Council of the EU: Adoption of the Orphan Works Directive

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On 4 October 2012, the Council of the EU adopted the Orphan Works Directive. The legislative proposal for a directive on certain permitted uses of orphan works was published by the European Commission on 24 May 2011 (see IRIS 2011-7/5). On 8 June 2012 a compromise text was published, which provided solid ground for the adoption of the directive. The European Parliament approved the proposal by a large majority on 13 September 2012. With the approval of the Council of the EU, the Orphan Works Directive reached the final stage of its legislative procedure.

Considering the numerous amendments and the time that it took to establish the final subject-matter of the directive, reaching an agreement was a difficult task. In light of these difficulties, Commissioner Barnier welcomed the adoption of the Directive, stating that it is “a significant achievement in our efforts to create a digital single market.” The adoption of this directive marks the final step in the process of providing a legal framework for Orphan works.

A total of 62 amendments were made to the proposal. The essence of the proposal, however, remains the same. The main purpose of the directive is to provide a legal framework for facilitating the digitisation and dissemination of works that are protected by copyright or related rights, but of which the author is not known or, if known, cannot be located. In order to determine the orphan status of a work, a diligent search must be carried out for which comprehensive rules are given in the directive. This diligent search must be recorded and made accessible in a single publicly accessible online database. This database will be managed by the Office for Harmonisation in the Internal Market.

The directive facilitates the cross-border online access to orphan works in publicly accessible archives. One condition is that the orphan work must be used for the public interest mission of the specific cultural institution using the work. It is important to note that rightsholders are able to put an end to the orphan status of a work at any time.

The Directive entered into force the day following its publication in the Official Journal of the European Union. From that date, member states will have two years within which to implement the directive. Three years after entry into force of this directive, the Commission shall submit a report about the possible inclusion of

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other works or protected subject-matter that is currently not within the scope of the directive.

Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works

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