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From: Presidency

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

- Progress report

I. INTRODUCTION

In December 2015, the Commission published the proposal for a European Accessibility Act (EAA) that once adopted, would make various products and services in the European Union (EU) more accessible for persons with disabilities. During discussions, both at technical and political levels, delegations have expressed broad support for the aim of this proposal. The proposed EAA was also identified in the Interinstitutional Declaration on the EU's legislative priorities as one of the files on which the European Parliament, the Council of the EU and the European Commission should make swift legislative progress and, where possible, complete the work before the end of 2017.

The Maltese Presidency has invested a lot of resources into advancing the work on the EAA, including a substantial discussion on the file at Coreper. In total, the Working Party devoted seven meeting days to the file during the semester.

All delegations have maintained general scrutiny reservations on the proposal as a whole. The Danish, Maltese and UK delegations have parliamentary scrutiny reservations.

Meanwhile, the European Parliament has examined the file at the Committee level, but has not yet adopted its Opinion in plenary.¹

II. THE MALTESE PRESIDENCY'S APPROACH

At the end of 2016, the Commission's proposal had been discussed at great length under two Presidencies, but the Council had not yet outlined its approach. In order to clarify the situation, the Maltese and Slovak Presidencies sent an extensive questionnaire to delegations in December 2016².

The delegations' replies gave a clearer picture of their concerns, including regarding the structure of the proposal; the scope; the accessibility requirements contained in Annex I; and the administrative and financial burden that the EAA might place on economic operators (including SMEs) and authorities. In particular, several delegations considered that other Union instruments (e.g. EU funds and public procurement) which already included accessibility obligations (see Article 1(3) of the proposal) should not be included in the scope of the EAA.

¹ The Rapporteur for the lead Committee (IMCO) is Morten LØKKEGAARD (DK/ALDE). The Rapporteur for the EMPL Committee is Adám KÓSA (HU/EPP).

² Doc. 15480/16.

Based on the replies to the questionnaire and on the subsequent Working Party discussions, the Maltese Presidency prepared several successive sets of drafting suggestions. In addition policy guidance on the structure and the scope of the EAA, as well as on the possible inclusion of a specific accessibility marking in the Directive³, was sought from Coreper.

The Presidency noted with satisfaction that the Coreper discussion gave clear guidance to the Working Party as follows:

- the EAA should concentrate on selected products and services;
- obligations relating to the other Union instruments mentioned in the proposal (e.g. EU funds and public procurement) which already include accessibility obligations should be left out of the scope of the EAA;
- the structure of the EAA should remain as proposed by the Commission (the New Legislative Framework (NLF) and market surveillance measures pursuant to Regulation (EC) 765/2008 in relation to accessibility requirements contained in the EAA), given that the structure in question may be used in the case of different types of product risks;
- for the audiovisual sector, it would be important to clarify which aspects should be included in the Audiovisual Media Services Directive (AVMS) and which ones in the EAA;
- the built environment should be left out of the Directive, as a Directive should not include recommendations or voluntary provisions;
- several delegations having feared that the introduction of a specific accessibility marking to be used on compliant products might give rise to administrative burdens, it would not be useful to include such a marking in the EAA.

³ Doc. 6744/1/17 REV 1

III. MAIN CHANGES BY THE MALTESE PRESIDENCY

As regards specific sectors, products, services, accessibility requirements and other elements of the draft Directive, the following are the most important changes made by the Presidency.⁴

The scope of **products covered by the EAA** (Article 1(1)) has been further clarified. Overall, this part of the text has not been considered controversial, but the following clarifications have been added: the self-service terminals covered are those that are *dedicated to services that fall within the scope of the Directive* (such as automated teller machines for banking services and check-in machines for passenger transport services). Moreover, *e-readers* have been added to the scope.

A number of clarifications have been made to the provisions on **services covered by the EAA** (Article 1(2)). The list of services has generally remained unchanged; the scope covers electronic communications services, services providing access to audiovisual media services, certain elements of passenger transport services, consumer banking services, e-books, and e-commerce. Services for responding to and handling emergency communications have been added to the scope. However, it has been clarified that the services are *to be provided to consumers*. As most of the services included in the EAA proposal are already regulated at the Union level, it is important that any linkages between the EAA and other sectoral legislation are clear and future-proof in the EAA text; therefore, the Presidency made further amendments in this regard. Amendments to the text of Article 1(2) have necessitated further amendments to definitions in Article 2 and in the recitals.

