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REPORT

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 1)
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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 - <i>Analysis of the final compromise text with a view to agreement</i>

I. INTRODUCTION

In December 2015, the Commission published the proposal for a European Accessibility Act (EAA) that will make various products and services in the European Union (EU) more accessible for persons with disabilities.

Both in 2017 and 2018, the EAA proposal has been identified in the 'Interinstitutional Declaration on the EU's legislative priorities' as one of the files on which the European Parliament, the Council and the European Commission should make swift legislative progress.

The European Economic and Social Committee delivered its opinion on 25 May 2016.¹

On 14 September 2017, the European Parliament adopted its first reading negotiation mandate.² In December 2017, the Council agreed on its General Approach, with significant redrafting of the proposal, which focused, in particular, on the following elements:

- the need to ensure a clear definition of the Directive's *scope*;
- keeping the *accessibility requirements* for products and services at the *functional level* (Annex I) and giving clear examples on how these accessibility requirements could be achieved or what the aimed result could be (Annex Ia);
- Article 12 on the *disproportionate burden* was amended in order to clarify the procedure and to provide clear guidance to economic operators and market surveillance authorities. A new Annex IV with criteria for assessing the disproportionate burden was added into the text;
- the text was *reorganised* to improve legal clarity (e.g. by separating the parts of the Directive dealing with products, services or both).

The first reading trilogues started in March 2018. The main political issues were identified at the beginning of the trilogue discussions.³ The issues where the Council and Parliament mandates differed most from each other included the idea of a product microenterprise exemption, passenger transport and in particular urban and suburban transport services, tourism, the answering of emergency calls, the built environment used in the provision of services, the CE marking of products, and accessibility requirements in other Union acts.

¹ SOC/257 - EESC-2016-00050-00-00-AC

² The Rapporteur for the lead Committee (IMCO) is Morten LØKKEGAARD (DK/ALDE). The Rapporteur for the EMPL Committee is Adám KÓSA (HU/EPP).

³ In total, there were seven trilogues, four during the Bulgarian Presidency and three during the Austrian Presidency, and 22 technical meetings.

Coreper discussed and updated the Council mandate twice (first on 26 September and a second time on 31 October/7 November 2018)⁴. A number of important elements, in particular concerning urban and suburban transport services, the answering of emergency communications, the built environment and accessibility requirements in other Union acts were added to the text at the last two trilogues, based on the Council's updated mandate.

On 8 November 2018, the Council and the Parliament negotiating teams reached in their 7th political trilogue a provisional agreement on the last political issues. The technical level was mandated to finalise the text of the provisional agreement and three further technical meetings duly took place. The text of the provisional agreement is set out in the Addendum.

II. PROVISIONAL AGREEMENT: ELEMENTS NEW IN RELATION TO THE GENERAL APPROACH

The original approaches of the Council and the Parliament were very different. During the trilogue process the Parliament accepted a great number of Council amendments, e.g. the amended name of the draft Directive, adding recitals to explain the inclusion of specific products and services in the scope, the new structure of Annex I, as well as new Annexes Ia and IV.

The main differences between the Council General Approach and the provisional agreement can be summarised as follows:

New elements in **Article 1 (scope)**:

- payment terminals are included in the product scope (Article 1(b)(ia)), also when they are not dedicated to the provision of services in the scope;
- interactive self-service terminals of urban, suburban and regional transport services (see Article 1(2)(c)) have been included;
- the answering of emergency communications to the single European emergency number 112 has been included (Article 1(2a));

⁴ See documents 12328/18, 13432/18 and 13811/18.

In addition, the provision in Article 1(4) on copyright and related rights has been redrafted. It is important for the Parliament that the Directive text refers specifically to the relationship of the Accessibility Act with the Marrakesh Directive and the Marrakesh Regulation (creating a set of limitations and exceptions to copyright for the benefit of the blind, visually impaired and otherwise print disabled persons).

In Article 2 (Definitions), the main changes are:

- in the definition of "consumer banking services", paragraph 3 of Section A of the MiFID II Directive is left out of the scope (Article 2(20a));
- new definitions on "assistive technology", "urban and suburban transport services" and "regional transport services" (Article 2(21e), (29) and (30));
- the definition of "applicable accessibility requirements" (Article 2(2a) of the General Approach) is deleted from the text and the wording is included, as relevant, in various parts of the text.

Article 3 (accessibility requirements) is modified as the provisional agreement now includes accessibility requirements for urban, suburban and regional transport services, for the answering of emergency communications to the single European emergency number 112, and for the built environment (voluntary). In addition, Member States are to provide guidelines and tools for microenterprises on the application of the Directive.

In addition, in specific cases, the Commission is empowered to adopt delegated acts to supplement Annex I.

Manufacturers and importers of products covered by the Directive should keep a register of non-conforming products (**Articles 5(8) and 7(8)**).

In **Article 10(2a)**, the Commission is empowered to adopt a delegated act changing the period for the identification of economic operators dealing with products.

Article 12 on the disproportionate burden was redrafted during the trilogue process, in order to increase legal clarity. The main changes compared to the General Approach are:

- it is made clear what exactly the responsibilities of microenterprises manufacturing, importing and distributing products are (the assessment, documenting the assessment, and informing the relevant market surveillance authorities);
- the Commission is empowered to amend Annex IV;
- economic operators shall inform relevant authorities if they rely on paragraph 12(1).

Articles 13 and 14 on standards and common technical specifications were combined. It is important for the Parliament that following either harmonised standards or technical specifications can provide presumption of conformity. In addition, standardisation should always be the preferred option; therefore, there are specific conditions when the Commission can adopt technical specifications.

A **new Article 20b** envisages a Commission Working Group to facilitate the exchange of information and best practices, to foster cooperation on and monitor the implementation of the Directive, and to provide advice.

Article 21 on accessibility requirements in other Union acts (replacing Articles 1(3), 21 and 22 of the proposal) is included in the Directive in the form agreed by Coreper on 7 November (see also Annex I, Section IVb). The redrafting of Article 23 is a technical amendment following the amended text of Article 21.

In **Chapter VII on final provisions**, there are also changes, mostly required by the changes made elsewhere in the text:

- the new Article 23a on the exercise of delegation;
- in Articles 25(2b) and 26(4a), it is stipulated that the EAA provisions on enforcement and penalties do not apply to the Public Procurement Directives;
- in Article 27a, there are deadlines for all transitional measures (5 or 20 years);
- Article 28(2) explains in more detail what the Commission reports should cover. In particular, the Parliament insisted in including these details.

Annexes:

- in Annex I, the changes reflect both changes to the articles (accessibility requirements for the answering of emergency communications to the number 112; other Union acts) and original EP amendments;
- the format of Annex Ia was modified to ensure that it clearly reads as a list of examples;
- accessibility requirements for the voluntary built environment are included in the separate Annex Ib.

All these amendments are the result of difficult negotiations during which each side had to compromise in order to reach a provisional agreement.

III. CONCLUSION

Should the Committee of Permanent Representatives approve the informally agreed text as set out in Addendum to this Note, the formal procedure requires that a letter be sent by the President of the Permanent Representatives Committee to the Parliament proposing that an agreement in first reading could be reached, subject to the Parliament agreeing to adopt the identical text at its plenary session.

In order to pave the way for the final adoption of the Directive, in accordance with Article 294 TFEU, the Permanent Representatives Committee is invited to confirm, on the basis of the consolidated text set out in the Addendum, that this text is acceptable, and to agree to inform the Parliament accordingly.
