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From: Presidency  
To: Permanent Representatives' Committee (Part 1)  
No. prev. doc.: 11435/13 PI 100 AUDIO 79 CULT 79 CODEC 1576  
No. Cion prop.: 12669/12 PI 99 AUDIO 75 CULT 105 CODEC 1920  
Subject: Proposal for a Directive of the European Parliament and of the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market - Examination of a Presidency compromise proposal in preparation for the first informal trilogue

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1. Following up on discussions at the Permanent Representatives Committee on 26 June 2013, delegations will find attached a Presidency compromise proposal on the above mentioned draft Directive
2. This text broadly builds upon the last compromise proposal by the Irish Presidency, including the amendments to that proposal circulated in the room on 26 June.

3. Changes in relation to the previous Presidency compromise contained in 11435/13 are indicated in **bold underlined** text.
  
4. **On the basis of the Presidency compromise proposal contained in the Annex to this Note, the Permanent Representatives' Committee is invited to agree on a mandate for the Presidency to present the agreed Council position to the European Parliament at a future informal trilogue.**

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2012/0180 (COD)

**Presidency Compromise**

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
on collective management of copyright and related rights and multi-territorial licensing of  
rights in musical works for online uses in the internal market**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 50(1), 53 and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C 44, 15.02.2013, p. 104.

Whereas:

- (1) The Directives which have been adopted in the area of copyright and related rights already provide a high level of protection for rightholders and thereby a framework wherein the exploitation of content protected by these rights can take place. These Directives contribute to developing and maintaining creativity. In an internal market where competition is not distorted, protecting innovation and intellectual creation also encourages investment in innovative services and products.
- (2) The dissemination of content which is protected by copyright and related rights, including books, audiovisual productions and recorded music, and services linked thereto, requires the licensing of rights by different holders of copyright and related rights, such as authors, performers, producers and publishers. It is normally for the rightholder to choose between the individual or collective management of his rights, unless Member States provide otherwise, in compliance with Union law and the international obligations of the Union and its Member States. Management of copyright and related rights includes the granting of licences to users, the auditing of licensees, the monitoring of the use of rights, the enforcement of copyright and related rights, the collection of rights revenue derived from the exploitation of rights and the distribution of the amounts due to rightholders. Collective management organisations enable rightholders to be remunerated for uses which they would not be in a position to control or enforce themselves, including in non-domestic markets.

- (2a) Article 167 of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its actions, in particular in order to respect and to promote the diversity of its cultures. It follows from this that Member States should preserve, respect and promote cultural diversity. Collective management organisations have and should continue to have an important role as promoters of the diversity of cultural expression, both by enabling the smallest and less popular repertoires to access the market and by providing social, cultural and educational services for the benefit of their rightholders and the public.
- (3) When established in the Union, collective management organisations should be able to enjoy the freedoms provided by the Treaties when representing rightholders resident or established in other Member States or granting licences to users resident or established in other Member States.
- (4) There are significant differences in the national rules governing the functioning of collective management organisations, in particular as regards their transparency and accountability to their members and rightholders. This has led in a number of instances to difficulties, in particular for non-domestic rightholders, in exercising their rights and to poor financial management of the revenues collected. Problems with the functioning of collective management organisations lead to inefficiencies in the exploitation of copyright and related rights across the internal market to the detriment of the members of collective management organisations, rightholders and users alike.

- (5) The need to improve the functioning of collective management organisations was identified in Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services.<sup>2</sup> This Recommendation set out a number of principles, such as the freedom of rightholders to choose their collective management organisations, equal treatment of categories of rightholders and equitable distribution of royalties. It called on collective management organisations to provide users with sufficient information on tariffs and repertoire in advance of negotiations between them. It also contained recommendations on accountability, rightholder representation in the decision-making bodies of collective management organisations and dispute resolution. However, the Recommendation has been unevenly followed.
- (6) The protection of the interests of the members of collective management organisations, rightholders and third parties requires that the laws of the Member States related to copyright management and multi-territorial licensing of online rights in musical works should be coordinated with a view to having equivalent safeguards throughout the Union. Accordingly, the Directive is based on Article 50(1) of the Treaty.
- (7) This Directive aims at coordinating national rules concerning the access to the activity of managing copyright and related rights by collective management organisations, the modalities for their governance, and their supervisory framework and is also based on Article 53 of the Treaty. In addition, since this is a sector offering services across the Union, this Directive is based on Article 62 of the Treaty.

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<sup>2</sup> OJ L 276, 21.10.2005, p. 54.

- (7a) This Directive aims at setting requirements applicable to collective management organisations to ensure a high standard of governance, financial management, transparency and reporting. This however should not prevent Member States from maintaining or imposing more stringent standards than the ones laid down in Title II of this Directive to collective management organisations established in their territories, provided that such more stringent standards are compatible with Union law.
- (7b) Nothing in this Directive should preclude a Member State from applying the same or similar provisions to collective management organisations established outside the Union but which are operating in that Member State.
- (7ba) Nothing in this Directive should preclude a Member State from applying national provisions implementing this Directive to entities which are established in that Member State and carry out the same activities as collective management organisations but are not covered by the definition of a collective management organisation set out in this Directive.
- (7c) This Directive, while applying to all collective management organisations, with the exception of Title III which only applies to collective management organisations managing authors' rights in musical works for online use on a multi-territorial basis, does not interfere with arrangements concerning the management of rights in the Member States such as individual management, the extended effect of an agreement between a representative collective management organisation and a user, i.e. extended collective licensing, mandatory collective management, legal presumptions of representation and transfer of rights to collective management organisations.

- (7ca) This Directive does not affect the possibility for Member States to determine by law, by regulation or by any other specific mechanism to that effect rightholders' fair compensation for exceptions or limitations to the reproduction right provided for in Article 5 paragraph 2 of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society and rightholders' remuneration for derogations from the exclusive right in respect of public lending provided for in Article 6 paragraph 1 of Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property applicable in their territory as well as the conditions applicable for their collection.
- (7d) This Directive does not affect the possibility for Member States to have authorisation regimes for the establishment of collective management organisations, including a requirement for the representativeness of the collective management organisation, nor does it require that these organisations adopt a specific legal form. In practice, collective management organisations operate in various legal forms such as associations, cooperatives or limited liability companies, which are controlled or owned by holders of copyright and related rights or by entities representing such rightholders. In some exceptional cases however, due to the legal form of a collective management organisation, the element of ownership or control is not present. This is, for example, the case for foundations, which do not have membership. Nonetheless, the provisions of this Directive should also apply to them. Moreover, entities representing rightholders, and being members of collective management organisations, may be other collective management organisations, associations of rightholders, unions or other organisations. *(previous last sentence moved to recital 43)*

**(7da) Rightholders may entrust the management of their rights to independent management entities. These are commercial entities which differ from collective management organisations including because they are not owned or controlled by members. However, to the extent these independent management entities carry out the same activities as collective management organisations, they should be obliged to provide certain information to the rightholders they represent, collective management organisations, users as well as to the public. Audio-visual producers, record producers and broadcasters license their own rights, in certain cases alongside rights that have been transferred to them by, for instance, performers, on the basis of individually negotiated agreements and act in their own interest. Book, music or newspaper publishers license rights that have been transferred to them on the basis of individually negotiated agreements and act in their own interest. Therefore audio-visual producers, record producers, broadcasters as well as publishers should not be considered “independent management entities”. Furthermore, authors’ and performers’ managers and agents acting as intermediaries and representing rightholders in their relations with collective management organisations should not be considered “independent management entities” as they do not manage rights in the sense of setting tariffs, granting licences or collecting money from users.**

(7e) Collective management organisations may choose to have certain of their activities, such as the invoicing of users or the distribution of amounts due to rightholders, carried out by subsidiaries or by other entities that they control. In such cases, those provisions of this Directive that would be applicable if the relevant activity were carried out directly by a collective management organisation, should be applied to the activities of the subsidiaries or other entities.

- (8) In order to ensure that holders of copyright and related rights can benefit fully from the internal market when their rights are being managed collectively and that their freedom to exercise their rights is not unduly affected, it is necessary to provide for the inclusion of appropriate safeguards in the constituting documents of collective management organisations. Moreover, a collective management organisation should not discriminate, directly or indirectly, between rightholders on the basis of their nationality, place of residence or place of establishment when providing its management services.
- (9) Having the Treaty freedoms to provide and to receive collective management of copyright and related rights across national borders entails that a rightholder is able to choose freely a collective management organisation for the management of his rights, whether they be communication to the public or reproduction rights, or categories of rights related to forms of exploitation such as broadcasting, theatrical exhibition or reproduction for online distribution, provided that the collective management organisation the rightholder wishes to choose already manages such rights or categories of rights. The rights, categories of rights or types of works and other subject matter managed by the collective management organisation should be determined by the general assembly of members if not already determined in the statute of the collective management organisation or prescribed by law.

It is important that the rights and categories of rights are determined in a manner that maintains a balance between the freedom of rightholders to dispose of their works and other subject matter and the ability of the organisation to manage effectively the rights taking into account in particular the type of rights managed by the organisation and the creative sector in which it operates. Taking due account of this balance, rightholders should be able to withdraw easily such rights or categories of rights from a collective management organisation and to manage these rights individually or to entrust or transfer all or part of them to another collective management organisation or another entity irrespective of the Member State of nationality, residence or establishment, of either the collective management organisation or the rightholder. Where a Member State, in compliance with Union law and the international obligations of the Union and its Member States, provides for mandatory collective management of rights, rightholders' choice would be limited to other collective management organisations. Collective management organisations managing different types of works and other subject matter, such as literary, musical or photographic works, should also allow this flexibility to rightholders as regards the management of different types of works and other subject matter. Collective management organisations should inform rightholders of their choices and allow them to exercise the rights related to these choices as easily as possible. Rightholders who have already authorised the collective management organisation may be informed via the website of the organisation. A requirement for the consent of rightholders to the management of each right, category of rights or type of works and other subject matter in the authorisation should not prevent the rightholders from accepting proposed subsequent amendments to that authorisation by tacit agreement in accordance with the conditions set out in national law. This Directive should not prejudice the possibility for rightholders to manage their rights individually, including for non-commercial uses.