Following the most recent meeting of the Working Party on 15/16 May, the Presidency further fine-tuned the wording of the scope concerning the following elements: "interactive self-service terminals" in the context of the provision of services (Article 1(1)(b)(iv)), "electronic communication services" (Article 1(2)(a)), "self-service terminals" in the context of transport services (Article 1(2)(c)(iii)), e-books (Article 1(2)(e)) and copyright (Article 1(4)).

⁴ The latest Presidency text is in doc. 9483/17 ADD 1.

Article 1(3) on **the scope** and Chapter VI (Articles 21-23) on **accessibility requirements in the other Union legislation** have been deleted from the text, as have the related Articles 21-23 and the corresponding parts of Annex I. Following this deletion from the scope, all references to public procurement and EU funds have been deleted from the EAA text.

A number of **new definitions** have been added to Article 2 ("consumer terminal equipment with interactive computing capability, used for accessing audiovisual media services", "emergency communication", "public safety answering point", "emergency service", "small and medium-sized enterprises", "consumer terminal equipment", "interactive computing capability", "e-reader", "smart ticketing" and "electronic ticketing"). The definition of "universal design" has been deleted from Article 2 as it was not used in the legislative text itself.

In the light of Member States' concerns, the Presidency completely rearranged **Article 3 and Annex I which sets out the accessibility requirements**. The general requirements relating to all products and all services covered by the Directive are in Sections I and III of Annex I, respectively. The other sections of Annex I relate only to certain products (Section II) or services (Section IV). This structure has allowed Annex I to be streamlined (less repetition) but has also made it possible to provide for sector or product-specific accessibility requirements, as necessary. In order to **eliminate possible conflicts between the EAA and sectorial Union legislation** already regulating accessibility in the transport sector, clarifications have been added to Articles 1 and 3 (see in particular Article 3, paragraphs 11 to 16).

Several delegations having raised concerns regarding the potentially high cost for SMEs and micro-enterprises of complying with accessibility requirements, the Presidency suggested that **microenterprises offering services** should be exempted from complying with the accessibility requirements of the EAA (Article 3(4)(new)).

The built environment has also been taken out of the EAA.

The formulations in the articles dealing with *the obligations to be met by economic operators* dealing with products (manufacturers, authorised representatives, importers, distributors in Articles 5 to 10) and to *service providers* (Article 11) have been amended throughout by replacing references to "a **risk** related accessibility" with "**non-compliance with the applicable accessibility requirements**" etc. Amendments in this respect were also made in Article 19 on *market surveillance*. The notion of "applicable accessibility requirements" has also been explained.

In **Article 12 on fundamental alteration and disproportionate burden**, two important text suggestions have been made in order to reduce the burden placed on economic operators. Following an assessment whether compliance with accessibility requirements would impose a disproportionate burden, a service provider using self-service terminals could decide that *only some of its self-service terminals* are accessible (paragraph 3a(new)). Apart from this change, all economic operators would only need to *keep the required documentation for a period of 5 years* (instead of an unlimited time period as in the proposal, or of 10 years as in an earlier version of the text; see paragraph 6).

The Presidency has slightly modified **Article 27a on transitional measures**, as it is suggested that the Member States can set a longer transitional period, up to 15 years, for *self-service terminals*, as compared with other *products that are used in the provision of services* (for which the period is 5 years).

In addition, the Presidency has fine-tuned various aspects of the text in the light of the latest discussion and written comments received. The complete text, including the latest changes suggested by the Presidency, is set out in doc. 9483/17 ADD 1.

IV. THE WAY FORWARD

Following intensive work, tangible progress has been achieved during the Maltese Presidency. The Working Party has discussed all parts of the text, and revisited many technical details as necessary.

However, a number of Member States have yet to complete their positions on the file, or on specific parts of this complex text. In particular, technical details require further analysis. Some delegations also wish to undertake their own impact assessments before deciding on their approach to the file.

All aspects of the file having been examined in the Council's preparatory bodies, the next Presidency is now in a good position to continue the work on the file.

The Presidency considers that the outcome of its work marks a substantial step towards a Council position on the Directive. During the next semester, the Council preparatory bodies will continue the discussions, with a view to agreeing a Council position and starting negotiations with the European Parliament.