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OUTCOME OF PROCEEDINGS

From:	WORKING PARTY ON SOCIAL QUESTIONS
On:	1 April 2016
No. prev. doc.:	7044/16 SOC 145 MI 148 ANTIDISCRIM 20 AUDIO 24 CODEC 292
No. Cion doc.:	14799/15 SOC 700 MI 770 ANTIDISCRIM 15 AUDIO 34 CODEC 1774 + ADD 1 - ADD 3 - COM(2015) 615 final
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

I. INTRODUCTION

At its meeting on 1 April 2016, the Working Party on Social Questions (SQWP) continued its discussion on the proposal for a Directive on the 'European Accessibility Act' (EAA).¹ The Working Party examined the legal aspects of the proposal and asked the Commission services to provide concrete examples in order to better understand the scope and functioning of the proposed Directive.

All delegations maintained general scrutiny reservations on the proposal; DK and UK also maintained parliamentary scrutiny reservations.

¹ 6th meeting devoted to this file.

II. SUMMARY OF THE DISCUSSION

(a) Legal aspects

The Council Legal Service (CLS) representative gave a presentation on the CLS' assessment, which mainly concerned the internal market legal basis of the proposal (Article 114 TFEU). The Working Party requested a written note on this assessment.

Delegations' comments on the legal aspects of the proposal dealt with the following:

- the scope of the proposal and their views on the products and services which are included therein;
- specific doubts regarding the inclusion of certain sectors within the scope (construction, transport, audio-visual media services, e-commerce) and the proposal's impact on accessibility in those sectors;
- how different (Member State) institutions (e.g. public authorities) would be involved in the implementation of the Directive; and
- the reasoning in the Commission's Impact Assessment, which underlies the choice of different elements in the proposal.

The Commission representatives (Cion) stressed the following:

- in choosing the products and services to be included within the scope, the Commission had considered whether Member States had already regulated these products or were likely to do so, as well as the risk of divergent rules being adopted and the resulting impact or likely impact on the market including in terms of distortion of competition;
- also, in choosing the products and services to be covered, the Commission had checked their importance for persons with disabilities in the light of the UN Convention on the Rights of Persons with Disabilities (UNCRPD);

- The EAA describes the "meaning" of accessibility for a number of EU legal Acts contained in its scope; thus the Directive would be *complementary* to existing Union legislation e.g. in the transport and audio-visual sectors. The legal acts included within the scope of the Directive already set out certain obligations on accessibility or options related to accessibility which are not modified by the EAA; and
- the Commission has promoted and supported website accessibility since the late 1990s but voluntary measures by the market operators have not resulted in making enough public and private websites accessible.

The Chair stressed that the scope was the fundamental starting point for Council discussions on the proposal and asked the Cion to provide more information, in writing, on the reasons why different sectors had been included in the proposal and on the links between the EAA proposal and other (sector-specific) Union legislation.

(b) Cion's explanatory intervention (see 7044/16, page 2)

Cion addressed certain key issues raised in the previous meeting. In particular, Cion clarified how the products and services were selected and how the EAA complements existing EU law, as well as the key differences in the provisions applying to products and services and the provisions in the EAA concerning other Union Legal acts. The Working Party then had an extensive discussion and requested further clarification on those elements and certain other issues. The Commission responded to questions and provided examples clarifying the provisions of the Directive. The key issues discussed were:

- products and their placement on the market ("new products"); services (to be noted that no concept of "new service" exists); links between the *service provided* and the *products needed* for that provision;
- the use of products related to *e-books as services*;

- *from which moment* the EAA Directive would require a product or a service to fulfil EAA accessibility requirements; *from which moment and until when* the unreasonable burden safeguard could be used;
- *who would be responsible* for the compliance of accessibility requirements; how the service provider would be identified;
- what requirements would apply to *public (state-owned) companies* who received public funding; would such companies be able to use the safeguard related to a disproportionate burden; would public funding need to be increased because of the obligations in the EAA; the question whether the EAA impose any obligations in respect of state aid;
- would *partial fulfilment of accessibility requirements* be in line with the EAA (e.g. replacing only some ticketing machines with accessible ones or not providing accessibility in remote parts of the transport network);
- *which transport modes* are included in the proposed Directive and which parts of the transport service would be covered; how the EAA Directive is linked to existing Union legislation on transport;
- what are the accessibility requirements for *products* harmonised by the EAA where *services* are co-financed by the structural funds programmes or purchased in accordance with public procurement rules;
- what would happen if different economic operators came up with very different results in their assessments on what constituted disproportionate burden; and
- in placing different obligations on different economic actors, does the proposal respect the principle of equal treatment?

III. CONCLUSION

The Chair invited the Council Legal Service to provide a written opinion before the next meeting of the Working Party. In addition the Commission will provide a contribution in writing focusing on various issues raised and discussed, including the application of the Directive to products and services and its link with other EU legislation.

The Chair noted that delegations had already submitted a number of written suggestions. In order to prepare for the next meeting, provisionally scheduled for 18 April, delegations were invited to submit any further drafting suggestions by 11 April.
