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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The proposed Directive will bring Union law into line with the EU's international commitments under the Marrakesh Treaty to Facilitate Access to Published Works for Persons who Are Blind, Visually Impaired, or Otherwise Print Disabled ('the Marrakesh Treaty').

The Marrakesh Treaty was adopted in 2013 at the World Intellectual Property Organisation (WIPO) with the aim of facilitating the availability and cross-border exchange of books and other print material in accessible formats around the world. It was signed by the Union¹ in April 2014. The Treaty requires the parties to provide exceptions or limitations to copyright and related rights for the benefit of blind, visually impaired and otherwise print-disabled persons and allows for the cross-border exchange of special format copies of books, including audio books, and other print material between countries that are parties to the Treaty. The Union has thus made a political commitment to implement the Treaty, which both the Council and the European Parliament have since strengthened. The Commission separately presented a proposal for a Council Decision for the ratification of the Marrakesh Treaty by the Union in October 2014. In May 2015, the Council submitted a request to the Commission under Article 241 of the Treaty on the Functioning of the European Union (TFEU), in which it underlined its full commitment to the rapid entry into force of the Marrakesh Treaty and asked the Commission to submit, without delay, a legislative proposal to amend the Union legal framework in accordance with the Treaty.

The beneficiaries of the Marrakesh Treaty, i.e. persons who are blind, visually impaired, or otherwise print disabled ('beneficiary persons') face many barriers to accessing books and other print material protected by copyright and related rights. The availability of books in formats that are accessible to print-disabled persons is estimated to be between 7 %² and 20 %³ despite the fact that digital technology greatly facilitates accessible publishing⁴. Accessible formats include e.g. Braille, large print, e-books and audiobooks with special navigation, audio description and radio broadcasts.

The objective of the proposed Directive is to increase the availability of works and other protected subject-matter, e.g. books, journals, newspapers, magazines and other writings, sheet music and other print material, including in audio form, in formats that are accessible to beneficiary persons. It will do this by ensuring that all beneficiary persons and organisations serving their needs on a non-profit basis can rely on a mandatory and harmonised exception to copyright and related rights within the Union. This will allow to make accessible format copies of otherwise non-accessible works and other subject matter that have already been published or made available. The proposed Directive would amend the existing Union legislative framework accordingly and ensure that the accessible format copies made in one Member State can be disseminated and accessed throughout the Union. With respect to the

¹ Council Decision 2014/221/EU of 14 April 2014 on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (OJ L115, 17.4.2014, p. 1.).

² LISU for the Royal National Institute of Blind People (RNIB), 'Availability of accessible publications - 2011 update', October 2011.

³ Catherine Meyer-Lereculeur 'Exception 'handicap' au droit d'auteur et développement de l'offre de publications accessibles à l'ère numérique', May 2013.

⁴ These figures refer to availability in some but not all accessible formats.

obligations imposed by the Marrakesh Treaty on the cross-border exchange of accessible format copies between the Union and third countries that are parties to the Treaty, this Directive should be read together with Regulation [...].

The proposed Directive is also in line with the Union's obligations deriving from the United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD'). The EU has been bound by the UNCRPD since January 2011, pursuant to Council Decision 2010/48/EC⁵. The provisions set out in the UNCRPD have thus become an integral part of the Union's legal order. The right of access to information and the right of people with disabilities to participate in cultural life on an equal basis with others are enshrined in the UNCRPD. Its article 30 requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials. In its Concluding observations on the initial report of the European Union⁶, adopted on 4 September 2015, the United Nations Committee on the Rights of Persons with Disabilities has encouraged the Union to take all appropriate measures to implement the Marrakesh Treaty as soon as possible.

- **Consistency with existing policy provisions in the policy area**

The Union has adopted a number of Directives in the area of copyright and related rights that provide legal certainty and a high level of protection for rightholders. The rights that are relevant for the proposed Directive are currently harmonised in Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society ('Directive 2001/29/EC')⁷, in Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property⁸, in Directive 96/9/EC on the legal protection of databases⁹ and in Directive 2009/24/EC on the legal protection of computer programs¹⁰.