- (10) Membership of collective management organisations should be based on objective and non-discriminatory criteria, including as regards publishers who by virtue of an agreement on the exploitation of rights are entitled to a share of the income from the rights managed by collective management organisations and to collect such income from the collective management organisations. The records kept by a collective management organisation should allow for the identification and location of its members and rightholders whose rights the organisation represents on the basis of authorisations given by these rightholders.
- (10a) In order to protect those rightholders whose rights are directly represented by the collective management organisation but who do not fulfil its membership requirements, it is appropriate to require that certain provisions of the Directive relating to members are also applied to such rightholders. Member States may also provide such rightholders with rights to participate in the decision-making process of the collective management organisation.
- (11) Collective management organisations should act in the best collective interests of the rightholders they represent. It is therefore important to provide for systems which enable the members of a collective management organisation to exercise their membership rights by participating in the organisation's decision-making process. Some collective management organisations have different categories of members, which may represent different types of rightholders, such as producers and performers. The representation in the decision-making process of these different categories of members, should be fair and balanced. The effectiveness of the rules on the general assembly of members of collective management organisations would be undermined if there were no provisions on how the general assembly should be run. Thus, it is necessary to ensure that the general assembly is convened regularly, and at least annually, and that the most important decisions in the collective management organisation are taken by the general assembly.

(12) Members of collective management organisations should be allowed to participate and vote in the general assembly of members; the exercise of these rights should only be subject to fair and proportionate restrictions. In some exceptional cases, collective management organisations have been established in the legal form of a foundation, hence they have no membership. In such cases, the powers of the general assembly of members should be exercised by the body entrusted with the supervisory function. Where collective management organisations have entities representing rightholders as their members, such as may be the case where a collective management organisation is a limited liability company and its members are associations of rightholders, Member States may provide that some or all powers of the general assembly of members should be exercised by an assembly of these rightholders. The general assembly of members should, at least, have the power to set the framework of the activities of the management, in particular with respect to the use of rights revenue by the collective management organisation. This should however be without prejudice to the possibility for Member States to provide for more stringent rules on, for example, investments, mergers or taking out loans, including a prohibition on any such transactions. The exercise of voting rights should be facilitated. In addition to the exercise of members' rights by electronic means, members should be allowed to participate and vote in the general assembly of members through a proxy. Proxy voting should only be restricted if this does not prejudice the appropriate and effective participation of members in the decision-making process.

- (13) Members should be allowed to take part in the continuous monitoring of the management of collective management organisations. To this end, these organisations should have a supervisory function appropriate to their organisational structure and allow members to be represented in the body that exercises this function. Depending on the organisational structure of the collective management organisation, the supervisory function may be exercised by a separate body, such as a supervisory board, or by some or all of the directors in the administrative board who do not manage the business of the collective management organisation. The requirement of fair and balanced representation of members should not prevent the collective management organisation from appointing third parties to exercise the supervisory function, including persons with relevant professional expertise and rightholders who do not fulfil the membership requirements or who are not directly represented by the organisation but via an entity which is a member of the collective management organisation.
- (14) For reasons of sound management, a collective management organisation's management must be independent. Managers, whether elected as directors or hired or employed by the organisation on the basis of a contract, should be required to declare annually whether there are conflicts between their interests and those of the rightholders that are represented by the collective management organisation. Member States should be free to require collective management organisations to make such statements public or submit them to public authorities.

(15) Collective management organisations collect, manage and distribute revenue from the exploitation of the rights entrusted to them by rightholders. This revenue is ultimately due to rightholders, who may have a direct legal relationship with the organisation, or may be represented via an entity which is the member of the collective management organisation or via a representation agreement. It is therefore important that a collective management organisation exercises the utmost diligence in collecting, managing and distributing this revenue. Accurate distribution is only possible where the collective management organisation maintains proper records of membership, licences and use of works and other subject matter. Relevant data that is required for the efficient collective management of rights should also be provided by rightholders and users and verified by the collective management organisation.  
*(NB : Recital 15 split into 15 and 15a plus a part moved to 16a)*

(15a) Amounts collected and due to rightholders should be kept separately in the accounts from any own assets the organisation may have. Without prejudice to the possibility for Member States to provide for more stringent rules on investment, including a prohibition of the investment of the rights revenue, where such amounts are invested, this should be carried out in accordance with the collective management organisation's general investment and risk management policy. In order to maintain a high level of protection for the rights of rightholders and to ensure that any income that may arise from the exploitation of their rights accrues to the benefit of rightholders, the investments made and held by the collective management organisation should be managed in accordance with criteria which would oblige the organisation to act prudently, while allowing it to decide on the most secure and efficient investment policy. This should allow the collective management organisation to opt for an asset allocation that suits the precise nature and duration of any exposure to risk of any rights revenue invested and which does not unduly prejudice any rights revenue owed to rightholders. *(NB : Last part moved to recital 16a)*

- (16) Since rightholders are entitled to be remunerated for the exploitation of their rights, it is important that management fees do not exceed justified costs of the management of the rights and that any deduction, other than management fees, for example a deduction for social, cultural or educational purposes, be decided by the members of the collective management organisation and for collective management organisations to be transparent towards rightholders regarding the rules governing these deductions. The same requirements should apply to any decision to use the rights revenue for collective distribution, such as scholarships. Rightholders should have access, on a non-discriminatory basis, to any social, cultural or educational service funded through such deductions. This Directive should not affect deductions under national law, such as deductions for the provision of social services by collective management organisations to rightholders, on any aspects that are not regulated by this Directive provided that such deductions are in compliance with Union law.
- (16a) The distribution and payment of the amounts due to individual rightholders or, as the case may be, to categories of rightholders, should be carried out in a timely manner and in accordance with the general policy on the distribution, including when performed via another entity representing the rightholders. Only objective reasons beyond the control of a collective management organisation can justify delay in the distribution and payment of amounts due to rightholders and therefore circumstances such as the rights revenue having been invested subject to a maturity date do not qualify as valid reasons for such a delay. In order to ensure that the amounts due to rightholders are appropriately and effectively distributed, it is necessary to require collective management organisations to take reasonable and diligent measures, on the basis of good faith, to identify and locate the relevant rightholders. It is also appropriate that members of the collective management organisation, to the extent allowed for under national law, decide on the use of any amounts that cannot be distributed in situations where rightholders entitled to these amounts cannot be identified or located.

- (17) Collective management organisations may manage rights and collect revenue from their exploitation under representation agreements with other organisations. To protect the rights of the members of the other collective management organisation, a collective management organisation should not distinguish between the rights it manages under representation agreements and those it manages directly for its rightholders. Nor should the collective management organisation be allowed to apply deductions to the rights revenue collected on behalf of another collective management organisation, other than management fees, without the other organisation's express consent. It is also appropriate to require collective management organisations to distribute and make payments to other organisations on the basis of such representation agreements no later than they distribute and pay to their own members and non-member rightholders they represent. Furthermore, the recipient organisation should in turn be required to distribute the amounts due to the rightholders it represents without delay.
- (18) Fair commercial terms in licensing are particularly important to ensure that users can obtain licences for works and other subject-matter in respect of which a collective management organisation represents rights and to ensure the remuneration of rightholders. Collective management organisations and users should therefore conduct licensing negotiations in good faith and apply tariffs which should be determined on the basis of objective and non-discriminatory criteria. It is appropriate to require that the licence fee or remuneration is reasonable in relation to, in particular, the economic value of the use of the rights in a particular context.

- (18a) In order to ensure that collective management organisations can comply with the obligations set out in this Directive, users should provide these organisations with relevant information on the use of the rights represented by the collective management organisations. This obligation should not apply to natural persons acting for purposes outside their trade, business, craft or profession and who therefore fall outside the definition of user in this Directive. This Directive should be without prejudice to Member States' possibility to oblige collective management organisations established in their territory to issue joint invoices.
- (19) To enhance the trust of rightholders, users and other collective management organisations in the management of rights by collective management organisations, each collective management organisation should comply with specific transparency requirements. Each collective management organisation or its member being an entity responsible for attribution or payment of amounts due to rightholders should therefore be required to provide certain information to individual rightholders at least once a year, such as the amounts attributed or paid to them and the deductions made. Collective management organisations should also be required to provide sufficient information, including financial information, to the other collective management organisations whose rights they manage under representation agreements.
- (19a) To ensure that members, other collective management organisations and users have access to information on the scope of activity of the organisation and the rights or other subject matter it represents, a collective management organisation should also provide information on these issues upon a duly justified request. The question whether and to what extent fees can be charged for providing this service should be left to national law. Each collective management organisation should also make public information on its structure and how it carries out its activities, including in particular its statutes and general policies on management fees, deductions and tariffs.

- (20) To ensure that rightholders are in a position to monitor and compare the respective performances of collective management organisations, collective management organisations should make public an annual transparency report comprising comparable audited financial information specific to their activities. Collective management organisations should also make public an annual special report, which forms part of the annual transparency report, on the use of amounts dedicated to social, cultural and educational services. This Directive should not preclude a collective management organisation from publishing the information required by the annual transparency report in a single document, for example as part of its annual financial statements, or in separate reports.
- (21) The providers of online services which make use of musical works such as music services that allow consumers to download music or to listen to it in streaming mode, as well as other services providing access to films or games where music is an important element, must first obtain the right to use such works. Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society<sup>3</sup> requires that a licence be obtained for each of the rights in the online exploitation of musical works. In respect of authors, these rights are the exclusive right of reproduction and the exclusive right of communication to the public of musical works, which includes the right of making available. They may be managed by the individual rightholders themselves, such as authors or music publishers, or by collective management organisations that provide collective management services to rightholders. Different collective management organisations may manage the reproduction and the communication to the public rights of authors. Furthermore, there are instances where several rightholders have rights in the same work and may have authorised different organisations to license their respective shares of rights in the work. Any user wishing to provide an online service offering a wide choice of musical works to consumers needs to aggregate rights in works from different rightholders and collective management organisations.

