COUNCIL OF THE EUROPEAN UNION

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NOTE

from: General Secretariat
to: Permanent Representatives Committee (Part 1)

No. prev. doc.: 6099/01 CODEC 122 PI 11 CULTURE 10
No. Cion prop.: 8723/99 PI 29 CULTURE 36 CODEC 297

- Examination of the European Parliament’s amendments at second reading

I. INTRODUCTION

1. On 28 September 2000 the Council adopted a common position on the above proposal for a Directive,¹ which is subject to the codecision procedure.

2. On 14 February 2001 the European Parliament completed its second reading, of the proposal and adopted 9 amendments to the Council’s common position (6099/01 CODEC 122 PI 11 CULTURE 10).

II. **DELEGATIONS' GENERAL POSITIONS**

3. The Intellectual Property Attachés (Copyright) considered the amendments adopted by the European Parliament at a meeting held on 26 February 2001.

4. The Commission representative confirmed that his Institution could accept all nine amendments proposed by the European Parliament.

5. The GR, ES, F, IT, A and S delegations were also able to accept all nine amendments.

6. The DK, D, IRL, NL, FIN and UK delegations\(^2\) had questions on or difficulties with one or more of the proposed amendments (see section III below), but had a generally positive attitude towards the proposed amendments taken as a whole. The UK delegation also entered a Parliamentary scrutiny reservation.

7. The B and P delegations, while expressing the hope that conciliation could be avoided, reserved their positions on the proposed amendments.

III. **POSITIONS ON THE INDIVIDUAL AMENDMENTS**

8. **Amendments 10 (Article 5(3)(j)) and 14 (Article 12(4)(aa)(new))**

   All delegations could accept these amendments.

9. **Amendment 3 (Recital 52 a (new))**

   The FIN delegation pointed out that the drafting of the last sentence of this proposed amendment was misleading, and suggested that the wording "Other forms of online use, which are non-interactive, remain subject to those provisions." would better reflect the intention of this sentence.

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\(^2\) The LUX delegation, which was not represented at the Attachés meeting, subsequently informed the Council Secretariat that its position was comparable to that of this group of delegations.
It was agreed that contacts would be taken with the European Parliament to explore the possibility of dealing with this question as a purely drafting matter which would not require a formal conciliation procedure.

10. **Amendment 5 (Article 5(2)(b))**

Following questions from the DK, D, IRL, NL and UK delegations on this amendment and on its impact on a reproduction of protected matter made by a library for the private use of a natural person, the Commission representative:

- stated his Institution's view that this amendment did not change the balance or the scope of the exception and indicated his willingness to confirm this view in the Commission's written opinion on the amendments;

- pointed out that this exception in no way affected other exceptions, in particular Article 5(2)(c), drawing attention in this respect to the statement on the hierarchy of exceptions which the Commission had made at the time of adoption of the Council's common position;³

- with regard to the terms "directly or indirectly", pointed out that the Council had used similar wording in Article 5(2)(c) of its common position.

In the light of these explanations, the delegations concerned indicated their readiness to give positive consideration to this amendment, reserving their final position at this stage.

³ "The Commission is of the view that no hierarchy exists between the exceptions and limitations contained in Article 5 and therefore, Member States may choose among them, notwithstanding the mandatory nature of Article 5(1)." (11375/00 PI 53 CULTURE 52 CODEC 659 ADD 1, point 5).
11. **Amendments 6 to 9 (Article 5(3)(a), (c), (d) and (f))**

The Attachés took note of the view expressed by the Council Legal Service and the Commission, in response to a request made by the P delegation in the Permanent Representatives Committee, that these amendments would reinforce slightly the position of rightholders but would not reverse the burden of proof as compared with the Council's common position. This view was supported by the F delegation.

The P delegation maintained its view that these amendments would reverse the burden of proof, shifting it from rightholders to users, and expressed a reservation on these amendments.

The NL and UK delegations expressed scrutiny reservations on these amendments, considering that the possibility of seeking compromise wording, without entering a formal conciliation procedure, should be explored.

The Attachés noted that the German-language version of this amendment was inaccurate, and agreed that contacts would be taken with the European Parliament with a view to aligning this language version (and any others, if appropriate) on the original French-language version of these amendments.

12. **Amendment 15 (Article 13(1))**

The B, NL and P delegations considered that transposition of the Directive within 18 months (as opposed to the 2 years provided for in the Council's common position) would pose serious difficulties for their authorities, in particular since late transposition could render the Member State concerned liable to damages in respect of any royalties due under new rights introduced by the Directive, but not paid as a result of late transposition. These delegations expressed reservations with regard to this amendment.

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4 The LUX delegation subsequently informed the Council Secretariat that its position was similar to that of these delegations.
IV. CONCLUSIONS

13. The Permanent Representatives Committee is invited to

- confirm that Amendments 10 and 14 are acceptable to all delegations;

- accept Amendment 3, either as proposed by the European Parliament or with mutually agreed drafting improvements;

- examine whether Amendments 5, 6 to 9 and 15 can be accepted by all delegations, on the understanding that the German-language version (and, if appropriate, any other language versions) will be aligned on the French-language version of Amendments 6 to 9;

- suggest that the Council decide, as an "A" item at one of its forthcoming meetings,

  = either to approve all the amendments of the European Parliament

  = or to mandate the President of the Council, in agreement with the President of the European Parliament, to convene the Conciliation Committee in accordance with Article 251(3), second sentence, of the Treaty.