Union law also provides for a number of exceptions or limitations to these rights, which allow, under certain conditions and for the purpose of achieving certain policy objectives, the use of content without the authorisation of the rightholder. The accessibility needs of persons with a disability were recognised in this context, and were provided for notably by Article 5(3)(b) of Directive 2001/29/EC. This provision allows Member States to introduce exceptions or limitations to copyright and related rights for the benefit of persons with disabilities, including print disabilities, in respect of uses which are directly related to the disability, of a non-commercial nature and to the extent required by the specific disability. In accordance with the requirements of the Marrakesh Treaty, the exception introduced by the

⁵ Council Decision 2010/48/EC of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities (OJ L23, 27.1.2010, p. 35).

⁶ CRPD/C/EU/CO/1, available at: http://tbinternet.ohchr.org/Treaties/CRPD/Shared%20Documents/EUR/CRPD_C_EU_CO_1_21617_E.doc.

⁷ 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 (OJ L 167, 22.6.2001, p. 10-19).

⁸ Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ L 376, 27.12.2006, p. 28-35).

⁹ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20-28).

¹⁰ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16-22).

proposed Directive will be mandatory for Member States, and will apply to rights that have been harmonised at Union level and that are relevant for the making and dissemination of accessible format copies as defined in the Marrakesh Treaty. The exception complements the existing optional exception or limitation provided for in Article 5(3)(b) of Directive 2001/29/EC by introducing a mandatory exception for the benefit of beneficiary persons that will have effect throughout the internal market.

- **Consistency with other Union policies**

With the adoption of this Directive, the Union aims to ensure that all beneficiary persons have access to books, journals, newspapers, magazines and other writings, sheet music and other print material to substantially the same degree as persons without an impairment or disability, and that the full potential of the internal market can be exploited to achieve this. In this respect, the proposed Directive is consistent with and complements other legislation and initiatives taken at Union level to ‘build on the strength of our single market and to fully exploit its potential in all its dimensions’¹¹. These include a proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies’ websites and one for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (‘the European Accessibility Act proposal’). In particular, the European Accessibility Act proposal includes obligations to ensure that e-book services provided in the internal market as of its date of application comply with certain functional requirements so that they are accessible from the moment they are put on the market.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for the proposal is Article 114 of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

The Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TFEU. The objective of this proposed Directive is to facilitate access to certain content protected by copyright and related rights for the beneficiary persons of the Marrakesh Treaty within the internal market in an area that is already harmonised by Union law and consequently can only be amended by Union law. In the absence of Union intervention, this objective could not be achieved by Member States. In addition, by reason of scale and effects, this objective can be better achieved at Union level.

- **Proportionality**

The proportionality of the proposal is ensured as it does not go beyond what is necessary to implement the Union obligations under the Marrakesh Treaty within the Union.

- **Choice of the instrument**

The choice of a Directive is consistent with previous measures in this area, notably Directive 2001/29/EC which harmonised the rights of authors and other rightholders and introduced an optional exception or limitation for the benefit of people with a disability. The proposed Directive would amend the existing Union legislative framework by providing for a new

¹¹ President Juncker’s Political Guidelines.

mandatory exception to the relevant harmonised rights and ensuring that accessible format copies made in one Member State under that exception can be disseminated and accessed throughout the Union. In so doing and by providing for clear definitions, it introduces a uniform approach to the Union's obligations under the Treaty, including the free circulation of accessible format copies in the internal market, providing the beneficiaries of the exception with the necessary legal certainty in undertaking the uses that it covers. At the same time, it allows for a certain margin of manoeuvre for Member States for adapting specific national legislation that might be directly or indirectly affected by the provisions of this Directive, for example in the area of education, healthcare or other social policies.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The purpose of the proposed Directive is to fulfil new international obligations as regards Union law. A retrospective evaluation of existing European law in this area is therefore not relevant and not required in this context. Available information on related European legislation was however taken into account, notably the results of public consultations and existing expert input.

- **Stakeholder consultations**

No specific stakeholder consultation was carried out for the purposes of the proposed Directive, which implements provisions established at international level. The extensive public consultation on the review of the EU copyright rules carried out by the Commission between December 2013 and March 2014 also included a section on limitations and exceptions for the benefit of persons with disabilities and on the access to and circulation of works in accessible formats, which also referred to the Marrakesh Treaty¹². Among other aspects, the views expressed by end users, consumers and institutional users (including organisations serving the needs of people with disabilities and libraries) pointed to a diverging scope of national exceptions or limitations, making it difficult to have legal certainty when exporting and importing accessible format copies made under a national copyright exception or limitation. These institutional respondents were consistently of the opinion that the Marrakesh Treaty would satisfactorily address these concerns. Rightholders and collective management organisations generally felt that there were no problems arising from the national implementation of the optional exception or limitation provided for in Union legislation. They also remarked that existing market mechanisms were effectively addressing the problem of access to works for persons with disabilities. This view was not shared by end users, consumers or institutional users.