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<sup>3</sup> OJ L 167, 22.6.2001, p. 10.

- (22) While the Internet knows no borders, the online market for music services in the Union is still fragmented, and a digital single market has not yet been fully achieved. The complexity and difficulty associated with the collective management of rights in Europe has, in a number of instances, exacerbated the fragmentation of the European digital market for online music services. This situation is in stark contrast to the fast growing demand on the part of consumers for access to digital content and associated innovative services, including across national borders.
- (23) Commission Recommendation 2005/737/EC promoted a new regulatory environment better suited to the management, at Union level, of copyright and related rights for the provision of legitimate online music services. It recognised that in an era of online exploitation of musical works, commercial users need a licensing policy that corresponds to the ubiquity of the online environment and which is multi-territorial. However, the Recommendation has not been sufficient to encourage the widespread multi-territorial licensing of online rights in musical works or to address the specific demands of multi-territorial licensing.

(24) In the online music sector, where collective management of authors' rights on a territorial basis remains the norm, it is essential to create conditions conducive to the most effective licensing practices by collective management organisations in an increasingly cross-border context. It is therefore appropriate to provide a set of rules prescribing basic conditions for the provision by collective management organisations of multi-territorial collective licensing of authors' online rights in musical works including lyrics. The same rules should apply to such licensing of all musical works, including musical works incorporated in audiovisual works. Online services solely providing access to musical works in sheet music form should however not be covered. The provisions of this Directive should ensure the necessary minimum quality of cross-border services provided by collective management organisations, notably in terms of transparency of repertoire represented and accuracy of financial flows related to the use of the rights. They should also set out a framework for facilitating the voluntary aggregation of music repertoire and rights, thus reducing the number of licences a user needs to operate a multi-territory, multi-repertoire service. These provisions should enable a collective management organisation to request another organisation to represent its repertoire on a multi-territorial basis where it cannot or does not wish to fulfil the requirements itself. There should be an obligation on the requested organisation, provided that it already aggregates repertoire and offers or grants multi-territorial licences, to accept the mandate of the requesting organisation. The development of legal online music services across the Union should also contribute to the fight against online infringements of copyright.

(25) The availability of accurate and comprehensive information on musical works, rightholders and the rights that each collective management organisation is authorised to represent in a given territory is of particular importance for an effective and transparent licensing process, for the subsequent processing of the usage reports and the related invoicing of service providers, as well as for the distribution of amounts due. For this reason, collective management organisations granting multi-territorial licences for musical works should be able to process such detailed data quickly and accurately. This requires the use of continually updated databases on ownership of rights that are licensed on a multi-territorial basis, containing data that allow for the identification of works, rights and rightholders that a collective management organisation is authorised to represent and of the territories in respect of which the authorisation extends. These databases should also help to match information on works with information on phonograms or any other fixation in which the work has been incorporated. It is also important to ensure that prospective licensees and rightholders have access to the information they need in order to identify the repertoire that those organisations are representing, without prejudice to any measures these organisations may take to protect the accuracy and integrity of the data, to control its reuse or to protect commercially sensitive information.

(26) To ensure that the data on the music repertoire they process is as accurate as possible, collective management organisations granting multi-territorial licences of musical works should be required to update their databases continuously and without delay as necessary. They should establish easily accessible procedures to enable rightholders and other collective management organisations to inform them of any inaccuracy that the organisations' databases may contain in respect of works they own or control, including rights – in whole or in part – and territories for which they have mandated the relevant collective management organisation to act, without however jeopardising the veracity and integrity of the data held by the collective management organisation. In the light of Article 12(b) of Directive 95/46/EC which grants to every data subject the right to obtain rectification, erasure or blocking of inaccurate or incomplete data, this Directive also ensures that inaccurate information regarding rightholders or other collective management organisations in the case of multi-territorial licences is to be corrected without undue delay. Collective management organisations should also have the capacity to process electronically the registration of works and authorisations to manage rights. Given the importance of information automation for the fast and effective processing of data, collective management organisations should provide for the use of electronic means for the structured communication of that information by rightholders. Collective management organisations should, as far as possible, ensure that such electronic means take into account the relevant voluntary industry standards or practices developed at international or Union level.

(27) Industry standards for music usage, sales reporting and invoicing are instrumental in improving efficiency in the exchange of data between collective management organisations and users. Monitoring of the use of licences should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data. To ensure that these efficiency gains result in faster financial processing and ultimately in earlier payments to rightholders, collective management organisations should be required to invoice service providers and to distribute amounts due to rightholders without delay. For this requirement to be effective, it is necessary that licensees provide collective management organisations with accurate and timely reports on the use of works. Collective management organisations should not be required to accept users' reports in proprietary formats when widely used industry standards are available. Collective management organisations should not be precluded from outsourcing services relating to the granting of multi-territorial licences for online rights in musical works. Sharing or consolidation of back office capabilities should help the organisations to improve management services and rationalise investments in data management tools.

(28) *(Merged with Recital 27)*

- (29) Aggregating different music repertoires for multi-territorial licensing facilitates the licensing process and, by making all repertoires accessible to the market for multi-territorial licensing, enhances cultural diversity and contributes to reducing the number of transactions an online service provider needs in order to offer services. This aggregation of repertoires should facilitate the development of new online services, and should also result in a reduction of transaction costs being passed on to consumers. Therefore, collective management organisations that are not willing to or are not able to grant multi-territorial licences directly in their own music repertoire should be encouraged on a voluntary basis to mandate other collective management organisations to manage their repertoire on a non-discriminatory basis. Exclusivity in agreements on multi-territorial licences would restrict the choices available to users seeking multi-territorial licences and also restrict the choices available to collective management organisations seeking administration services for their repertoire on a multi-territorial basis. Therefore, all representation agreements between collective management organisations providing for multi-territorial licensing should be concluded on a non-exclusive basis.
- (30) The transparency of the conditions under which collective management organisations manage the online rights they have been authorised to represent is of particular importance to members of collective management organisations. Collective management organisations should therefore provide sufficient information to their members on the main terms of any agreement mandating any other collective management organisation to represent these members' online music rights for the purposes of multi-territorial licensing.

(31) It is also important to require any collective management organisations that offer or grant multi-territorial licences to agree to represent the repertoire of any collective management organisations that decide not to do so directly. To ensure that this requirement is not disproportionate and does not go beyond what is necessary, the requested collective management organisation should only be required to accept the representation if the request is limited to the online right or categories of online rights that it represents itself. Moreover, this requirement should only apply to collective management organisations which aggregate repertoire and should not extend to collective management organisations which provide multi-territorial licences for their own repertoire only. Nor should it apply to collective management organisations which merely aggregate rights in the same works for the purpose of being able to license jointly both reproduction and communication to the public rights in such works. To protect the interests of the rightholders of the mandating collective management organisation and to ensure that small and less well-known repertoires in Member States can access the internal market on equal terms, it is important that the repertoire of the mandating collective management organisation is managed on the same conditions as the repertoire of the mandated collective management organisation and that it is included in offers that the mandated collective management organisation addresses to online service providers. The management fee charged by the mandated collective management organisation should allow this organisation to recoup the necessary and reasonable investments incurred. Any agreement whereby a collective management organisation mandates another organisation or organisations to grant multi-territorial licences in its own music repertoire for online use should not prevent this first-mentioned collective management organisation from continuing to grant licences limited to the territory of the Member State where this organisation is established, in its own repertoire and in any other repertoire it may be authorised to represent in this territory.

- (32) The objectives and the effectiveness of the rules on multi-territorial licensing by collective management organisations would be significantly jeopardised if rightholders were not able to exercise such rights in respect of multi-territorial licences when the collective management organisation to which they have granted their rights did not grant or offer multi-territorial licences and furthermore did not want to mandate another collective management organisation to do so. For this reason, it would be important in such circumstances to enable rightholders to exercise the right to grant the multi-territorial licences required by online service providers themselves or through another party or parties, without having to withdraw their rights from the organisation.
- (33) In the interest of the online market, the obligations relating to the multi-territorial licensing of online rights in musical works should also apply to any entity directly or indirectly owned or controlled, in whole or in part, by a collective management organisation and which offers or grants multi-territorial licences for online rights in musical works.
- (34) In the digital environment, collective management organisations are regularly required to license their repertoire for totally new forms of exploitation and business models. In such cases and in order to foster an environment conducive to the development of such licences, collective management organisations should have the flexibility required to provide, as swiftly as possible, individualised and innovative licences, without the risk of the terms of these licences being used as a precedent for determining the terms for other licences.

(35) Broadcasting organisations generally rely on a licence from a local collective management organisation for their own broadcasts of television and radio programmes which include musical works. This licence is often limited to broadcasting activities. A licence for online rights in musical works would be required in order to allow such television or radio broadcasts to be also available online. To facilitate the licensing of online music rights for the purposes of simultaneous and delayed transmission online of television and radio broadcasts, it is necessary to provide for a derogation from the rules that would otherwise apply to the multi-territorial licensing of musical works for online uses. Such a derogation should be limited to what is necessary to allow access to television or radio programmes online and to material having a clear and subordinate relationship to the original broadcast produced for purposes such as supplementing, previewing or reviewing that television or radio programme. That derogation should not operate so as to distort competition with other services which give consumers access to individual musical or audiovisual works online, nor lead to restrictive practices, such as market or customer sharing, which would be in breach of Articles 101 or 102 of the Treaty on the Functioning of the European Union.

