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REPORT

From:	Presidency
To:	Permanent Representatives Committee / Council
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Subject:	Proposal 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 - Progress Report

INTRODUCTION

The initial discussions of the proposal on the European Accessibility Act (EEA) having had taken place during the previous semester¹, the discussions during the Slovak Presidency have been based on the examination of successive Presidency drafting suggestions. The Working Party devoted six meeting days to the file during the second semester.

A large number of delegations have maintained general scrutiny reservations on the proposal. Similarly, several delegations have indicated that they are still scrutinising the drafting suggestions by the Slovak Presidency. The Danish, Maltese and UK delegations have entered parliamentary scrutiny reservations.

¹ The first progress report was presented for the EPSCO in June 2016, 9627/16.

THE SLOVAK PRESIDENCY'S APPROACH

The focus has primarily been on issues that were essential for advancing the discussions, including clarifying the scope of the Commission proposal (Articles -1 (new) and 1) and the definitions (Article 2). In particular, the Presidency has sought to improve legal clarity in the text and to avoid any overlap or conflict with existing Union legislation. Taking also into account that a large number of delegations have maintained their general scrutiny reservations on the proposal, the Presidency adopted a step-by-step approach in modifying the text. All articles and the corresponding recitals have been discussed, and several have been redrafted.

The main horizontal changes to the text suggested by the Presidency are as follows:

Using the definition of the UN Convention. The proposal is part of the implementation of the UN Convention on the Rights of Persons with Disabilities. The definition used in the proposal has therefore been aligned with the definition of "persons with disabilities" that is contained in the UN Convention. However, the Presidency's text also stresses that increasing the accessibility of products and services can benefit, not only persons with disabilities, but any person with an impairment, whether permanent or temporary.

Concentrating on the internal market objective of the proposal. The new article on "Subject matter" (Article -1) sets out the purpose of the draft Directive, clarifying in particular the fact that the EAA is meant to eliminate and prevent internal market barriers arising from potentially divergent accessibility requirements set by different Member States. While the proposed scope related to other Union Acts (Article 1(3)) is that of those legal acts and goes beyond the list of specific products (Article 1(1)) and services (Article 1(2)) listed in the EEA, the Presidency, following requests from numerous delegations, suggested that the EAA should be strictly limited to specific products and services which were already in the scope of the EAA. Thus Article 1(3), as suggested by the Presidency, would be limited to Union acts which include mandatory provisions on accessibility. Furthermore the accessibility requirements should only be applied in respect of these Union acts in relation to products and services covered by Article 1(1) and 1(2) of the EAA.

Clarifying the voluntary accessibility requirements concerning the built environment. Member States may decide that for certain services included in the EAA (passenger transport, consumer banking, telephony/electronic communication), the accessibility requirements set by the EAA should also apply to the built environment used by customers of these services. The Presidency placed this "encouragement" provision in a separate Article 3a, in order to clarify its voluntary nature. However, if the above services are provided on the basis of the other Union acts, Member States will have to apply any compulsory accessibility requirements on the built environment included in those Union acts.

Reducing the financial and administrative burden for economic operators and relevant authorities, including market surveillance authorities and the Commission. Many delegations felt that the provisions contained in the Commission proposal would create a substantial administrative and financial burden. The Presidency suggested several ways to reduce the burden placed on economic operators, relevant authorities, market surveillance authorities and the Commission. In particular, it proposed limiting the timeframe of application of certain provisions of the EAA.

The Presidency wished to ensure that service providers or relevant authorities had sufficient time to adapt to the accessibility requirements contained in the EAA, including provisions on the preservation of rights and obligations arising from long-term contracts concluded before the proposed date of entry into force of the EAA (see Article 27a (new)). For example, a service provider would be allowed to continue to operate self-service terminals until they reached the end of their economically useful lives or until they were fully depreciated (see Article 27a (new)).

It was also clarified in the text that the EAA would have no retroactive effect; in other words it should only apply to products placed on the market or services provided after the date of application. The same temporal limitation applies in relation to calls for competitions, programmes and transport infrastructure that will be procured, adopted/implemented or constructed after the date of application of the Directive. Furthermore, the Presidency also suggested reducing the obligations related to the preparation and submission of notifications regarding the application of safeguard clauses and suggested cancelling the obligation to keep a registry of all complaints alleging non-compliance of products with accessibility requirements.

Adaptation of the New Legislative Framework (NLF) and market surveillance measures

pursuant to Regulation (EC) 765/2008 in relation to accessibility requirements contained in the EAA. The Commission proposal follows the NLF approach to product harmonisation; the regular NLF format also includes provisions on "serious risks" to health, safety, the environment or any other public interest. However, the Presidency text clarifies (Article 17(-1)) the fact that non-compliance with EAA accessibility requirements should not constitute a serious risk within the meaning of other NFL product directives and Regulation (EC) 765/2008. Moreover, the Presidency specified that the most severe measures that may be imposed by the internal market authorities, such as the recall or withdrawal of a product from the market, is only to be applied as *a last resort* solution.