- **Collection and use of expertise**

No expertise was collected specifically in preparation of this proposal. The Commission took into account a 2013 study on the application of Directive 2001/29/EC¹³, which assessed *inter alia* the application in 11 Member States of the optional exception or limitation for persons with a disability provided for in Article 5(3)(b) of that Directive.

¹² Report on the responses to the Public Consultation on the Review of the EU Copyright Rules, July 2014, p. 61-63. http://ec.europa.eu/internal_market/consultations/2013/copyright-rules/index_en.htm.

¹³ "Study on the application of Directive 2001/29/EC on copyright and related rights in the information society", December 2013, De Wolf and partners, available at: http://ec.europa.eu/internal_market/copyright/docs/studies/131216_study_en.pdf, p. 417 et seq.

- **Impact assessment**

The proposed Directive will implement the Marrakesh Treaty in the internal market and aims to bring Union law into line with the Treaty. The Better Regulation Guidelines¹⁴ do not require an impact assessment to be carried out when the Commission has no discretion over the policy content.

- **Fundamental rights**

The proposed Directive supports the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community, as enshrined in Article 26 of the Charter of Fundamental Rights of the European Union ('the Charter'). The Directive also reflects the Union's commitments under the UNCRPD. The UNCRPD guarantees people with disabilities the right of access to information and the right to participate in cultural, economic and social life on an equal basis with others. In view of this, it is justified to restrict the property rights of rightholders in light of the Union's obligations under the Charter¹⁵. The proposed Directive is an essential first step in ensuring such access to information and participation in cultural, economic and social life.

The proposal would have limited impact on copyright as a property right as recognised in the Charter (Article 17(2))¹⁶. It should be noted that, at present, all Member States have to some extent made use of the optional copyright exception or limitation provided for in Article 5(3)(b) of Directive 2001/29/EC. The impact of the proposed Directive on copyright as a property right will thus be limited to fully harmonising the existing divergent copyright exceptions or limitations for persons with print disabilities that are in force in the Member States.

4. BUDGETARY IMPLICATIONS

The proposal has no impact on the Union budget.

5. OTHER ELEMENTS

European Economic Area

The proposed act relates to an European Economic Area (EEA) matter and it should extend to the EEA.

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Member States will be obliged to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 12 months after its adoption. Member States will be required to communicate to the Commission the provisions introduced to comply with this Directive, and other major legislative provisions adopted in the field covered by this Directive. The Commission will monitor the implementation of the proposed Directive and, in accordance with Better Regulation Guidelines and no sooner than five years after the

¹⁴ SWD(2015) 111 final.

¹⁵ Article 52(1) of the Charter allows restrictions interfering with the exercise of the freedoms of the Charter. Such restrictions must (i) be provided for by law; and (ii) respect the essence of those rights and freedoms. In addition, the limitations are (iii) 'subject to the principle of proportionality' and 'may be made only if they are necessary and genuinely meet objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others'.

¹⁶ OJ C 83, 30.3.2010, p. 389–403.

date of transposition, it shall carry out an evaluation of the Directive and present the main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by proposals for the amendment of the Directive. In the same way, it will also carry out an evaluation of Regulation [...]. The Commission will also monitor the availability in accessible formats of works and other subject-matter other than those covered by this Directive, and the availability of works and other subject-matter in accessible formats for people with other disabilities, within the Union. The Commission will, by two years after the date of transposition of the proposed Directive, present a report on this matter. That report shall include an assessment on whether expanding the scope of this Directive in accordance with its findings should be considered.

- **Explanatory documents**

In the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁷, Member States agreed to provide the Commission, when notifying it of the measures taken to transpose a directive, with one or more documents explaining the relationship between the provisions of the directive and corresponding provisions of their national measures, where there is a justification for demanding this additional information. The explanatory documentation will help to ensure that all national legal systems put in place a mandatory exception in line with this Directive in the light of Union obligations under the Marrakesh Treaty.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 specifies the subject-matter and the scope of the proposal. The proposed Directive will facilitate the use of certain copyright protected content, without the authorisation of the rightholder, for the benefit of persons who are blind, visually impaired or otherwise print disabled.