(36) It is necessary to ensure the effective enforcement of the provisions of national law adopted pursuant to this Directive. Collective management organisations should offer their members specific procedures for the handling of complaints. These procedures should also be made available to other rightholders directly represented by the organisation. It is also appropriate to require that Member States have independent, impartial and effective dispute resolution procedures, via courts or other bodies, suitable for settling commercial disputes between collective management organisations and users on existing or proposed licensing conditions or on a breach of contract. Furthermore, the effectiveness of the rules on multi-territorial licensing of online rights in musical works could be undermined if disputes between collective management organisations and other parties were not solved quickly and efficiently. As a result, it is appropriate to provide, without prejudice to the right of access to a tribunal, for the possibility of easily accessible, efficient and impartial out-of-court procedure, such as mediation or arbitration, for resolving conflicts between collective management organisations granting multi-territorial licences, on the one hand, and online service providers, rightholders or other collective management organisations, on the other.

This Directive neither prescribes a specific manner in which such alternative dispute resolution should be organised, nor determines which body should carry it out, provided that its independence, impartiality and efficiency is guaranteed.

(37) Member States should establish appropriate procedures by means of which it will be possible to monitor the compliance of collective management organisations with this Directive. While it is not appropriate for this Directive to restrict the choice of Member States as to competent authorities, nor as regards the ex-ante or ex-post nature of the control over collective management organisations, it should be ensured that such authorities are capable of addressing any concern that may arise in the application of this Directive in an effective and timely manner. Moreover, there should also be a possibility for members of a collective management organisation, rightholders, users and collective management organisations to notify a competent authority in respect of activities or circumstances which, in their opinion, constitute a breach of law by collective management organisations and, where relevant, users. Member States should ensure that competent authorities have the power to impose sanctions or measures where provisions of national law implementing this Directive are not complied with. This Directive does not provide for specific types of sanctions or measures, provided that they are effective, proportionate and dissuasive. Such sanctions or measures may include orders to dismiss directors who acted negligently, inspections at the premises of a collective management organisation or, in cases where an authorisation is issued for an organisation to operate, the withdrawal of such an authorisation. *(NB : Last part moved to recital 37a)*

- (37a) To ensure that the requirements for multi-territorial licensing are complied with, specific provisions on the monitoring of their implementation should be laid down. The competent authorities of the Member States and the Commission should cooperate with each other to this end. Member States should provide each other with mutual assistance by way of exchange of information between their competent authorities in order to facilitate the monitoring of collective management organisations.
- (38) It is important for collective management organisations to respect the rights to private life and personal data protection of any rightholder, member, user and other individual whose personal data they process. 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<sup>4</sup> governs the processing of personal data carried out in the Member States in the context of that Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States. Rightholders should be given appropriate information about the processing of their data, the recipients of that data, time limits for retention of such data in any database, and how rightholders can exercise their rights to access, correct or delete their personal data concerning them in accordance with Articles 10 and 11 of Directive 95/46/EC. In particular, unique identifiers which allow for the indirect identification of a person should be treated as personal data within the meaning of point (a) of Article 2 of that Directive.
- (39) *(Moved into recital 26)*
- (40) Provisions on enforcement measures should be without prejudice to the competencies of national independent public authorities established by the Member States pursuant to Article 28 of Directive 95/46/EC to monitor the respect of national provisions adopted in implementation of that Directive.

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<sup>4</sup> OJ L 281, 23.11.1995, p. 31.

- (41) This Directive respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union. Provisions in the Directive related to dispute resolution should not prevent parties from exercising their right of access to a tribunal as guaranteed in the Charter.
- (42) Since the objectives of this Directive, namely to improve the ability of their members to exercise control over the activities of collective management organisations, to guarantee sufficient transparency by collective management organisations and to improve the multi-territorial licensing of authors' rights for online use of musical works, cannot be sufficiently achieved by Member States and can therefore, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that same Article of the Treaty, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (43) The provisions of this Directive are without prejudice to the application of rules on competition, and any other relevant law in other areas including confidentiality, trade secrets, privacy, access to documents, the law of contract and private international law relating to the conflict of laws and the jurisdiction of courts, workers' and employers' freedom of association and their right to organise.

- (44) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011<sup>5</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (45) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>6</sup> and delivered an opinion on 9 October 2012.

HAVE ADOPTED THIS DIRECTIVE:

## **TITLE I**

### **General provisions**

#### *Article 1*

#### *Subject matter*

This Directive lays down requirements to ensure the proper management of copyright and related rights by collective management organisations. It also lays down requirements for multi-territorial licensing by collective management organisations of authors' rights in musical works for online use.

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<sup>5</sup> OJ C 369, 17.12.2011, p. 15.

<sup>6</sup> OJ L 8, 12.1.2001, p. 1.

## *Article 2*

### *Scope*

Titles I, II, IV with the exception of Articles 36 and 40, and IVa shall apply to all collective management organisations established in the Union.

Title III and Articles 36 and 40 shall apply to collective management organisations established in the Union managing authors' rights in musical works for online use on a multi-territorial basis.

Without prejudice to Article 31, Member States shall ensure that the relevant provisions of this Directive apply to entities directly or indirectly owned or controlled, in whole or in part, by a collective management organisation, provided that these entities carry out an activity which, if carried out by the collective management organisation, would be subject to the provisions of this Directive.

**Articles 16, 18 and 19(a), (b), (d), (e) and (f) shall apply to all independent management entities established in the Union.**

## *Article 3*

### *Definitions*

For the purposes of this Directive, the following definitions shall apply:

- (a) 'collective management organisation' means any organisation authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of these rightholders as its sole or main purpose, and which fulfils one or both of the following criteria:
  - (i) it is owned or controlled by its members;

- (ii) it is organised on a not-for-profit basis;

**(aa) 'independent management entity' means any organisation authorised by law or by way of assignment, licence or any other contractual arrangement to manage copyright or rights related to copyright on behalf of more than one rightholder, for the collective benefit of these rightholders as its sole or main purpose and which is:**

- (i) neither owned nor controlled by members and**
- (ii) organised on a for-profit basis;**

- (b) 'rightholder' means any person or entity other than a collective management organisation that holds a copyright or related right or, under an agreement for the exploitation of rights or by law, is entitled to a share of the rights revenue;
- (c) 'member' means a rightholder or an entity representing rightholders, including other collective management organisations and associations of rightholders, fulfilling the membership requirements of the collective management organisation;
- (d) 'statute' means the memorandum and articles of association, the statute, the rules or document of constitution of a collective management organisation;
- (da) 'general assembly of members' means the body in the collective management organisation wherein members participate and exercise their voting rights, regardless of the legal form of the organisation;
- (e) 'director' means:
  - (i) where national law or the statute of the collective management organisation provides for a unitary board, any member of the administrative board,

- (ii) where national law or the statute of the collective management organisation provides for a dual board, any member of the management board or the supervisory board;
- (f) 'rights revenue' means income collected by a collective management organisation on behalf of rightholders, whether from an exclusive right, a right to remuneration or a right to compensation;
- (g) 'management fees' means the fees deducted or offset by a collective management organisation from rights revenue or from any income arising from the investment of rights revenue in order to cover the costs of its management of copyright or related rights;
- (h) 'representation agreement' means any agreement between collective management organisations whereby one collective management organisation mandates another collective management organisation to represent rights in its repertoire, including an agreement concluded under Articles 28 and 29;
- (i) 'user' means any person or entity that is carrying out acts subject to the authorisation of rightholders, remuneration for rightholders or payment of compensation to rightholders and is not acting in the capacity of a consumer;
- (j) 'repertoire' means the works in respect of which a collective management organisation manages rights;
- (k) 'multi-territorial licence' means a licence which covers the territory of more than one Member State;

- (l) 'online rights in musical works' means any of the rights of an author in a musical work provided under Articles 2 and 3 of Directive 2001/29/EC which are required for the provision of an online service.
- (m) *Deleted.*

**Title II**  
**Collective management organisations**  
**Chapter 1**  
**Representation of rightholders, membership and organisation of**  
**collective management organisations**

*Article 4*  
*General principles*

Member States shall ensure that collective management organisations act in the best interests of the rightholders whose rights they represent and do not impose on them any obligations which are not objectively necessary for the protection of their rights and interests or for the effective management of their rights.

*Article 5*  
*Rights of rightholders*

1. Member States shall ensure that rightholders have the rights as laid down in paragraphs 2 to 7 and that these rights are set out in the statute or membership terms of the collective management organisation.

2. Rightholders shall have the right to authorise a collective management organisation of their choice to manage the rights, categories of rights or types of works and other subject matter of their choice, for the territories of their choice, irrespective of the Member State of nationality, residence or establishment of either the collective management organisation or the rightholder. Unless the collective management organisation has objectively justified reasons to refuse management, it shall be obliged to manage such rights, categories of rights or types of works and other subject matter, provided that their management falls within its scope of activity.
3. Rightholders shall have the right to terminate the authorisation to manage rights, categories of rights or types of works and other subject matter granted by them to a collective management organisation or to withdraw from a collective management organisation any of the rights or categories of rights or types of works and other subject matter of their choice as determined pursuant to paragraph 2, for the territories of their choice, upon serving reasonable notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal will take effect only at the middle and at the end of the financial year, whichever is sooner after the expiry of the notice period.
4. If there are amounts due to a rightholder for acts of exploitation which occurred before the termination of the authorisation or the withdrawal of rights took effect, or under a licence granted before such termination or withdrawal took effect, the rightholder shall retain his rights under Articles 11, 12, 16, 18, 26 and 34.

