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From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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FEEDBACK on the 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 {COM(2015) 615
final}

Delegations will find attached document SWD(2016) 233 final.

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COMMISSION STAFF WORKING DOCUMENT

STAKEHOLDER FEEDBACK

on the

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

{COM(2015) 615 final}

I. THE EUROPEAN ACCESSIBILITY ACT

The European Commission adopted on 2nd of December 2015 a legislative proposal on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements of products and services.¹

This proposal aims at contributing to improve the proper functioning of the internal market and remove and prevent barriers for the free movement of accessible products and services. It also supports Member States to achieve their national commitments as well as their obligations under the United Nations Convention on the Rights of Persons with Disabilities² regarding accessibility. The proposal defines accessibility requirements for a limited number of products and services and uses the same accessibility requirements to clarify the accessibility obligations already established in other EU legislation, namely in the public procurement Directives³, the European Structural and Investment Funds Regulations⁴, and transport related regulations⁵.

II. THE FEEDBACK MECHANISM

In its Better Regulation Communication of 19 May 2015 (COM(2015)215)⁶, the Commission stated that it intends to listen more closely to citizens and stakeholders, and be open to their feedback, at every stage of the process. It introduced various feedback mechanisms, allowing citizens and stakeholders to comment i.a. on legislative proposals adopted by the College, and, where relevant, on the accompanying impact assessment. Feedback on legislative proposals can be provided for a period of eight weeks following the publication of all language versions of the proposal. To feed these views into the legislative debate, the Commission will collect them and present them to the European Parliament and the Council.

This document offers a brief factual overview of the input received through the new feedback mechanism⁷ on the Commission's 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 and related documents.

III. SUMMARY OF VIEWS EXPRESSED IN THE CONTEXT OF THE FEEDBACK MECHANISM

The mechanism gathered feedback from **32 stakeholders**⁸ mainly representing NGOs (22 contributions) but also companies and industry/ business associations (4), public authorities (3), citizens (1) and other stakeholders, namely European umbrella organisations for business (2).

In general, support was expressed for the objectives of the European Accessibility Act (EAA).

¹ This proposal is also commonly referred to as 'European Accessibility Act': <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0615:FIN>

² United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), available at: <http://www.un.org/disabilities/default.asp?id=150>.

³ Directive 2014/24, Directive 2014/25 and Directive 2014/23

⁴ Regulation (EU) No 1303/2013

⁵ Regulation (EU) No 1315/2013 and Regulation (EU) No 1370/2007

⁶ http://ec.europa.eu/smart-regulation/better_regulation/key_docs_en.htm

⁷ <https://ec.europa.eu/transparency/regdoc/?fuseaction=list&n=10&adv=0&coteId=1&year=2015&number=615&version=F&dateFrom=&dateTo=&serviceId=&documentType=&title=&titleLanguage=&titleSearch=EXACT&sortBy=NUMBER&sortOrder=DESC>

⁸ The distribution per country was: BE-15; ES-5; SE-4; FI-2; FR-1; DE-1; UK-1; RO-1; DK-1; MT-1. Many of the NGOs that provided feedback activate at EU level. For this reason, there was a large number of responses from Belgium.

a. Scope

The majority of stakeholders welcome the extensive coverage of products and services in the area of Information and Communication Technologies (ICT). However, many NGO stakeholders would like the scope of the directive to be widened to cover in the same way the areas of education, healthcare, housing, tourism, training, emergency services, insurance, household appliances, retail, legal matters and justice and services regarding culture, leisure and sports. Some respondents from industry ask for a more detailed description of the products in the scope.

b. Definitions

Stakeholders' opinions differ on using the term "persons with functional limitations" in the text of the proposal. Some stakeholders support this usage for being broader than "disabled people" and therefore including older people and people with temporary impairments. Other stakeholders are concerned that, under this terminology, disability is seen as a lack of ability of the person affected instead of a socially constructed phenomenon caused by the existence of various environmental, social and other barriers.

c. Accessibility requirements

Some NGO stakeholders welcome the accessibility requirements defined in Annex I of the proposal, including the references that information about products should be understandable. They expect it to be in large font sizes and available by more than one sensory channel. However, some industry stakeholders are concerned that including this information on the product itself might interfere with other regulations that require producers to minimize the use of packaging materials. They suggest that alternative formats for product information should only be made available upon request.

Concerning the accessibility requirements for the built environment related to the provision of certain products and services in the scope of the proposal, many NGO stakeholders consider the enabling clause in Article 3(10) of the proposal to be insufficient, since it is left at the discretion of the Member States to decide if the related built environment should be made accessible according to the accessibility requirements defined in Annex I of the proposal. The NGOs hold the view that the accessibility of the built environment should be a mandatory provision of the directive.

Some NGOs require more detailed elaboration of the accessibility requirements for various products and services while others welcome the functional nature of the requirements.

One public authority stakeholder referred to the use of alternative solutions for accessibility while another signalled that, when the private market does not provide accessible solutions, assistive alternatives need to be financed by public authorities.

d. Obligations of manufacturers

Some NGO stakeholders welcome the comprehensive provisions regarding the obligations of the manufacturers, especially the requirement that products should remain in conformity in order to avoid that changes in product design or characteristics make future versions of a product less accessible. However, many of these stakeholders are concerned that manufacturers shall self-assess if a product complies with the accessibility requirements. They hold the view that this should be done by an independent body.

Moreover, some NGO stakeholders point out that the CE marking, which should be affixed to products as a sign of compliance with the accessibility requirements, is already used on non-accessible products. Therefore, the CE marking appears to them to be insufficient to guide consumers on which products are accessible or not. Their recommendation is to introduce a separate marking uniquely associated with accessibility.

e. Fundamental alteration and disproportionate burden

Many NGO stakeholders are concerned that the assessment of fundamental alteration or disproportionate burden performed by the economic operator before complying with the accessibility requirements could be used as a loophole to avoid compliance. They ask for a clearer definition of the terms "fundamental alteration" and "disproportionate burden" and for the final decision on the necessity of compliance to be made by a relevant surveillance authority or a specialist panel.

f. Other issues

One industry stakeholder welcomes the use of accessibility requirements in public procurement, refers to US legislation and expresses the importance of harmonisation. Other industry stakeholders welcome the EAA and state their belief that it will promote innovation, while pointing out the market opportunity of accessibility.

In general, NGO stakeholders see the EAA as contributing to the implementation of the already existing obligations in the UN Convention on the Rights of Persons with Disabilities across the EU.

Most stakeholders agree on the need to enhance awareness on accessibility and some suggest university and vocational training on what "design for all" means and how to achieve it.