Article 2 gives the definitions of the terms ‘work and other subject-matter’, ‘beneficiary person’, ‘accessible format copy’ and ‘authorised entity’ that apply for the purposes of the proposed Directive.

Article 3 provides for a mandatory exception and states the specific permitted uses by beneficiary persons and authorised entities.

Article 4 relates to the circulation of accessible format copies in the internal market. The provision aims to ensure that accessible format copies made under the exception provided for in Article 3 may circulate or be accessed in any Member State.

Article 5 sets out the applicable rules for the protection of personal data.

Article 6 states the amendments to be made to Directive 2001/29/EC to ensure coherence with this Directive.

Article 7 states that the Commission will present a report on the availability in the internal market of works and other subject matter in accessible formats and for persons with disabilities other than those covered by this Directive.

Article 8 sets out the arrangements on the evaluation of the proposed Directive, in accordance with Better Regulation rules.

¹⁷ OJ C 369, 17.12.2011, p. 14.

Article 9 sets the time frame for the transposition of the proposed Directive by the Member States and specifies a number of accompanying obligations that must be met by the Member States, e.g. to notify the Commission of the main provisions that implement the proposed Directive in their national law.

Article 10 specifies the date of the Directive's entry into force and Article 11 states that the Directive is addressed to the Member States.

Proposal for a

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on certain permitted uses of works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled and amending Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

(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 Article 114 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 Committee¹⁸,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Union Directives in the area of copyright and related rights provide legal certainty and a high level of protection for rightholders. This harmonised legal framework contributes to the proper functioning of the internal market and stimulates innovation, creation, investment and the production of new content, including in the digital environment. It also aims to promote access to knowledge and culture by protecting works and other subject-matter and by permitting exceptions or limitations that are in the public interest. A fair balance of rights and interests between rightholders and users should be safeguarded.
- (2) Directive 96/9/EC of the European Parliament and of the Council¹⁹, Directive 2001/29/EC of the European Parliament and of the Council²⁰, Directive 2006/115/EC of the European Parliament and of the Council²¹ and Directive 2009/24/EC of the European Parliament and of the Council²² harmonise the rights of rightholders. Those Directives provide for an exhaustive list of exceptions and limitations to those rights, which allow for the use of content without the authorisation of the rightholders under certain conditions in order to achieve certain policy objectives.
- (3) Persons who are blind, visually impaired or otherwise print disabled continue to face many barriers in accessing books and other print material which are protected by copyright and related rights. Measures need to be taken to increase the availability of

¹⁸ OJ C , , p. .

¹⁹ OJ L 77, 27.3.1996, p. 20-28.

²⁰ OJ L 167, 22.6.2001, p. 10-19.

²¹ OJ L 376, 27.12.2006, p. 28-35.

²² OJ L 111, 5.5.2009, p. 16-22.

those works in accessible formats and to improve their circulation in the internal market.

- (4) The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled ('the Marrakesh Treaty') was signed on behalf of the Union on 30 April 2014²³. Its aim is to improve the availability of works and other protected subject-matter in accessible formats for persons who are blind, visually impaired or otherwise print disabled. The Marrakesh Treaty requires contracting parties to provide exceptions or limitations to the rights of holders of copyright and related rights for the making and dissemination of copies in accessible formats of certain works and other subject-matter, and for the cross-border exchange of those copies. The conclusion of the Marrakesh Treaty by the Union requires the adaptation of Union law by establishing a mandatory exception for uses, works and beneficiary persons covered by the Treaty. This Directive implements the obligations that the Union has to meet under the Marrakesh Treaty in a harmonised manner, with a view to ensuring that those measures are applied consistently throughout the internal market.
- (5) This Directive is designed for the benefit persons who are blind, have a visual impairment which cannot be improved so as to give those persons visual function substantially equivalent to that of a person who has no such impairment, or have a perceptual or reading disability, including dyslexia, preventing them from reading printed works to substantially the same degree as persons without such disability, or are unable to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading due to a physical disability. The objective of the measures introduced by this Directive is to improve the availability of books, journals, newspapers, magazines and other writings, sheet music and other print material, including in audio form, whether digital or analogue, in formats that make those works and other subject-matter accessible to those persons to substantially the same degree as to persons without an impairment or disability. Accessible formats include Braille, large print, adapted e-books, audio books and radio broadcasts.
- (6) This Directive should therefore provide for mandatory exceptions to the rights that are harmonised by Union law and are relevant for the uses and works covered by the Marrakesh Treaty. These include in particular the rights of reproduction, communication to the public, making available, distribution and lending, as provided for in Directive 2001/29/EC, Directive 2006/115/EC, and Directive 2009/24/EC, as well as the corresponding rights in Directive 96/9/EC. As the scope of exceptions and limitations required by the Marrakesh Treaty also includes works in audio form, like audiobooks, it is necessary that these exceptions also apply to related rights.
- (7) Uses laid down in this Directive include the making of accessible format copies by either the beneficiary persons or authorised entities serving their needs — whether public or private organisations, in particular libraries, educational establishments and other non-profit organisations that serve persons with a print disability as their main or one of their main activities or public interest missions —. Those uses should also include making accessible format copies, for the exclusive use of the beneficiary persons, by a natural person who does so on behalf of a beneficiary person or who assists the beneficiary person in doing so.

