



The voice of blind and partially sighted people in Europe

Bárbara Martín – 2nd Vicepresident EBU – The Marrakesh Treaty and the EU

WIPO Subregional Roundtable on Copyright and Related Rights

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INTRODUCTION

Good morning.

First of all, I would like to thank WIPO for the invitation to this important roundtable. For me, it is always an honour to share European Blind Union's thoughts regarding Marrakesh treaty, at all terms.

Today I will speak about two different items: the process of ratification of the treaty in the EU, and the guide that the World Blind Union has published to facilitate the comprehension not only the treaty itself, but its background and the importance of its implementation. Even though both seem to be different, there is a mutual connection that will be explained along this presentation.

Let's start then with first one, don't be afraid, it is not going to be that hard. First, I will explain some general concepts, and then I will link it to the Marrakesh Treaty so that you will understand it very easily, you will see it.

1^o.- ABOUT THE EU, WHAT IS IT?

The European Union (EU) is unique. It is not a federal state because its Member States remain independent sovereign nations. Nor is it a purely intergovernmental organisation because the Member States do pool some of their sovereignty — and thus gain much greater collective strength and influence than they could have acting individually. They pool their sovereignty by taking joint decisions through shared institutions **such as the European Parliament**, which is elected by the EU citizens, **and the Council**, which represents national governments. They decide on the basis of proposals from the **European Commission**, which represent the interests of the EU as a whole.

But what does each of these institutions do? How do they work together? and what does this have to do with the Marrakech Treaty? Well, let's have a quick but practical view to it.

2^o.- A UNIQUE INSTITUTIONAL SET-UP

- **The European Council**, which brings together national and EU-level leaders, sets EU's broad priorities.
- **The European Parliament (EP)**, through its 751 MEPs, represents European citizens directly elected by them
- **The European Commission (EC)**, whose members are appointed by national governments, represents the interests of the EU as a whole.



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Together, these three institutions produce through the "Ordinary Legislative Procedure" the policies and laws that apply throughout the EU. In principle:

- **The EC proposes new laws, and the Parliament and Council adopt them.**
- **The Commission and the member countries** implement them,
- **The Commission** ensures that the laws are properly applied and implemented.

Other two other institutions that play vital roles:

- the **Court of Justice of the EU** upholds the rule of European law
- the **Court of Auditors** checks the financing of the EU's activities.

The powers and responsibilities of all of these institutions are laid down in the Treaties, which are the foundation of everything the EU does. They also lay down the rules and procedures that the EU institutions must follow.

The EU has a number of **other institutions and interinstitutional bodies** that play specialised roles that you may have heard of:

- the **European Central Bank** is responsible for European monetary policy
- the **European Economic and Social Committee** represents civil society, employers and employees
- the **European Committee of the Regions** represents regional and local authorities

3^o.- EU LAW PROCEDURE

1^o.- Before the **EC proposes new initiatives** it assesses the potential **economic, social and environmental** consequences that they may have. It does this by preparing 'Impact assessments' which set out the advantages and disadvantages of possible policy options.

The Commission also consults interested parties such as non-governmental organisations, local authorities and representatives of industry and civil society. Groups of experts give advice on technical issues. In this way, the Commission ensures that legislative proposals correspond to the needs of those most concerned and avoids unnecessary red tape. Citizens, businesses and organisations can participate.

2^o.- The **European Parliament and the Council review proposals by the Commission and propose amendments**. If the Council and the Parliament cannot agree upon amendments, a second reading takes place. This was not the case for Marrakesh Treaty so there is no need to go through it in more detail.



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4^o.- EU ACTS: Directives and Regulation

- **binding** legal instruments (regulations, directives and decisions)
- **non-binding** instruments (resolutions, opinions)
- **other** instruments (EU institutions' internal regulations, EU action programmes...)

Regarding Marrakesh Treaty were needed, a directive and a regulation. Let's see very briefly what they are to later on link it with Marrakesh itself.

A.- An **EU Directive** is a form of legislation that is "directed" at the Member States. It sets out the objective or policy which needs to be attained. The Member States must then pass the relevant domestic legislation to give effect to the terms of the Directive within a time frame set in the directive, for Marrakesh, 1 year.

Directives are often used to help enforce the free trade, free movement and competition rules across the EU. They can also be used to establish common social policies, and thus can affect employment issues, labour law, working conditions, and health and safety.

