

Directive 2014/26/EU of the European Parliament and of the Council
of 26 February 2014 on collective management of copyright and
related rights and multi-territorial licensing of rights in musical works
for online use in the internal market (Text with EEA relevance)

TITLE II

COLLECTIVE MANAGEMENT ORGANISATIONS

CHAPTER 1

***Representation of rightholders and 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 that they 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 laid down in paragraphs 2 to 8 and that those 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 the scope of its activity.

3 Rightholders shall have the right to grant licences for non-commercial uses of any rights, categories of rights or types of works and other subject-matter that they may choose.

4 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, 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

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notice not exceeding six months. The collective management organisation may decide that such termination or withdrawal is to take effect only at the end of the financial year.

5 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 12, 13, 18, 20, 28 and 33.

6 A collective management organisation shall not restrict the exercise of rights provided for under paragraphs 4 and 5 by requiring, as a condition for the exercise of those rights, that the management of rights or categories of rights or types of works and other subject-matter which are subject to the termination or the withdrawal be entrusted to another collective management organisation.

7 In cases 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 he authorises the collective management organisation to manage. Any such consent shall be evidenced in documentary form.

8 A collective management organisation shall inform rightholders of their rights under paragraphs 1 to 7, as well as of any conditions attached to the right set out in paragraph 3, before obtaining their consent to its managing any right or category of rights or type of works and other subject-matter.

A collective management organisation shall inform those rightholders who have already authorised it of their rights under paragraphs 1 to 7, as well as of any conditions attached to the right set out in paragraph 3, by 10 October 2016.

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, transparent and non-discriminatory criteria. Those membership requirements shall be included in the statute or membership terms of the collective management organisation and shall be made publicly available. In cases where a collective management organisation refuses to accept a request for membership, it shall provide the rightholder with a clear explanation of the reasons for its decision.

3 The statute of a collective management organisation shall provide for appropriate and effective mechanisms for the participation of its members in the 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 it 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 those records.

Article 7

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 Article 6(4), Article 20, Article 29(2) and Article 33 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 8

General assembly of members of the collective management organisation

1 Member States shall ensure that the general assembly of members is organised in accordance with the rules laid down in paragraphs 2 to 10.

2 A general assembly of members shall be convened at least once a year.

3 The general assembly of members shall decide on any amendments to the statute and to the membership terms of the collective management organisation, where those terms are not regulated by the statute.

4 The general assembly of members shall decide on the appointment or dismissal of the directors, review their general performance 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 such 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 amounts due to rightholders;
- b the general policy on the use of non-distributable amounts;
- 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;
- e the use of non-distributable amounts;
- f the risk management policy;
- g the approval of any acquisition, sale or hypothecation of immovable property;
- h the approval of mergers and alliances, the setting-up of subsidiaries, and the acquisition of other entities or shares or rights in other entities;
- i the approval of taking out loans, granting loans or providing security for loans.

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6 The general assembly of members may delegate the powers listed in points (f), (g), (h) and (i) of paragraph 5, by a resolution or by a provision in the statute, to the body exercising the supervisory function.

7 For the purposes of points (a) to (d) of paragraph 5, Member States may require the general assembly of members to determine more detailed conditions for the use of the rights revenue and the income arising from the investment of rights revenue.

8 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 22.

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

9 All members of the collective management organisation shall have the right to participate in, and the right to vote at, the general assembly of members. However, Member States may allow for restrictions 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, on the basis of 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.

The criteria laid down in points (a) and (b) of the first subparagraph 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 19 and 21.

10 Every member of a collective management organisation shall have the right to appoint any other person or entity as a proxy holder to participate in, and vote at, the general assembly of members on his behalf, provided that such appointment does not result in a conflict of interest which might occur, for example, where the appointing member and the proxy holder belong to different categories of rightholders within the collective management organisation.

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.

Each proxy shall be valid for a single general assembly of members. 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.

11 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 10 shall apply to the assembly of delegates *mutatis mutandis*.

12 Member States may decide that where a collective management organisation, by reason of its legal form, does not have a general assembly of members, the powers of that assembly are to be exercised by the body exercising the supervisory function. The rules laid down in paragraphs 2 to 5, 7 and 8 shall apply *mutatis mutandis* to such body exercising the supervisory function.

13 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 are to be exercised by an assembly of those rightholders. The rules laid down in paragraphs 2 to 10 shall apply *mutatis mutandis* to the assembly of rightholders.

Article 9

Supervisory function

1 Member States shall ensure that each collective management organisation has in place a supervisory function for continuously monitoring the activities and the performance of the duties of the persons who manage the business of the organisation.

2 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.

3 Each person exercising the supervisory function shall make an annual individual statement on conflicts of interest, containing the information referred to in the second subparagraph of Article 10(2), to the general assembly of members.

4 The body exercising the supervisory function shall meet regularly and shall have at least the following powers:

- a to exercise the powers delegated to it by the general assembly of members, including under Article 8(4) and (6);
- b to monitor the activities and the performance of the duties of the persons referred to in Article 10, including the implementation of the decisions of the general assembly of members and, in particular, of the general policies listed in points (a) to (d) of Article 8(5).

5 The body exercising the supervisory function shall report on the exercise of its powers to the general assembly of members at least once a year.

Article 10

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

1 Member States shall ensure that each collective management organisation takes all necessary measures so that the persons who manage its business do so in a sound, prudent and appropriate manner, using sound administrative and accounting procedures and internal control mechanisms.

2 Member States shall ensure that collective management organisations put in place and apply procedures to avoid conflicts of interest, and where such conflicts cannot be avoided, to identify, manage, monitor and disclose actual or potential conflicts of interest in such a way as

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to prevent them from adversely affecting the collective interests of the rightholders whom the organisation represents.

The procedures referred to in the first subparagraph shall include an annual individual statement by each of the persons referred to in paragraph 1 to the general assembly of members, containing the following information:

- a any interests in the collective management organisation;
- b any remuneration received in the preceding financial year from the collective management organisation, including in the form of pension schemes, benefits in kind and other types of benefits;
- c any amounts received in the preceding financial year as a rightholder from the collective management organisation;
- d a declaration concerning any actual or potential conflict between any personal interests and those of the collective management organisation or between any obligations owed to the collective management organisation and any duty owed to any other natural or legal person.