²³ Council Decision 2014/221/EU of 14 April 2014 on the signing, on behalf of the European Union, of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled. (OJ L115, 17.4.2014, p. 1).

- (8) The mandatory exception should also limit the right of reproduction so as to allow for any act that is necessary in order to make changes to or convert or adapt a work or other subject-matter in such a way as to produce an accessible format copy. This includes providing the necessary means to navigate information in an accessible format copy.
- (9) The exception should allow authorised entities to make and disseminate online and offline within the Union accessible format copies of works or other subject-matter covered by this Directive.
- (10) It should be possible for accessible format copies made in one Member State to be available in all Member States, in order to ensure their greater availability across the internal market. This would reduce the demand for redundant work in producing accessible format copies of the same work or other subject matter across the Union, thus generating savings and efficiency gains. This Directive should therefore ensure that accessible format copies made in one Member State may be circulated and accessed in all Member States. An authorised entity should thus be able to disseminate those copies, offline or online, to beneficiary persons and authorised entities in any Member State. Moreover, authorised entities and beneficiary persons should be allowed to obtain or have access to those copies from any authorised entity in any Member State.
- (11) In view of the specific nature of the exception, its targeted scope and the need for legal certainty for its beneficiaries, Member States should not be allowed to impose additional requirements for the application of the exception, such as compensation schemes or the prior verification of the commercial availability of accessible format copies.
- (12) Any processing of personal data under this Directive should respect fundamental rights, including the right to respect for private and family life and the right to protection of personal data under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and must be in compliance with Directive 95/46/EC of the European Parliament and of the Council, which governs the processing of personal data, as may be carried out by authorised entities within the framework of this Directive and under the supervision of the Member States' competent authorities, in particular the public independent authorities designated by the Member States.
- (13) The United Nations Convention on the Rights of Persons with Disabilities ('the UNCRPD'), to which the EU is a party, guarantees people with disabilities the right of access to information and the right to participate in cultural, economic and social life on an equal basis with others. The UNCRPD requires parties to the Convention to take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
- (14) Under the Charter of Fundamental Rights of the European Union, the Union recognises and respects the right of people with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.
- (15) With the adoption of this Directive, the Union aims to ensure that beneficiary persons have access to books and other print material in accessible formats. Accordingly, this Directive is an essential first step in improving access to works for people with disabilities.

- (16) The Commission will monitor the effect of this Directive. As part of this, it will assess the situation regarding the availability in accessible formats of works and other subject-matter other than those covered by this Directive, as well as the availability of works and other subject-matter in accessible formats for persons with other disabilities. The Commission will review the situation closely. Changes to the scope of this Directive may be considered, if necessary.
- (17) Pursuant to Directive 2001/29/EC, Member States may continue to provide for an exception or limitation for the benefit of persons with a disability in cases which are not covered by this Directive.
- (18) This Directive therefore respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. This Directive should be interpreted and applied in accordance with those rights and principles.
- (19) The Marrakesh Treaty imposes certain obligations regarding the exchange of accessible format copies between the Union and third countries that are parties to the Treaty. The measures taken by the Union to fulfil those obligations are contained in Regulation [...] which should be read in conjunction with this Directive.
- (20) The objective of this Directive — implementing the Union's obligations under the Marrakesh Treaty in order to improve access to works and other subject-matter protected by copyright and related rights for persons who are blind, visually impaired or otherwise print disabled in the Union — cannot be achieved by the Member States acting independently, as it requires the adaptation of Union law. Furthermore, by reason of its scale and effects, the objective can only be achieved through action at Union level. The Union may therefore 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 the same Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (21) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²⁴, 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.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Subject matter and scope

This Directive lays down rules on the use of certain works and other subject-matter without the authorisation of the rightholder, for the benefit of persons who are blind, visually impaired or otherwise print disabled.

