal data, as may be carried out by authorised entities within the framework of this Regulation and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States.

#### *Amendment*

(6) Any processing of personal data under this Regulation should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directives 95/46/EC<sup>13</sup> *and 2002/58/EC<sup>13a</sup>* of the European Parliament and the Council *and with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>13b</sup>*, which *govern* the processing of personal data, as may be carried out by authorised entities within the framework of this Regulation and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the

Member States.

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<sup>13</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

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<sup>13</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

*<sup>13a</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p.37).*

*<sup>13b</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

## Amendment 11

### Proposal for a regulation Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

*(6a) Member States should not impose additional conditions on being able to have recourse to the exception(s) contained in this Regulation, including compensation schemes or prior verification of the commercial availability of accessible format copies.*

## Amendment 12

### Proposal for a regulation Recital 6 b (new)

***(6b) Article 26 of the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) require the integration of persons with disabilities.***

## **Amendment 13**

### **Proposal for a directive Recital 7**

*Text proposed by the Commission*

(7) The United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD'), to which the EU is a party, guarantees people with disabilities the right of access to information and the right to participate in cultural, economic and social life on an equal basis with others. The UNCRPD requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

*Amendment*

(7) The UNCRPD, to which the EU ***has been a party since 21 January 2011 and which is binding for Member States,*** guarantees people with disabilities the right of access to information and ***to communication and*** the right to participate ***in work and in*** cultural, economic, ***political*** and social life on an equal basis with others. The UNCRPD requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.

## **Amendment 14**

### **Proposal for a regulation Recital 8**

*Text proposed by the Commission*

(8) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. This Regulation should be interpreted and applied in accordance with

*Amendment*

(8) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, ***which prohibits all forms of discrimination, and in particular Articles 21 and 26 thereof, which prohibit***



those rights and principles.

*discrimination on the grounds of disability and recognise and respect the right of people with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.* This Regulation should be interpreted and applied in accordance with those rights and principles.

## Amendment 15

### Proposal for a regulation Recital 8 a (new)

*Text proposed by the Commission*

*Amendment*

*(8a) The Commission should present, within one year, a strategic action plan to promote the objectives of the Marrakesh Treaty with special emphasis on ensuring widespread cross-border exchange with third countries, providing educational and cultural works for visually impaired persons.*

## Amendment 16

### Proposal for a regulation Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

This Regulation lays down rules on the cross-border exchange of accessible format copies of certain works and other subject-matter between the Union and third countries that are parties to the Marrakesh Treaty without the authorisation of the right holder, for the benefit of persons who are blind, visually impaired or otherwise print disabled.

This Regulation lays down rules on the cross-border exchange of accessible format copies of certain works and other subject-matter between the Union and third countries that are parties to the Marrakesh Treaty without the authorisation of the right holder, for the benefit of persons who are blind, visually impaired or otherwise print disabled. *It aims to effectively ensure the right of such persons to participate in cultural, economic and social life on an equal basis with others.*

## Amendment 17

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 1

*Text proposed by the Commission*

(1) ‘work or other subject-matter’ means a work in the form of a book, journal, newspaper, magazine or other writing, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;

*Amendment*

(1) ‘work or other subject-matter’ means a work in the form of a book, journal, newspaper, magazine or other writing, including sheet music, and related illustrations, in any media, including in audio form such as audiobooks **and in digital formats, such as e-books**, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;

## Amendment 18

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 2 – introductory part

*Text proposed by the Commission*

(2) ‘beneficiary person’ means:

*Amendment*

(2) ‘beneficiary person’ means, **regardless of any other disabilities**:

*Justification*

*This addition aligns the definition of 'beneficiary person' with the Marrakesh Treaty. It should refer to all parts a, b, c and d of Article 2 (2) and should therefore be inserted after (d).*

## Amendment 19

### Proposal for a directive

#### Article 2 – paragraph 1 – point 2 – point c

*Text proposed by the Commission*

(c) a person who has a perceptual or reading disability, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person without an impairment or disability; or

*Amendment*

(c) a person who has a perceptual or reading disability, including dyslexia, **or any other learning disability** and is, as a result, unable to read printed works to substantially the same degree as a person without an impairment or disability; or

## Amendment 20

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 3

##### *Text proposed by the Commission*

(3) ‘accessible format copy’ means a copy of a work or other subject-matter in an alternative manner or form that gives a beneficiary person access to the work or other subject-matter, including allowing for the person to have access as feasibly and comfortably as a person without ***a visual impairment or*** any of the disabilities referred to in paragraph 2;

##### *Amendment*

(3) ‘accessible format copy’ means a copy of a work or other subject-matter in an alternative manner or form that gives a beneficiary person access to the work or other subject-matter, including allowing for the person to have access as feasibly and comfortably as a person without any of the ***impairments or*** disabilities referred to in paragraph 2;

##### *Justification*

*It is important to underline the non-commercial aspect of the copies, which further clarifies the definition of the authorised entities and their action on a non-profit basis.*

## Amendment 21

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 4

##### *Text proposed by the Commission*

(4) ‘authorised entity’ means an organisation ***providing*** education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, as its main activity or as one of its main activities or public-interest missions.