5. A collective management organisation shall not restrict the exercise of rights provided under paragraphs 3 and 4 by requiring that the management of rights or categories of rights or type of works and other subject matter which are subject to the termination or the withdrawal be entrusted to another collective management organisation.
6. Where a rightholder authorises a collective management organisation to manage his rights, he shall give consent specifically for each right or category of rights or type of works and other subject matter which that rightholder authorises the collective management organisation to manage. Any such consent shall be evidenced in documentary form.
7. A collective management organisation shall inform rightholders of their rights under paragraphs 1 to 6 before obtaining their consent to manage any right or category of rights or type of works and other subject matter.

A collective management organisation shall inform the rightholders who have already authorised the collective management organisation of their rights under paragraphs 1 to 6 by [*date six months of the transposition date of this Directive*].

#### *Article 6*

##### *Membership rules of collective management organisations*

1. Member States shall ensure that collective management organisations comply with the rules laid down in paragraphs 2 to 5.

2. A collective management organisation shall accept rightholders and entities representing rightholders, including other collective management organisations and associations of rightholders as members if they fulfil the membership requirements which shall be based on objective and non-discriminatory criteria. These membership requirements shall be included in the statute or membership terms of the collective management organisation and shall be made publicly available.
3. The statute of a collective management organisation shall provide for appropriate and effective mechanisms for the participation of its members in the collective management organisation's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced.
4. A collective management organisation shall allow its members to communicate with the organisation by electronic means, including for the purposes of exercising members' rights.
5. A collective management organisation shall keep records of its members and shall regularly update these records.

## *Article 6a*

### *Rights of rightholders who are not members of the collective management organisation*

1. Member States shall ensure that collective management organisations comply with the rules laid down in Articles 6(4), 18, 28(2) and 34 in respect of rightholders who have a direct legal relationship by law or by way of assignment, licence or any other contractual arrangement with them but are not their members.
2. Member States may apply other provisions of this Directive to the rightholders referred to in paragraph 1.

## *Article 7*

### *General assembly of members of the collective management organisation*

1. Member States shall ensure that the general assembly of members is organised according to the rules laid down in paragraphs 1a to 8.
  - 1a. Member States may decide that the powers of the general assembly of members may be exercised by an assembly of delegates elected at least every four years by the members of the collective management organisation, provided that:
    - a) appropriate and effective participation of members in the collective management organisation's decision-making process is ensured; and
    - b) the representation of the different categories of members in the assembly of delegates is fair and balanced.

The rules laid down in paragraphs 2 to 8 shall apply to the assembly of delegates *mutatis mutandis*.

- 1b. Member States may decide that where a collective management organisation is precluded by reason of its legal form from having a general assembly of members, the powers set out in paragraphs 3 to 6 shall be exercised by the body exercising the supervisory function.
- 1c. Member States may decide that where a collective management organisation has members who are entities representing rightholders, all or some of the powers of the general assembly of members may be exercised by an assembly of these rightholders. The rules laid down in paragraphs 2 to 8 shall apply to the assembly of rightholders *mutatis mutandis*.
2. A general assembly of members shall be convened at least once a year.
3. The general assembly of members shall approve any amendments to the statute and the membership terms of the collective management organisation, where these terms are not regulated by the statute.
4. The general assembly of members shall decide on the appointment or dismissal of the directors and approve their remuneration and other benefits such as monetary and non-monetary benefits, pension awards and entitlements, rights to other awards and rights to severance pay.

In a collective management organisation with a dual board system, the general assembly of members shall not decide on the appointment or dismissal of members of the management board or approve their remuneration and other benefits where the power to take these decisions is delegated to the supervisory board.

5. In accordance with the provisions laid down in Chapter 2 of Title II, the general assembly of members shall decide at least on the following issues:
- (a) the general policy on the distribution of the amounts due to rightholders;
  - (b) the general policy on the use of the amounts due to rightholders which cannot be distributed as set out in Article 12(2);
  - (c) the general investment policy with regard to rights revenue and to any income arising from the investment of rights revenue;
  - (d) the general policy on deductions from rights revenue and from any income arising from the investment of rights revenue;
  - (da) the use of the amounts due to rightholders which cannot be distributed as set out in Article 12(2);
  - (db) the risk management policy;
  - (e) the approval of any acquisition, sale or hypothecation of immovable property;
  - (f) the approval of mergers and alliances, setting-up subsidiaries, acquiring other entities or shares or rights in other entities;

- (g) the approval of taking out loans, granting loans or providing security for loans.

The general assembly of members may delegate the powers in points (db), (e), (f) and (g) to the body exercising the supervisory function.

6. The general assembly of members shall control the activities of the collective management organisation by, at least, deciding on the appointment and removal of the auditor and approving the annual transparency report referred to in Article 20.

Member States may allow alternative systems or modalities for the appointment and removal of the auditor, provided that these systems or modalities are designed to ensure the independence of the auditor from the persons who manage the business of the collective management organisation.

7. Where Member States allow for any restriction on the right of the members of the collective management organisation to participate in and to exercise voting rights at the general assembly of members, any such restriction shall be based on one or both of the following criteria:

- (a) duration of membership;

- (b) amounts received or due to a member; provided that such criteria are determined and applied in a manner that is fair and proportionate.

These criteria shall be included in the statute or the membership terms of the collective management organisation and shall be made publicly available in accordance with Articles 17 and 19.

8. Every member of a collective management organisation shall have the right to appoint any other natural or legal person as a proxy holder to participate in and vote at the general assembly of members in his name, provided that such appointment does not result in a conflict of interest.

However, Member States may provide for restrictions concerning the appointment of proxy holders and the exercise of the voting rights of the members they represent if such restrictions do not prejudice the appropriate and effective participation of members in the decision-making process of a collective management organisation.

The proxy holder shall enjoy the same rights in the general assembly of members as those to which the appointing member would be entitled.

The proxy holder shall cast votes in accordance with the instructions issued by the appointing member.

*Article 8*

*Supervisory function*

1. Member States shall ensure that the collective management organisation has a supervisory function with participation of members of the collective management organisation responsible for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation.
  - 1a. In order to ensure the effective participation of the different categories of members, there shall be fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function.
  - 1b. Each person exercising the supervisory function shall make an annual individual statement on conflicts of interest containing the information referred to in Article 9(2), second subparagraph to the body exercising the supervisory function.
2. The body exercising the supervisory function shall meet regularly and shall have at least the following powers:
  - (a) *(moved to Article 7(5))*
  - (b) *(moved to Article 7(5))*
  - (c) *(moved to Article 7(5))*
  - (d) to exercise the powers delegated to it under Article 7(4) and (5);

- (e) to monitor the activities and the performance of the duties of the persons referred to in Article 9, including the implementation of the decisions of the general assembly of members and in particular, of the general policies listed in Article 7(5) (a)-(d).

3. *Deleted.*

### *Article 9*

#### *Obligations of the persons who manage the business of the collective management organisation*

1. Member States shall ensure that a collective management organisation ensures that the persons who manage the business of the collective management organisation do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.
2. A collective management organisation shall put in place and apply procedures so as to avoid conflicts of interest, and where these cannot be avoided, to identify, manage, monitor and disclose such conflicts of interest in order to prevent them from adversely affecting the collective interests of the rightholders the organisation represents.

These procedures shall include an annual individual statement by each of the persons referred to in paragraph 1 to the body exercising the supervisory function, containing the following information:

- (a) any interests in the collective management organisation;
- (b) any remuneration received from the collective management organisation, including pension schemes, benefits-in-kind and other types of benefits in the preceding financial year;

- (c) any amounts received as a rightholder from the collective management organisation in the preceding financial year;
- (d) a declaration on any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations towards the collective management organisation and any duty to any other natural or legal person.

## Chapter 2

### Management of rights revenue

#### *Article 10*

#### *Collection and use of rights revenue*

0. Member States shall ensure that collective management organisations comply with the rules laid down in paragraphs 1 to 4.
1. A collective management organisation shall be diligent in the collection and management of rights revenue.
2. A collective management organisation shall keep separate in its accounts:
  - (a) rights revenue and any income arising from the investment of rights revenue; and
  - (b) any own assets it may have and income arising from such assets, from management fees or from other activities.
3. A collective management organisation shall not be allowed to use rights revenue or any income arising from the investment of rights revenue for purposes other than distribution to rightholders, save that it may deduct or offset its management fees or use the rights revenue or any income arising from the investment of rights revenue in compliance with a decision taken in accordance with Article 7(5).

4. Where a collective management organisation invests rights revenue or any income arising from the investment of rights revenue, it shall do so in the best interests of the rightholders whose rights it represents, in accordance with the general investment and risk management policy referred to in Article 7(5)(c) and (db) and having regard to the following rules:
  - (a) where there is any potential conflict of interest, the collective management organisation shall ensure that the investment is made in the sole interest of these rightholders;
  - (b) the assets shall be invested in order to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
  - (c) the assets shall be properly diversified in order to avoid excessive reliance on any particular asset or accumulations of risks in the portfolio as a whole.

*Article 11*

*Deductions*

1. Member States shall ensure that where a rightholder authorises a collective management organisation to manage his rights, the collective management organisation shall inform the rightholder of the general policy on deductions from the rights revenue and from any income arising from the investment of rights revenue, before obtaining his consent to manage his rights.
  - 1a. Management fees shall not exceed the justified and documented costs incurred by the collective management organisation for the management of copyright and related rights.

2. Where a collective management organisation provides social, cultural or educational services funded through deductions from rights revenue and from any income arising from the investment of rights revenue, such services shall be provided on the basis of fair criteria.

*Article 12*

*Distribution of the amounts due to rightholders*

1. Without prejudice to Articles 14(3) and 26, Member States shall ensure that a collective management organisation regularly, diligently, accurately and in accordance with the general policy on distribution referred to in Article 7(5)(a) distributes and pays amounts due to rightholders

Member States shall also ensure that a collective management organisation or its members who are entities representing rightholders distribute and pay to rightholders these amounts as soon as possible but no later than 12 months from the end of the financial year in which the rights revenue was collected, unless objective reasons related in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matter with rightholders prevent the collective management organisation or, where applicable, its members from respecting this deadline.

