

REASONED OPINION WITH REMARKS 6/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS, DATED OCTOBER 8, 2012, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY 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 IN RIGHTS IN MUSICAL WORKS FOR ONLINE USES IN THE INTERNAL MARKET (TEXT WITH EEA RELEVANCE) [COM (2012) 372 FINAL] [2012/0180 (COD)] {SWD 2012) 204 FINAL} {SWD (2012) 205 FINAL}

BACKGROUND

A. The Protocol on the application of the principles of subsidiarity and proportionality attached to the Lisbon Treaty of 2007, in force since December 1st, 2009, establishes a procedure allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle. The said Protocol has been developed in Spain by Act 24/2009, of December 22, amending Act 8/1994, of May 19. In particular, new articles 3 j), 5 and 6 of Act 8/1994 are the legal basis for this report.

B. 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 in rights in musical works for online uses in the internal market has been adopted by the European Commission and conveyed to the national parliaments, which have a period of eight weeks to verify the subsidiarity check of the initiative, being the deadline October 29, 2012.

C. The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on September 11, 2012, to examine the said European legislative initiative, appointing to that end as Rapporteur MP Ms. Maria González Veracruz, and requesting the Government the report envisaged in section 3 j) of act 8/1994.

E. The Joint Committee for EU Affairs, in its meeting held on October 8, 2012, adopted the following

REPORT

1.- Article 5(1) of the Treaty on the European Union puts forward that “*the use of Union competences is governed by the principles of subsidiarity and proportionality*”, and adds in Article 5 (3) of the same Treaty that “*under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall only act in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level*”.

2.- According to the Explanatory Memorandum, the legislative proposal studied is based on Art. 50 (2) g, 53 and 62 of the Treaty on the Functioning of the European Union. Article 50 (2) g states that the European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular (...) by coordinating to the necessary extent the safeguards which are required by Member States of companies of firms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union, for the protection of the interests of members and others. Article 53 of the TFEU states that, in order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons. Article 62 lays down that the provisions of Articles 51 to 54 shall apply to the matters covered by Chapter Three of Title IV of the Treaty.

3.- The proposal for a Directive has two aims, to improve the rules concerning governance and transparency of the collecting societies managing copyright and related rights, in order that the rightholders can have a better oversight on them, and to improve the efficiency of their activity. The initiative has the purpose of facilitating the multi-territorial licensing for online rights in musical works managed by collecting societies.

4.- The proposal includes many provisions designed to improve the functioning of collecting societies of copyright and related rights. Some issues could be highlighted, as new rules for the general meetings of members of the collecting societies (Art. 7), creation of important obligations for those who effectively manage the business of the collecting societies (Art. 9), or the new standards of transparency and information imposed (Arts. 16 to 20).

5.- Nevertheless, a too detailed regulation on questions like the functioning of the general assembly, general investment policy, rules on transparency, accountability, and copyright and licensing rights' management, that leave Member States little flexibility, can cause problems if we keep in mind that some Member States, like Germany and France, have set up competent ad-hoc authorities in order not to have to comply with two different regulations on the subject (the domestic one and the Union regulations). In these countries high standards have been implemented in the oversight and control of the collecting societies' activities.

6.- The present proposal includes the enhancement of the legal position of the rightholders. Article 5 grants them faculties like the possibility to terminate the authorization to manage their rights, choose the States where their works are to be commercialised, and be informed of the rights granted to them by law. Although most of these rules are included in the Royal Legislative Decree 1/1996, of April 12, approving the consolidated restated text of the Spanish Copyright Act, the present proposal for a Directive reinforces some guarantees authors are entitled so that their legal status is applied in all Member States.

7.- Title III of the proposal is devoted to multi-territorial licensing of online rights in musical works in the internal market. The aim of the articles of this Title (21 to 33) is to establish a solid and homogeneous legal framework that guarantees that this market, which is inherently international and therefore cannot always be adequately regulated by the Member States individually, can operate legally and is not hampered by the differences between the regulations applied.

8.- As to whether the proposal complies with the principle of subsidiarity, it has to be stressed that the current fragmentation in domestic regulations regarding commercialisation of works subject to copyright hampers full realization of the internal market. And, even in a world where electronic media provide for an immediate exchange of literary, musical or audiovisual works, administrative constraints are an obstacle that could be cleared by an action of the European Union.

9.- As regards governance and transparency, many of the problems derive from the existence of the so-called "non-domestic repertoires" of the collecting societies. As there is no harmonized legal framework in force, the collecting societies are not subject to requirements that would provide more insight for those authors that exercise their rights cross-border. From this point of view, the approval of the present Directive would entail that all these societies are subject to the same requirements, which would enhance the movement of works subject to intellectual rights. On the other hand, multi-territorial licensing for online uses of musical works is, by definition, of a cross-border nature. Rules have to be set up at EU level providing more legal security to this contractual

arrangement, as Member States' regulation could not always be applicable to contracts with cross-border implications.

10.-. The fact that this is a proposal for a Directive makes it easier to analyse the compliance with the subsidiarity principle. In admitting the possibility of Member States adapting some of the provisions, during the transposition period, to their domestic situation, national legislative systems can provide for the right answers to the needs of their peculiar domestic market in an area with a high degree of diversity.

CONCLUSION

For these reasons, the Joint Committee for EU Affairs 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 in rights in musical works for online uses in the internal market complies with the principle of subsidiarity established in the Treaty on the European Union in force.

Nevertheless, this Committee considers that, in the course of the approval procedure some changes have to be introduced in the proposal so that the Directive establishes a set of main principles and objectives, leaving Member States a wide range of possibilities for its implementation according to its cultural and legal tradition.