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NOTE

from: Presidency
to: Delegations

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Subject: Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites
- Progress report

The present report has been drawn up under the responsibility of the Italian Presidency and is without prejudice to particular points of interest and more detailed comments of individual delegations. It sets out the work done so far in the Council's preparatory bodies and gives an account of the state of play in the examination of the above-mentioned proposal.

INTRODUCTION

1. The Commission adopted its proposal for a *Directive of the EP and of the Council on the accessibility of public sector bodies' websites*¹ on 3 December 2012 with Article 114 TFEU as a legal basis. The proposal aims to introduce mandatory EU standardised accessibility features for certain types of websites.
2. After a first presentation of the proposal and of its impact assessment in January 2013, the Council Working Party on Telecommunications and the Information Society (WP TELE) discussed the proposal under the Irish Presidency. Its Progress Report² highlighted the main issues raised by delegations, i.e.: the use of standards, scope, legal basis and the costs and benefits of the implementation of the proposal. A report by the Greek Presidency took the status of the file forward to May 2014.³
3. The delayed adoption of the European Standard hampered progress on the file, with further discussions suspended until its adoption.
4. In the European Parliament, Mr. Jorgo Chatzimarkakis (IMCO) was appointed as Rapporteur. Prior to the end of its term of office, the outgoing EP adopted its first reading position on 26 February 2014.⁴ In the new EP, Ms. Dita Charanzova (IMCO) has been appointed Rapporteur.

¹ Doc 17344/12

² Doc 10089/13

³ Doc 10016/14

⁴ Doc 6835/14

STATE OF PLAY IN THE COUNCIL AND WAY FORWARD

5. The proposal was discussed in WP TELE in October 2014. Following additional written comments from delegations, a revised text proposed by the Presidency was thoroughly discussed in WP TELE on 20 November and remains under discussion. On the basis of those discussions, the Presidency put together the present progress report in order to inform Ministers about the state of play of the proposal and draw attention to the issues which will require further discussions. This report should be read together with the reports presented by the Irish and Greek Presidencies referred to in point 2, since many concerns raised there remain valid.
6. The Presidency intends to continue work on the file during the remainder of its term with a view towards enabling Council to enter into negotiations with the EP aimed at concluding the file during the next Presidency.

MAIN ELEMENTS OF THE PRESIDENCY PROPOSAL

The Presidency text, under further discussion in WP TELE, introduces the following main changes to the proposal.

Scope (Article 1 and the Annex)

The scope is changed to cover all public sector websites and the whole of those websites. This implies the deletion of a number of other parts of the proposal, including the Annex (although an illustrative list of websites covered could still prove useful), as well as minor consequential changes throughout the text. Covering all public sector websites and the whole of those might require exclusion of specific cases from the scope. In this context, Directive 2010/13 on Audiovisual Media Services addresses accessibility issues in Article 7, under which Member States shall encourage media providers to ensure that their services are gradually made accessible. Recital 46 of the Directive gives sign language, subtitling etc as accessibility examples.

It is not proposed to extend the scope to cover websites published by private entities. However, there is an issue regarding websites supported by public funds or published by public-private partnerships etc. In that respect, the definition of "public sector body" in Article 2(8) (which has been simplified and updated to reflect the new Public Procurement Directive) includes bodies "financed, for the most part, by the State, regional or local authorities", if they are also "established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character" and they have legal personality. Furthermore, the definition of "public sector body" in Regulation 910/2014 (the eID Regulation) covers private entities mandated by a public sector body to provide public services, when acting under such a mandate.

Definitions (Article 2)

The changes in Article 1 make the definition of "websites concerned" and "content of websites" redundant.

The definition of "public sector body" has been clarified by the addition of a separate definition of "body governed by public law" (identical to the definition in the eID Regulation) and updated to reflect Directive 2014/24.

The definition of "international standard" has been deleted due to the deletion of Article 5(3), which was the sole normative reference to an international standard.

Requirements for web-accessibility (Article 3)

In general, Article 3(1), laying down the essential requirements for web-accessibility, contains appropriate language to describe the requirements. All deadlines have been moved to Article 10.

Presumption of conformity, standards (Articles 4-5)

Article 5 has been changed to reflect the existence of EN 301 549.

There is a question as to whether Article 4 is necessary if the Commission does not intend to go through the process of turning EN 301 549 into a harmonised standard. Standardisation mandate M 376, issued in 2005 and resulting in EN 301 549, was for a European standard in support of policies for e-accessibility, specifically in a procurement context. The mandate does not appear to have been for a harmonised standard for the application of (existing or future) Union harmonisation legislation. EN 301 549 now exists and Article 5 provides that compliance with that standard in itself establishes a presumption of conformity with Article 3.

EN 301 549 contains accessibility requirements intended for public procurement. However, the focus on public procurement would not appear to pose a problem for making the relevant parts of it applicable also for this Directive, as long as the content of the standard is suitable for that. Section 9 of the standard (web) for example refers systematically to WCAG 2.0. However, the parts of the standard relevant for this Directive should be identified.

Additional measures (Article 6)

Article 6(1) is changed and Article 6(2) deleted due to all public sector websites being included.

A new Article 1a introduces a suggestion for a "comply or explain" requirement.

A reference to monitoring and reporting is discussed for Article 6(4), thereby linking Article 6(4) with the monitoring in Article 7. This possible approach would mean that the cooperation under Article 6(4) provides a basis for discussing aspects such as quantitative versus qualitative monitoring, the use of usability studies, sampling etc.

Monitoring and reporting (Article 7)

The reference to continuous monitoring in Article 7(1) has been replaced with periodical monitoring. In addition, a reference to monitoring and remedial action based on specific complaints is suggested. This might strike a balance between quantitative and qualitative monitoring and also represents a form of sampling.

The reporting obligation in Article 7(2) has been changed from annual to every [X] (to be determined) years.

The implementing act in Article 7(4) has been replaced by Commission guidelines, based on the outcome of the cooperation under Article 6(4).

Article 7(5) has been changed to include a suggested reference to the cooperation under Article 6(4).

Exercise of delegation and committee (Articles 8-9)

Deleted.

Transposition (Article 10)

The date in Article 10(1) has been changed to [24] months after the date of entry into force.

The former Article 3(2) has been moved to Article 10(1a), with the date changed to [36] months after the date of entry into force.

Review (Article 11)

Given the changes to Article 10, the date for the review needs to be further considered.

Annex

For further discussion, including on whether an Annex is necessary or whether any list could instead be addressed in a recital.