Directives can be used to set minimum EU standards to be applied at national level, but also leave member states free to apply more stringent national measures, provided these do not conflict with free movement and free market rules.

B.- **Regulations** are legal acts with a direct and general application in all EU countries, which aim to ensure the uniform treatment of the EU law. This means that regulations:

- do not have to be transposed into national law,
- create rights and obligations for individuals and they can therefore invoke it directly before national courts,
- can be used as a reference by individuals in their relationship with other individuals, EU countries or EU authorities.

THE MARRAKESH TREATY IN THE EU.

The Treaty was signed by the European Union on **30 April 2014** and will enter into force after its ratification as in everywhere else.

The implementation of the Marrakesh Treaty in the EU goes through two different legislative proposals, **a directive and a regulation**, both adopted on **17 July 2017**, although they are pending publication in the EU Official Journal.

1^o.- Directive 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 disabled¹.

¹ EU Directive proposal



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The **Directive** deals the right to make accessible copies of works for the beneficiaries, and to share them within the borders of the EU. It contains the definitions - "works", "copy in accessible format", "beneficiaries" and "authorized entities"-, the guarantee for the beneficiaries and authorized entities of which the Member States take over, the period of application of the directive, and its evaluation, control and review formats.

The Directive allows Member States to **optionally establish compensation schemes for publishers who consider themselves to be economically disadvantaged by the accessible format of their texts if they so wish**. The payment would be made by the authorized entity or entities, and the application of these compensations will be subject to strict conditions. Member States will decide whether or not to include such schemes when transposing the Directive into their national legislative frameworks.

2^o.- Regulation of the EP and of the Council on the cross-border exchange between the Union and third countries of accessible format copies of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled².

The **Regulation** opens the way to the global exchange of works in accessible format, thus meeting the requirement of the Treaty of free transit of these works among all States ratifying it. It contains, in addition to the definitions and opening to the import and export of works in accessible format, the guidelines on the control of the works and the entities with which they are exchanged. These entities must keep a record of the works that they export or import, as well as the proposal of the calendar of application of the regulation and the formats of evaluation and modification of the same one.

CRITICAL ELEMENTS

1^o.- When EU will ratify the treaty.

We have to distinguish between the **adoption of the ratification decision by Council and the deposit of the ratification instrument with WIPO**. While the EU is free to take the ratification decision at any time, the deposit of the ratification decision with WIPO is the act that actually triggers the effective date of becoming a party to the treaty. The legal situation as regards the latter is that when the EU becomes party to an international treaty, it must be in a position to give full effect to its obligations deriving from that treaty.

The EU legal framework has to comply with the international treaty, this will be the case once the transposition deadline of the Directive has expired and the Regulation has become applicable because it will be only at that time that authorised entities in the EU will benefit from the domestic legal framework allowing them to engage in exchanges with other parties in the way foreseen by the treaty.

² [EU Regulation proposal](#)



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The common practice is usually to adopt the ratification decision as soon as possible but to deposit it only once the EU instruments implementing the international treaties are approved as European law. There is no decision yet on this point so we expect that the Council will follow the same path in this case.

2º.- Authorized entities.

With regard to which and how many authorized entities, it was initially proposed that a **single authorized** entity in each Member State should exercise control of access to published works and create accessible works. Finally, no clause limiting the number of authorized entities has been included.

3. The clause allowing Member States to apply certain compensation schemes, if they consider it appropriate.

These compensations are limited to the authorized entity of the Member State that makes the accessible copy and the calculation of its scope is imprecisely explained, since it only mentions that the non-profit nature of the entities must be taken into account, the interest of the objectives pursued by the Directive and the interest of the beneficiaries, as well as the level of prejudice that would supposedly have for the owners of the rights.

I will come back to this aspect later as an example of how important it is to find a consensus that helps to find a solution where it seems that there is not.

CONCLUSIONS

- **It is taking too much time to ratify it, we don't expect it to happen before 2019**
By then blind and partially sighted will celebrate it, it will be the beginning of a new era for us only comparable to the milestone of Braille.
- **EU has been quite respectful with the content and philosophy of MT.** But now the ball is at national fields and it really needs to be played for the good of 30 million citizens!
- **Once MT is on board we will need to see how it works to make sure it does properly.** But, how?, well, WBU's guide will be for sure an excellent tool that will help everybody involved.