7.11.2012

NOTICE TO MEMBERS

(94/2012)


Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

Under Parliament’s Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the Luxembourg Chamber of Deputies on the above-mentioned proposal.
REASONED OPINION

General considerations

At its meeting of 18 October 2012 the Committee on the Economy, Foreign Trade and Economic Solidarity examined the proposal for a directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market (COM(2012) 372 final).

This proposal for a directive aims, on the one hand, to establish rules on transparency and good governance for the collective management of copyright and related rights, and, on the other hand, to create a legal framework which promotes the development, in the field of music-making, of multi-territory and multi-directory licensing by collecting societies.

The proposal is subject to oversight of the principles laid down in Article 5 of the Treaty on European Union. On 16 July 2012 the Committee on the Economy, Foreign Trade and Economic Solidarity was tasked with performing that oversight. The deadline for the national parliaments to respond expires on 29 October 2012.

Oversight of compliance with the principles of subsidiarity and proportionality

From a very general point of view, the Committee on the Economy, Foreign Trade and Economic Solidarity understands the argument made by the Commission with respect to the principle of subsidiarity. Given, in particular, the transnational nature of problems relating to the management of copyright in musical works, the objectives pursued by the proposal for a directive in question could be better achieved at Community level.

However, on closer examination of the proposed arrangements, this committee found that it goes into a lot of detail without offering convincing justifications for this approach.

For example, as regards the application of the standards introduced, the proposal would require Member States to appoint a specific authority (Article 39) responsible for managing complaint procedures, imposing sanctions (Article 38) and monitoring the application of Title III (Article 40). This committee is particularly concerned by Article 39. It reads as follows:

‘Article 39

Competent authorities

Member States shall notify the Commission of the competent authorities referred to in Articles 21, 37, 38 and 40 by the [date]. The Commission shall make that information available on its website.’

In addition to the serious problems involved in implementing Article 39 in the Luxembourg context, the committee also considers this provision to be contrary to the principles laid down in Article 5 of the Treaty on European Union, which states:
‘(...) Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. (…)’

Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. (…)’.

In view of the European Union principles referred to above, it seems excessive to want to require each country to appoint an independent authority specifically to ensure that the standards introduced by this proposal for a directive are applied.

It would be more consistent with the subsidiarity principle to respect the Member States’ internal organisation by allowing a diversity of national models for monitoring such standards. In Luxembourg, for example, according to the current model it is the judge who has the power to exercise this control.

Conclusion

For the reasons outlined above, the Committee on the Economy, Foreign Trade and Economic Solidarity believes that, in its current form, the proposed arrangement does not comply with the principle of subsidiarity.