Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled

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PURPOSE: to conclude, on behalf of the European Union, the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: people who are blind, visually impaired or otherwise unable to access printed material must have equal access to books and printed material in order to fully and effectively participate in society. The World Health Organisation (WHO) estimates that **285 million people worldwide are visually impaired: 39 million are blind** and 246 million have low vision. The World Blind Union reports that in Europe only 5% of published books are available in an accessible format for visually impaired persons, while in developing countries – where approximately 90% of visually impaired people live – this rate is as low as 1%.

Since January 2011, the European Union has been bound by the United Nations Convention on the Rights of Persons with Disabilities. This enshrines the right of access to information (Article 21) and the right of people with disabilities to participate in cultural life on an equal basis with others (Article 30). The Convention has become an integral part of the EU legal order. Twenty-five Member States are parties to the Convention and three countries are finalising ratification.

In 2009, negotiations began in the World Intellectual Property Organisation (WIPO) on a possible international treaty introducing limitations and exceptions to copyright for the benefit of people who are blind, visually impaired or otherwise print-disabled, with the objective of **facilitating the cross-border exchange of books in accessible formats**.

On 26 November 2012, the Council adopted a Decision authorising the Commission to participate in these negotiations, on behalf of the European Union. The WIPO negotiations were successfully concluded at the diplomatic conference held in Marrakesh between 17 and 28 June 2013. These led to the adoption of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled on 27 June 2013.

The Council authorised the signature of the Treaty on behalf of the European Union on 14 April 2014.

It is now necessary to conclude this Agreement on behalf of the European Union.

CONTENT: this proposal calls on the Council to approve, on behalf of the European Union, the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or Otherwise Print Disabled.

Objectives of the Treaty: the Treaty establishes a set of international rules which ensure that there are limitations or exceptions to copyright at national level for the benefit of people who are blind, visually

impaired, or otherwise print-disabled and enable the cross-border exchange of accessible format copies of published works that have been made under an exception or limitation to copyright in any of the Contracting Parties to the Treaty.

Main provisions:

Definition and scope: the Treaty defines:

- **the beneficiaries**: they are people who are blind, have a visual impairment or a perceptual or reading disability, or are otherwise unable, due to physical disability, to hold or manipulate a book, or focus or move their eyes to the extent that would be normally acceptable for reading;

- **works**: as literary and artistic works within the meaning of Article 2(1) of the Berne Convention for the Protection of Literary and Artistic Works, in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media. By virtue of an agreed statement, this also covers audiobooks;

- **an accessible-format copy**: as is a copy in an alternative manner and form compared to the format in which the work has been published and which gives beneficiaries access to the work as comfortably as sighted people could access it. The accessible-format copy must be used exclusively by beneficiaries and it must respect the integrity of the original work.

Accessible format copies made under a limitation or exception to copyright may be exported by 'authorised entities', defined as government institutions or other organisations that provide education, instructional training, adaptive reading or information access to blind, visually impaired, or otherwise print-disabled persons on a non-profit basis.

These entities must ensure that they only distribute accessible formats to beneficiaries, that they discourage the reproduction, distribution and making available of unauthorised copies and that they maintain due care in, and records of, their handling of the copies.

Production obligations of accessible format copies: the Treaty obliges every Contracting Party to provide, in their national copyright laws, for a **limitation or exception to the rights of reproduction, distribution and making available to the public**, to facilitate the availability of works in accessible formats for the Treaty's beneficiaries.

Contracting Parties may decide to limit such limitations or exceptions to cases where accessible format copies are not commercially available on reasonable terms to beneficiaries in their territory.

'Three-step test': Contracting Parties may only allow accessible format copies to be exported, if they ensure that relevant limitations or exceptions to the rights of reproduction, distribution and making available to the public are subject to the 'three-step test'. This means that either they must be a party to the WIPO Copyright Treaty (WCT) or they must otherwise ensure that the relevant limitations or exceptions are limited to certain special cases which do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Import authorisation: the Treaty clarifies that, to the extent a Contracting Party permits a beneficiary or an authorised entity to make an accessible-format copy of a work, it should also permit accessible-format copies to be imported.

Contracting Parties are obliged to take appropriate measures, if necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective

technological measures, this legal protection does not prevent the beneficiaries from enjoying the limitations and exceptions provided for in the Treaty.

Protection of privacy: the Treaty also requires Contracting Parties to protect the privacy of beneficiaries and to cooperate in order to facilitate the cross-border exchange of accessible-format copies. WIPO will set up an information access point to assist authorised entities in identifying one another with a view to working together. The Treaty also encourages authorised entities to provide information on their policies and practices to interested parties and to members of the public.

Ratification procedure and entry into force: the Treaty confirms that Contracting Parties are free to determine the appropriate method of implementing the Treaty within their own legal system and practice. However, they must comply with existing international obligations under the Berne Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty (WCT).

The Treaty will enter into force once twenty Contracting Parties have ratified it.

Other specific provisions: the Treaty also:

- recognises that the Contracting Parties may maintain or implement other limitations and exceptions for beneficiaries and people with other disabilities, outside the scope of the Treaty;
- contains administrative and procedural provisions that are very similar to those in other WIPO Treaties in the field of copyright (e.g. WCT).

Competence of the EU: the EU may become a party to the Treaty, having made the declaration during the Marrakesh diplomatic conference, that it is competent in respect of, and has its own legislation binding on all its Member States on matters covered by this Treaty and that it has been duly authorised, in accordance with its internal procedures, to become party to the Treaty. The European Union signed the final act of the diplomatic conference on 28 June 2013 and signed the Treaty on 30 April 2014 in Geneva.