Article 2
Definitions

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

²⁴ OJ C 369, 17.12.2011, p. 14.

- (1) ‘work and other subject-matter’ means a work in the form of a book, journal, newspaper, magazine or other writing, including sheet music, and related illustrations, in any media, including in audio forms such as audiobooks, which is protected by copyright or related rights and which is published or otherwise lawfully made publicly available;
- (2) ‘beneficiary person’ means:
 - (a) a person who is blind;
 - (b) a person who has a visual impairment which cannot be improved so as to give the person visual function substantially equivalent to that of a person who has no such impairment;
 - (c) a person who has a perceptual or reading disability, including dyslexia, and is, as a result, unable to read printed works to substantially the same degree as a person without an impairment or disability; or
 - (d) a person who is otherwise unable, due to a physical disability, to hold or manipulate a book or to focus or move their eyes to the extent that would be normally acceptable for reading.
- (3) ‘accessible format copy’ means a copy of a work or other subject-matter in an alternative manner or form that gives a beneficiary person access to the work or other subject-matter, including allowing for the person to have access as feasibly and comfortably as a person without a visual impairment or any of the disabilities referred to in paragraph 2;
- (4) ‘authorised entity’ means an organisation providing education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis, as its main activity or as one of its main activities or public-interest missions.

Article 3 *Permitted uses*

1. Member States shall provide that any act necessary for:
 - (a) a beneficiary person, or a person acting on their behalf, to make an accessible format copy of a work or other subject-matter for the exclusive use of the beneficiary person; and
 - (b) an authorised entity to make an accessible format copy and to communicate, make available, distribute or lend an accessible format copy to a beneficiary person or authorised entity for the purpose of exclusive use by a beneficiary person;

does not require the authorisation of the rightholder of any copyright or related right in the work or protected subject-matter pursuant to Articles 2, 3 and 4 of Directive 2001/29/EC, Article 1(1) of Directive 2006/115/EC, Article 8(2) and (3) and Article 9 of Directive 2006/115/EC, Article 4 of Directive 2009/24/EC and Articles 5 and 7 of Directive 96/9/EC.
2. Member States shall ensure that the accessible format copy respects the integrity of the work or other subject-matter, having due consideration for the changes required to make the work accessible in the alternative format.
3. Article 5(5) and the first, third and fifth subparagraphs of Article 6(4) of Directive 2001/29/EC shall apply to the exception provided for in paragraph 1 of this Article.

Article 4
Accessible format copies in the internal market

Member States shall ensure that an authorised entity established in their territory may carry out the acts referred to in Article 3(1)(b) for a beneficiary person or an authorised entity established in any Member State. Member States shall also ensure that a beneficiary person or authorised entity established in their territory may obtain or have access to an accessible format copy from an authorised entity established in any Member State.

Article 5
Protection of personal data

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

Article 6
Amendment to Directive 2001/29/EC

In Article 5(3) of Directive 2001/29/EC, point (b) is replaced by the following:

‘(b) uses, for the benefit of people with a disability, which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability, without prejudice to the obligations of Member States under Directive [...];’

Article 7
Report

By [two years after the date of transposition], the Commission shall present a report to the European Parliament, the Council and the European Economic and Social Committee on the availability, in accessible formats, of works and other subject-matter other than those defined in Article 2(1) for beneficiary persons, and of works and other subject-matter for persons with disabilities other than those referred to in Article 2(2), in the internal market. The report shall contain an assessment on whether an amendment of the scope of this Directive should be considered.

Article 8
Review

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

Member States shall provide the Commission with the necessary information for the preparation of the evaluation report and the preparation of the report referred to in Article 7.

Article 9
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [12 month after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those 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 10

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 11

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President