##### *Amendment*

(4) ‘authorised entity’ means an organisation ***authorised or recognised by the Member States in which it is established to provide*** education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, as its main activity or as one of its main activities or public-interest missions.

##### *Justification*

*The amendment is aimed to complete the definition of "authorized entity" proposed by the Commission, taking into to account the definition of the Marrakesh Treaty which specifies by whom these entities are to be legitimately authorized or recognised.*

## Amendment 22

### Proposal for a regulation

## Article 4 a (new)

*Text proposed by the Commission*

*Amendment*

### *Article 4a*

***Member States shall ensure that complaints and redress mechanisms are put in place and are available to users in case of disputes concerning the application of the measures referred to in Articles 3 and 4.***

### *Justification*

*The proposed Regulation does not mention any complaints or redress mechanisms that should be put in place by Member States in cases where beneficiaries are prevented from using the permitted exception. Setting up such a mechanism would be very appropriate in view of insuring effective application of the provisions of the Regulation. This is consistent with Art.10(1) of the Marrakesh Treaty, which requires Contracting Parties to adopt any necessary 'measures' to ensure effective application of the Treaty.*

## Amendment 23

### Proposal for a regulation

#### Article 5 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. An authorised entity established in a Member State carrying out the acts referred to in Articles 3 and 4 shall ensure that:

1. An authorised entity established in a Member State carrying out the acts referred to in Articles 3 and 4 shall ***establish and follow its own practices to*** ensure that:

### *Justification*

*This wording comes from the Marrakesh Treaty, Article 2(c).*

## Amendment 24

### Proposal for a regulation

#### Article 5 – paragraph 1 – point c

*Text proposed by the Commission*

*Amendment*

(c) it demonstrates due care in, and maintains records of, its handling of works and other subject-matter and of their

(c) it demonstrates due care in, and maintains records of, its handling of works and other subject-matter and of their accessible format copies, ***while respecting***

accessible format copies; and

*the privacy of beneficiary persons in accordance with Article 6; and*

## **Amendment 25**

### **Proposal for a regulation**

#### **Article 5 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) it publishes and updates, on its website if appropriate, information on the manner in which it complies with the obligations laid down in points (a) to (c).

*Amendment*

(d) it publishes and updates, on its website if appropriate, *or through other online or offline channels*, information on the manner in which it complies with the obligations laid down in points (a) to (c).

## **Amendment 26**

### **Proposal for a regulation**

#### **Article 5 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. An authorised entity established in a Member State carrying out the acts referred to in Articles 3 and 4 shall provide the following information, on request, to any beneficiary person or right holder:

*Amendment*

2. An authorised entity established in a Member State carrying out the acts referred to in Articles 3 and 4 shall provide the following information *in an accessible way*, on request, to any beneficiary person or right holder:

## **Amendment 27**

### **Proposal for a regulation**

#### **Article 5 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*Member States shall assist their authorised entities to make information available regarding their practices under Articles 3 and 4, both by sharing information among authorised entities and by making available information on their policies and practices - including those related to the cross-border exchange of accessible format copies - to interested*

*parties and members of the public, as appropriate.*

*Justification*

*This wording comes from the Marrakesh Treaty, Article 9.2.*

**Amendment 28**

**Proposal for a regulation  
Article 5 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. The obligations incumbent on authorised entities set out in this Article shall be applied respecting the principle of proportionality.**

**Amendment 29**

**Proposal for a regulation  
Article 5 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2b. Member States shall foster the exchange of information and best practices amongst authorised entities so as to effectively promote access to adapted works or subject-matter.**

**Amendment 30**

**Proposal for a regulation  
Article 6 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

The processing of personal data carried out within the framework of this Regulation shall be carried out in compliance with *Directive 95/46/EC*.

The processing of personal data carried out within the framework of this Regulation shall be carried out in compliance with ***Directives 95/46/EC<sup>1a</sup> and 2002/58/EC<sup>1b</sup> of the European Parliament and of the Council, and with Regulation (EU) 2016/679 of the European Parliament and***

*of the Council<sup>1c</sup>.*

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*<sup>1a</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281 , 23.11.1995, p. 31).*

*<sup>1b</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).*

*<sup>1c</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

## **Amendment 31**

### **Proposal for a regulation Article 7 – paragraph 1**

*Text proposed by the Commission*

**No sooner than** [five years after the date of application], the Commission shall carry out an evaluation of this Regulation and present the main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by proposals for the amendment of this Regulation.

*Amendment*

**By** [five years after the date of application], the Commission shall carry out an evaluation of this Regulation and present the main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by proposals for the amendment of this Regulation.