Reorganisation of Annex I. While the Presidency did not suggest substantial modifications to the content of Annex I on accessibility requirements for products and services, it provided a considerably simplified drafting of this Annex. The simplification was broadly welcomed by delegations.

DRAFTING SUGGESTIONS on DIFFERENT PRODUCTS, SERVICES and UNION ACTS

Concerning specific sectors, products, services and other elements of the draft Directive, the Presidency made the following specific suggestions:

The scope of **products covered by the EAA** (Article 1(1)) has been clarified. Overall, this part of the text has not been considered controversial. However, the expression "*advanced computing capability*" has been discussed on several occasions. For example, delegations have noted that what is considered "*advanced*" will depend on technological development. In the light of these discussions, the Presidency has suggested a definition of "*advanced computing capability*" designed to help economic operators and users of accessible equipment to know when accessibility functions could reasonably be expected to be required in the equipment.

Extensive modifications have been made to the provisions on **services covered by the EAA** (Article 1(2)). Most of the services included in the EAA proposal are already regulated at the Union level, in particular transport services, audio-visual services and electronic communication services. However, these regulations only contain limited provisions on accessibility. The drafting suggestions aim to clarify which aspects of the services covered fall within the scope (Article 1) and how to define them (Article 2). In particular, the text has been amended so as to clarify that **only certain aspects of transport services** are covered by the EAA Directive (Article 1(2)(c)). The text now includes **links between a service and "the related equipment used in the provision of the service"** (see e.g. Article 1(2)(a),(b),(c)(ii) and (e)). A clarification has been made to Article 1(2)(b), as the current text refers only to "*services providing access to audio-visual media services*" and not to audio-visual services themselves (definition in Article 2(6a)).

A number of **new definitions** have been added to Article 2 ("*service*", "*service provider*", "*consumer banking*", different transport services, "*computer hardware*", "*operating system*", etc.).

The Presidency also sought to **eliminate possible conflicts between the EAA Directive and sectorial Union legislation** already providing for assistance of persons with reduced mobility and for some other accessibility requirements in the transport sector by adding provisions to the Articles 1 and 3 (see in particular Article 3 paragraphs 11 to 15).

References to accessibility obligations for **websites** have been updated following the adoption of the Web Accessibility Directive.²

Delegations have discussed different aspects of **e-books**, including the question as to whether an e-book is a service or a product. Following these discussions, it was considered appropriate to include a definition of e-book in the text.

Several delegations have raised concerns on the potentially high costs of accessibility requirements for **e-commerce** service providers, in particular to SMEs and micro-enterprises.

² This Directive sets accessibility requirements to public websites. It will be published shortly in the Official Journal.

Article 1(3) on scope and Chapter VI (Articles 21-23) on **accessibility requirements in the other Union legislation** have been discussed at length. A number of recent Union acts (on public procurement, on EU Funds for the financing period 2014-2020, on tendering for public transport services and on transport infrastructure) refer to "accessibility" (whether with mandatory or voluntary requirements), but only in a general way. The Commission proposal includes references to a number of such Union acts. Some delegations suggested removing all or some of provisions which refer to the other Union acts, while others considered that the other Union acts should be only regulated with regard to the products and services otherwise covered by the EAA Directive. The Presidency inserted a paragraph (Article 1(3-a)) stipulating that accessible products and services that fall under other Union acts would only be covered insofar as they also fall under the scope of the EAA as specified in Article 1(1) and (2). Moreover, the drafting suggestions limit the scope of the EAA to Union legislation with *mandatory* accessibility provisions.

CONCLUSION

The suggestions of the Presidency³ have been appreciated by delegations, since they focused on the major concerns of the delegations, including improving legal certainty, reducing the administrative and financial burdens and ensuring that the EAA does not overlap with other Union acts.

While discussions during the Slovak Presidency have concentrated on the essential parts of the text (scope, definitions, transitional measures), other aspects will require further attention and discussion. In particular, Chapter IV on standards and technical specifications has not yet been examined in detail. In the last phase of the discussions, a number of delegations presented detailed drafting suggestions which will be taken into account in the forthcoming work.

Since the positions of a number of Member States are still not known (they have yet to complete their scrutiny of the proposal), the Slovak Presidency and the incoming Maltese Presidency intend to prepare a joint questionnaire in order to seek guidance on the future direction of the negotiations.

During the next semester, the Council preparatory bodies will continue working towards a Council position, with a view to starting negotiations with the European Parliament, which is expected to formulate its position during the first semester of 2017.

³ The latest set of Presidency drafting suggestions can be found in 14095/16.