2. Where the amounts due to rightholders cannot be distributed, after three years from the end of the financial year in which the collection of the rights revenue occurred, and provided that the collective management organisation has taken all necessary measures to identify and locate the rightholders, the general assembly of members shall decide on the use of the amounts concerned in accordance with the general policy referred to in Article 7(5)(b), without prejudice to the right of the rightholder to claim such amounts from the collective management organisation in accordance with the laws of the Member States on the statute of limitations of claims. Member States may limit or determine the permitted uses of the amounts concerned.

3. For the purposes of paragraph 2, measures to identify and locate rightholders shall include verifying records referred to in Article 6(5) and other readily available records and making available to the rightholders that the collective management organisation represents, or where it has as members entities representing rightholders, to these members as well as to other collective management organisations information on works and other subject matter for which one or more rightholders have not been identified including, where available, the title of the work or other subject matter, the name of the rightholder, the name of the relevant publisher or producer and any other relevant information available which could assist in identifying the rightholder.

## **Chapter 3**

# **Management of rights on behalf of other collective management organisations**

### *Article 13*

#### *Rights managed under representation agreements*

Member States shall ensure that a collective management organisation does not discriminate against any rightholder whose rights it manages under a representation agreement, in particular with respect to applicable tariffs, management fees, and the conditions for the collection of the rights revenue and distribution of the amounts due to rightholders.

### *Article 14*

#### *Deductions and payments in representation agreements*

1. Member States shall ensure that a collective management organisation does not make deductions, other than management fees, from the rights revenue derived from the rights it manages on the basis of a representation agreement, or from any income arising from the investment of that rights revenue, unless the other collective management organisation that is party to the representation agreement expressly consents to such deductions.
  
2. The collective management organisation shall regularly, diligently and accurately distribute and pay amounts due to other collective management organisations.

3. The collective management organisation shall carry out such distribution and payments to the other collective management organisation as soon as possible but no later than 12 months from the end of the financial year in which the rights revenue was collected, unless objective reasons related in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matter with rightholders prevent the collective management organisation from respecting this deadline.

The other collective management organisation or, where it has as members entities representing rightholders, these members shall distribute and pay the amounts due to rightholders no later than 6 months from receipt of these amounts, unless objective reasons related in particular to reporting by users, identification of rights, rightholders or matching of information on works and other subject matter with rightholders prevent the collective management organisation or, where applicable, its members from respecting this deadline.

## **Chapter 4**

### **Relations with users**

#### *Article 15*

#### *Licensing*

1. Member States shall ensure that collective management organisations and users conduct negotiations for the licensing of rights in good faith including the provision of all necessary information on their respective services.
  
2. Licensing terms shall be based on objective and non-discriminatory criteria, in particular in relation to tariffs.

Tariffs for exclusive rights and rights to remuneration shall be reasonable in relation to in particular, the economic value of the use of the rights in trade taking into account the nature and scope of the use of the work and other subject matter, as well as to the economic value of the service provided by the collective management organisation.

3. A collective management organisation shall allow users to communicate with it by electronic means, including, when appropriate, for the purpose of reporting on the use of the licence.

#### *Article 15a*

#### *Obligations on users*

Member States shall ensure that users provide a collective management organisation, without undue delay, with the information on the use of the rights represented by the collective management organisation that is necessary for the collection of rights revenue and for the distribution and payment of amounts due to rightholders. When providing this information, users shall take into account, as far as possible, voluntary industry standards.

## **Chapter 5**

### **Transparency and reporting**

#### *Article 16*

#### *Information provided to rightholders on the management of their rights*

1. Without prejudice to paragraph 2, Articles 17 and 26(2), Member States shall ensure that a collective management organisation makes available no less than once a year to each rightholder to whom it attributed rights revenue or made payments in the period to which the information relates, at least the following information:
  - (a) any contact details which the rightholder has authorised the collective management organisation to use in order to identify and locate the rightholder;
  - (b) the rights revenue attributed to the rightholder;
  - (c) the amounts paid by the collective management organisation to the rightholder per category of rights managed and per type of use;
  - (d) the period during which the use took place for which amounts were attributed and paid to the rightholder, unless objective reasons related to reporting by users prevent the collective management organisation from providing this information;
  - (e) the deductions made for management fees;

- (f) the deductions made for any purpose other than management fees, including those that may be required by national law for the provision of any social, cultural or educational services;
- (g) any rights revenue attributed to the rightholder which is outstanding for any period.
- (h) *Deleted.*

2. Where a collective management organisation attributes rights revenue and has as members entities which are responsible for the distribution of rights revenue to rightholders, the collective management organisation shall provide the information under paragraph 1 to these entities provided that these entities do not have the information under paragraph 1 in their possession. Member States shall ensure that these entities make at least the information under paragraph 1 available, no less than once a year, to each rightholder to whom they attributed rights revenue or made payments in the period to which the information relates.

#### *Article 17*

#### *Information provided to other collective management organisations on the management of rights under representation agreements*

Member States shall ensure that a collective management organisation makes at least the following information available, no less than once a year and by electronic means, to the collective management organisation on whose behalf it manages rights under a representation agreement, for the period to which the information relates:

- (a) the rights revenue attributed, the amounts paid by the collective management organisation per category of rights managed, and per type of use for the rights it manages under the representation agreement, as well as any rights revenue attributed which is outstanding for any period;

- (b) the deductions made for management fees;
- (ba) deductions made for any purpose other than management fees as referred to in Article 14;
- (c) *Deleted.*
- (d) resolutions adopted by the general assembly of members insofar as these resolutions are relevant to the management of the rights under the representation agreement.

*Article 18*

*Information provided to members, other collective management organisations and users on request*

1. Without prejudice to Article 23, Member States shall ensure that, on the basis of a duly justified request, a collective management organisation makes at least the following information available by electronic means and without undue delay to any member, to any collective management organisation on whose behalf it manages rights under a representation agreement or to any user:
  - (a) *Deleted. (Moved to 19(1)(ba))*
  - (b) the works or other subject matter it represents, the rights it manages, directly or under representation agreements, and the territories covered; or, where due to the scope of activity of the collective management organisation such works or other subject matter cannot be determined, the categories of works or other subject matter it represents, the rights it manages and the territories covered.
  - (c) *Deleted (Moved to 19(1)(fa))*
2. *Deleted.*

*Article 19*

*Disclosure of information to the public*

1. Member States shall ensure that a collective management organisation makes public at least the following information:
  - (a) its statute;
  - (b) its membership terms and the terms of termination of authorisation to manage rights, if not included in the statute;
  - (ba) standard licensing contracts and standard applicable tariffs, including discounts;
  - (c) the list of the persons referred to in Article 9;
  - (d) its general policy on distribution of the amounts due to rightholders;
  - (e) its general policy on management fees;
  - (f) its general policy on deductions from rights revenue for purposes other than management fees, including deductions for the purposes of social, cultural and educational services;
  - (fa) a list of the representation agreements it has entered into, and the names of the collective management organisations with which these representation agreements have been concluded;
  - (g) the complaint handling and dispute resolution procedures available in accordance with Articles 34, 35 and 36.

2. The information referred to in paragraph 1 shall be published on the website of the collective management organisation and shall remain available to the public on that website and kept up to date.

*Article 20*

*Annual transparency report*

1. Member States shall ensure that, irrespective of its legal form under national law, a collective management organisation draws up and makes public an annual transparency report, including the special report referred to in paragraph 3, for each financial year no later than eight months following the end of the financial year.

The annual transparency report shall be published on the website of the collective management organisation and shall remain available to the public on that website for at least five years.

2. The annual transparency report shall contain at least the information set out in Annex I.
3. A special report shall address the use of the amounts deducted for the purposes of social, cultural and educational services and shall contain at least the information set out in point 3 of Annex I.
4. The accounting information included in the annual transparency report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts<sup>7</sup>.

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<sup>7</sup> OJ L 157, 9.6.2006, p. 87.

The auditor's report, including any qualifications thereto, shall be reproduced in full in the annual transparency report.

For the purposes of this paragraph, accounting information shall comprise the financial statements referred to in point 1 (a) of Annex I and any financial information referred to in points 1 (f) and (g) and in point 2 of Annex I.

5. *Deleted.*

### **Title III**

## **Multi-territorial licensing of online rights in musical works by collective management organisations**

#### *Article 21*

##### *Multi-territorial licensing in the internal market*

1. Member States shall ensure that collective management organisations established in their territory comply with the requirements of this Title when granting multi-territorial licences for online rights in musical works.
2. *Deleted.*

#### *Article 22*

##### *Capacity to process multi-territorial licences*

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works has sufficient capacity to process electronically, in an efficient and transparent manner, data needed for the administration of such licences, including for identifying the repertoire and monitoring its use, invoicing users, collecting rights revenue and distributing amounts due to rightholders.

2. For the purpose of paragraph 1, a collective management organisation shall comply, at least, with the following conditions:
  - (a) the ability to identify accurately the musical works, in whole or in part, which the collective management organisation is authorised to represent;
  - (b) the ability to identify accurately, in whole or in part, with respect to each relevant territory, the rights and their corresponding rightholders for each musical work or share therein which the collective management organisation is authorised to represent;
  - (c) the use of unique identifiers to identify rightholders and musical works, taking into account, as far as possible, voluntary industry standards and practices developed at international or Union level;
  - (d) *Deleted.*
  - (e) the use of adequate means to identify and resolve in a timely and effective manner inconsistencies in data held by other collective management organisations granting multi-territorial licences for online rights in musical works.

*Article 23*

*Transparency of multi-territorial repertoire information*

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works provides to online service providers, to rightholders whose rights it represents and to other collective management organisations, by electronic means, on the basis of a duly justified request, up-to-date information allowing the identification of the online music repertoire it represents. This shall include the musical works represented, the rights represented, in whole or in part, and the territories represented.

2. Paragraph 1 shall be without prejudice to the possibility for a collective management organisation to take reasonable measures to protect the accuracy and integrity of the data it holds, control its re-use and protect commercially sensitive information.

*Article 24*

*Accuracy of multi-territorial repertoire information*

1. Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works has arrangements in place to enable rightholders and other collective management organisations to request a correction of the data referred to in Article 22(2) or the information provided under Article 23, where such rightholders and organisations, on the basis of reasonable evidence, believe that the data or the information are inaccurate in respect of their online rights in musical works. Where the claims are sufficiently substantiated, the collective management organisation shall ensure that the data or the information are corrected without undue delay.
2. The collective management organisation shall provide rightholders whose musical works are included in its own music repertoire and rightholders who have entrusted the management of their online rights in musical works to it in accordance with Article 30(1) with the means of submitting to it in electronic form information on their musical works, their rights in those works and the territories for which the rightholders authorise the organisation. When doing so, the collective management organisation and the rightholders shall take into account, as far as possible, voluntary industry standards or practices regarding the exchange of data developed at international or Union level, allowing rightholders to specify the musical work, in whole or in part, the online rights, in whole or in part, and the territories for which they authorise the organisation.

3. Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated collective management organisation shall also apply paragraph 2 with respect to the rightholders whose musical works are included in the repertoire of the mandating collective management organisation, unless the collective management organisations agree otherwise.

*Article 25*

*Accurate and timely reporting and invoicing*

1. Member States shall ensure that a collective management organisation monitors the use of online rights in musical works which it represents, in whole or in part, by online service providers to which it has granted a multi-territorial licence for those rights.
2. The collective management organisation shall offer online service providers the possibility of reporting by electronic means the actual use of online rights in musical works and online service providers shall accurately report the actual use of these works. The collective management organisation shall offer the use of a least one method of reporting which takes into account voluntary industry standards or practices developed at international or Union level for the electronic exchange of such data. The collective management organisation may refuse to accept reporting by the online service provider in a proprietary format if the organisation allows for reporting using an industry standard for the electronic exchange of data.

3. The collective management organisation shall invoice the online service provider by electronic means. The collective management organisation shall offer the use of a least one format which takes into account voluntary industry standards or practices developed at international or Union level. The invoice shall identify the works and rights which are licensed, in whole or in part, on the basis of the data referred to in Article 22(2), and the corresponding actual uses, to the extent this is possible on the basis of the information provided by the online service provider and the format used to provide that information. The online service provider may not refuse to accept the invoice if the collective management organisation is using an industry standard.
4. The collective management organisation shall invoice the online service provider accurately and without delay after the actual use of the online rights in that musical work is reported, except where this is not possible for reasons attributable to the online service provider.
5. The collective management organisation shall have adequate arrangements in place for the online service provider to challenge the accuracy of the invoice, including when the online service provider receives invoices from one or more collective management organisations for the same online rights in the same musical work.

*Article 26*

*Accurate and timely payment to rightholders*

1. Without prejudice to paragraph 4, Member States shall ensure that a collective management organisation which grants multi-territorial licences for online rights in musical works distributes amounts due to rightholders accruing from such licences accurately and without delay after the actual use of the work is reported, except where any delay is attributable to the online service provider.

2. Without prejudice to paragraph 4, the collective management organisation shall provide at least the following information to rightholders together with each payment it makes under paragraph 1:
  - (a) the period during which the uses took place for which amounts are due to rightholders and the territories in which the uses took place;
  - (b) the amounts collected, deductions made and amounts distributed by the collective management organisation for each online right in any musical work which rightholders have authorised, in whole or in part, the collective management organisation to represent;
  - (c) the amounts collected for rightholders, deductions made, and amounts distributed by the collective management organisation in respect of each online service provider.
3. *Deleted.*
4. Where a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works under Articles 28 and 29, the mandated collective management organisation shall distribute the amounts referred to in paragraph 1 accurately and without delay, and provide the information referred to in paragraph 2 to the mandating collective management organisation. The mandating collective management organisation shall be responsible for the subsequent distribution of such amounts and the provision of such information to rightholders, unless the collective management organisations agree otherwise.

*Article 27*  
*Outsourcing*  
*Deleted.*

*Article 28*  
*Agreements between collective management organisations for multi-territorial licensing*

1. Member States shall ensure that any representation agreement between collective management organisations according to which a collective management organisation mandates another collective management organisation to grant multi-territorial licences for the online rights in musical works in its own music repertoire shall be of a non-exclusive nature. The mandated collective management organisation shall manage these online rights on a non-discriminatory basis.
2. The mandating collective management organisation shall inform its members of the key terms of the agreement, including its duration and the costs of the services provided by the mandated collective management organisation.
3. The mandated collective management organisation shall inform the mandating collective management organisation of the key terms according to which the latter's online rights are to be licensed, including the nature of the exploitation, all provisions which relate to or affect the licence fee, the duration of the licence, the accounting periods and the territories covered.

*Article 29*

*Obligation to represent another collective management organisation for multi-territorial licensing*

1. Member States shall ensure that where a collective management organisation which does not grant or offer to grant multi-territorial licences for the online rights in musical works in its own repertoire requests another collective management organisation to enter into a representation agreement to represent these rights, the requested collective management organisation shall accept such a request if it is already granting or offering to grant multi-territorial licences for the same category of online rights in musical works in the repertoire of one or more other collective management organisations.
  - 1a. The requested collective management organisation shall respond to the requesting collective management organisation in writing and without undue delay.
  - 1b. Without prejudice to paragraphs 2 and 3, the requested collective management organisation shall manage the represented repertoire of the requesting collective management organisation on the same conditions it manages its own repertoire.
  - 1c. The requested collective management organisation shall include the represented repertoire of the requesting collective management organisation in all offers it addresses to online service providers.
2. *[First subparagraph moved to paragraph 1]*

The management fee for the service provided by the requested collective management organisation to the requesting organisation shall not exceed the costs reasonably incurred by the requested collective management organisation.

3. The requesting collective management organisation shall make available to the requested collective management organisation information relating to its own music repertoire required for the provision of multi-territorial licences for online rights in musical works. Where information is insufficient or provided in a form that does not allow the requested collective management organisation to meet the requirements of this Title, the requested collective management organisation shall be entitled to charge for the costs reasonably incurred in meeting such requirements or to exclude those works for which information is insufficient or cannot be used.

### *Article 30*

#### *Access to multi-territorial licensing*

1. Member States shall ensure that where a collective management organisation does not grant or offer to grant multi-territorial licences for online rights in musical works or does not allow another collective management organisation to represent those rights for such a purpose by [*one year after the transposition date of this Directive*], rightholders who have authorised that collective management organisation to represent their online rights in musical works can grant multi-territorial licences for their online rights in musical works themselves or through any other party they authorise or can grant such licences through any collective management organisation complying with the provisions of this Title. A collective management organisation which does not grant or offer to grant multi-territorial licences shall continue to grant or offer to grant licences for the online rights in musical works of such rightholders for their use in the territory of the Member State where the collective management organisation is established, unless the rightholders terminate their authorisation.

2. Rightholders who decide to grant multi-territorial licences for their online rights in musical works themselves, through any other party, or through another collective management organisation shall notify their decision to the first-mentioned collective management organisation in paragraph 1, without undue delay. Any reversal of this decision shall also be notified.
3. The first-mentioned collective management organisation in paragraph 1 shall not grant or offer to grant multi-territorial licences for online rights in musical works of the rightholders referred to in paragraph 2 unless these rightholders notify this collective management organisation of the reversal of the decision they took in accordance with paragraph 2.

#### *Article 31*

##### *Multi-territorial licensing by entities owned or controlled by collective management organisations*

Articles 18(1)(b), 19(1)(ba), 21-30, 32, 36 and 40 shall also apply to entities directly or indirectly owned or controlled, in whole or in part, by a collective management organisation and which offer or grant multi-territorial licences for online rights in musical works.

#### *Article 32*

##### *Licensing terms for new types of online services*

Member States shall ensure that collective management organisations providing multi-territorial licences for online rights in musical works shall not be required to use as a precedent for other online services, licensing terms agreed with an online service provider, when this provider is providing a new type of service which has been available in the Union for less than three years.

### *Article 33*

#### *Derogation for online music rights required for radio and television programmes*

The requirements under this Title shall not apply to collective management organisations when they grant, on the basis of the voluntary aggregation of the required rights, in compliance with competition rules under Articles 101 and 102 of the Treaty on the Functioning of the European Union, a multi-territorial licence for the online rights in musical works required by a broadcaster to communicate or make available to the public its radio or television programmes simultaneously with or after their initial broadcast as well as any online material, including previews, produced by or for the broadcaster which is ancillary to the initial broadcast of its radio or television programme.

## **Title IV**

### **Enforcement measures**

#### *Article 34*

##### *Complaint procedure for members*

1. Member States shall ensure that collective management organisations make available to their members effective and timely procedures for dealing with complaints, in particular in relation to authorisation to manage rights and termination or withdrawal of rights, membership terms, the collection of amounts due to rightholders, deductions and distributions.
2. Collective management organisations shall respond in writing to complaints by members. Where the collective management organisation rejects the complaint, it shall give reasons.
3. Paragraphs 1 and 2 shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.

*Article 35*

*Dispute resolution for users and collective management organisations*

1. Member States shall ensure that disputes between collective management organisations and users concerning in particular existing and proposed licensing conditions or breach of contract can be submitted to a court, or if appropriate, to another independent and impartial dispute resolution body.
2. Where the obligation set out in paragraph 1 is implemented by recourse to an independent and impartial dispute resolution body other than a court, this shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.

*Article 36*

*Alternative dispute resolution*

1. Member States shall ensure, for the purposes of Title III, that the following disputes related to a collective management organisation established in their territory which grants or offers to grant multi-territorial licences for online rights in musical works can be submitted to an independent and impartial alternative dispute resolution procedure:
  - (a) disputes with an online service provider on the application of Articles 23 and 25;
  - (b) disputes with one or more rightholders on the application of Articles 23, 24, 25, 26, 28, 29 and 30;
  - (c) disputes with another collective management organisation on the application of Articles 23, 24, 25, 26, 28 and 29.

2. *Deleted.*
3. Paragraph 1 shall be without prejudice to the right of the parties to assert and defend their rights by bringing an action before a court.

#### *Article 37*

#### *Compliance with the Directive*

0. Member States shall ensure that compliance by collective management organisations established in their territory with the provisions of national law adopted pursuant to the requirements laid down in this Directive is monitored by competent authorities designated for that purpose.
1. Member States shall ensure that procedures exist for members of a collective management organisation, rightholders, users and collective management organisations to notify competent authorities designated for that purpose of activities or circumstances which, in their opinion, constitute a breach of the provisions of national law adopted pursuant to the requirements laid down in this Directive.
2. *Deleted.*

#### *Article 38*

#### *Sanctions or measures*

1. Member States shall ensure that competent authorities designated for that purpose have the power to impose appropriate sanctions or to take appropriate measures where the provisions of national law adopted in the implementation of this Directive have not been complied with. These sanctions and measures shall be effective, proportionate and dissuasive.
2. *Deleted.*

*Article 39*  
*Competent authorities*

Member States shall notify the Commission of the competent authorities referred to in Articles 37, 38, 39a and 40 by the [*date of transposition*].

The Commission shall publish this information.

*Article 39a*  
*Exchange of information between competent authorities*

In order to facilitate the monitoring of the application of this Directive, each Member State shall ensure that an information request from a competent authority designated for that purpose of another Member State on matters relevant to the application of this Directive, in particular with regard to the activities of collective management organisations established in their territory, is responded to by a competent authority designated for that purpose, without undue delay, provided that the request is duly justified. Where a competent authority considers that a collective management organisation established in another Member State but acting within its territory may not be in compliance with the provisions of the national law of the Member State in which that collective management organisation is established and which have been adopted pursuant to the requirements laid down in this Directive, it shall transmit all relevant information to the attention of the competent authority of the Member State in which the collective management organisation is established, **which may be accompanied by a request to that authority that it take appropriate action within its competence. The matter may also be referred by the competent authority making such a request to the contact committee established in accordance with Article 41(2).**

*Article 40*

*Compliance with the provisions on multi-territorial licensing*

1. *Deleted (moved to 37(0)).*
2. The Commission shall foster regular exchange of information between the competent authorities designated for that purpose in Member States and between those authorities and the Commission on the situation and development of multi-territorial licensing.
3. The Commission shall conduct regular consultations with representatives of rightholders, collective management organisations, users, consumers and other interested parties on their experience with the application of the provisions of Title III of this Directive. The Commission shall provide competent authorities with all relevant information that emerges from these consultations, in the framework of the exchange of information set out in paragraph 2.
4. Member States shall ensure that, at the latest, on *[18 months after the end of the transposition period (date)]*, their competent authorities provide the Commission with a report on the situation and development of multi-territorial licensing in their territory. The report shall include information, in particular, on the availability of multi-territorial licences in the relevant Member State, the compliance of collective management organisations with provisions of national law adopted in the implementation of Title III of this Directive and the assessment of the development of multi-territorial licensing of online rights in musical works by users, consumers, rightholders and other interested parties.

5. On the basis of the reports under paragraph 4 and the information gathered under paragraphs 2 and 3, the Commission shall assess the application of Title III of this Directive. If necessary, and based on a specific report as appropriate, it will consider further steps to address any identified problems. This assessment shall cover, in particular, the following:
- (a) the number of collective management organisations meeting the requirements of Title III;
  - (b) the application of Articles 28 and 29, including the number of representation agreements concluded by collective management organisations under these Articles;
  - (c) the proportion of repertoire in the Member States which is available for licensing on a multi-territorial basis.

#### **Title IVa**

### **DATA PROTECTION**

#### *Article 40a*

#### *Protection of personal data*

The processing of personal data carried out in the framework of this Directive shall be subject to 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.

**TITLE V**  
**REPORTING AND FINAL PROVISIONS**

*Article 40b*

*Notification of collective management organisations*

Member States shall provide, on the basis of the information at their disposal, the Commission with a list of the collective management organisations established in their territories by [*date of transposition (date)*] at the latest.

Member States shall notify any changes to this list to the Commission without undue delay. The Commission shall publish this information and keep it up to date.

*Article 41*

*Report and contact committee*

1. By [*5 years after the end of the transposition period (date)*], the Commission shall assess the application of this Directive and report to the European Parliament and to the Council on the application of this Directive, including its impact on the development of cross-border services, on cultural diversity and on the operation in the Union of collective management organisations established outside the Union, and, if necessary, on the need for a review. The Commission shall submit its report accompanied, if appropriate, by a legislative proposal.
2. A contact committee is hereby established. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and shall meet either on the initiative of the chairman or at the request of the delegation of a Member State. The tasks of the committee shall be as follows:
  - (a) to examine the impact of this Directive on the functioning of the internal market, and to highlight any difficulties;

- (b) to organise consultations on all questions deriving from the application of this Directive;
- (c) to facilitate the exchange of information on relevant developments in legislation and case-law, as well as relevant economic, social, cultural and technological developments;
- (d) to act as a forum for the assessment of the digital market in works and other subject matter.

#### **Article 41a**

#### **Report on licensing entities other than collective management organisations**

**Deleted.**

#### *Article 42*

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [24 months after the entry into force of the Directive] at the latest. They shall forthwith communicate to the Commission the text of these provisions.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 43*

*Entry into force*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 44*

*Addressees*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*      *For the Council*

*The President*      *The President*

1. Information to be provided in the annual transparency report referred to in Article 20(2):

- (a) financial statements comprising a balance-sheet or a statement of assets and liabilities, an income and expenditure account for the financial year and a cash flow statement;
- (b) a report on the activities in the financial year;
- (c) a description of the legal and governance structure of the collective management organisation;
- (d) information on any entities directly or indirectly owned or controlled, in whole or in part, by the collective management organisation;
- (e) information on the total amount of remuneration paid to the persons referred in Articles 8(1b) and 9 in the previous year, and on other benefits granted to them;
- (f) the financial information referred to in point 2;
- (g) a special report on the use of the amounts deducted for the purposes of social, cultural and educational services.

2. Financial information to be provided in the annual transparency report:
- (a) Financial information on rights revenue, per category of rights managed and per type of use (e.g. broadcasting, online, public performance) including the information on the income arising from the investment of rights revenue and the use of such income (whether it is distributed to rightholders, other collective management organisations or otherwise used).
  - (b) Financial information on the cost of rights management and other services provided by the collective management organisation to rightholders, with a comprehensive description of at least the following items:
    - (i) all operating and financial costs, with a breakdown per category of rights managed and where costs are indirect and cannot be attributed to one or more categories of rights an explanation of the method used to allocate such indirect costs;
    - (ii) operating and financial costs, with a breakdown per category of rights managed and where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs, only with regard to the management of rights including management fees deducted from or offset with rights revenue or any income arising from the investment of rights revenue in accordance with Article 10(3);
    - (iii) operating and financial costs with regard to services, other than the management of rights, but including social, cultural and educational services;

- (iv) resources used to cover costs;
  - (v) deductions made to rights revenue, with a breakdown per category of rights managed and per type of use and the purpose of the deduction, such as costs related to the management of rights or to social, cultural or educational services;
  - (vi) the percentages that the cost of the rights management and other services provided by the collective management organisation to rightholders represents compared to the rights revenue in the relevant financial year, per category of rights managed, and where costs are indirect and cannot be attributed to one or more categories of rights, an explanation of the method used to allocate such indirect costs.
- (c) Financial information on amounts due to rightholders with a comprehensive description of at least the following items:
- (i) total amount attributed to rightholders with a breakdown per category of rights managed and per type of use;
  - (ii) total amount paid to rightholders, with a breakdown per category of rights managed and per type of use;
  - (iii) frequency of payments, with a breakdown per category of rights managed and per type of use;

- (iv) total amount collected but not yet attributed to rightholders, with a breakdown per category of rights managed and per type of use and indicating the financial year in which these amounts were collected;
  - (v) total amount attributed to but not yet distributed to rightholders, with a breakdown per category of rights managed and per type of use and indicating the financial year in which these amounts were collected;
  - (vi) where a collective management organisation has not carried out the distribution and payments within the deadline set out in Article 12(1), the reasons for the delay;
  - (vii) explanation on the use of amounts that cannot be distributed to rightholders in accordance with Article 12(2).
- (d) Information on relationships with other collective management organisations with a description of at least the following items:
- (i) amounts received from other collective management organisations and amounts paid to other collective management organisations, with a breakdown per category of rights and per type of use and per organisation;
  - (ii) management fees and other deductions from the revenue due to other collective management organisations, with a breakdown, per category of rights and per type of use and per organisation;

- (iv) management fees and other deductions from the amounts paid by other collective management organisations, with a breakdown per category of rights and per organisation;
- (v) amounts distributed directly to rightholders originating from other collective management organisations, with a breakdown per category of rights and per organisation.

3. Information to be provided in the special report referred to in Article 20(3):

- (a) the amounts deducted for the purposes of social, cultural and educational services in the financial year, with a breakdown per type of purpose and for each type of purpose with a breakdown per category of rights managed and per type of use;
- (b) an explanation of the use of these amounts, with a breakdown per type of purpose including costs of managing amounts deducted to fund social, cultural and educational services and the separate amounts used for social, cultural and educational services.

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