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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document 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

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

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 }
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1. PROBLEM DEFINITION

Current national accessibility requirements relating to specific products and services differ from Member State to Member State, and sometimes within a Member State (where there are accessibility requirements at regional/local level). This leads to a fragmentation of the single market, increasing the burden on industry for making accessible products and services available to consumers. National accessibility requirements differ in terms of coverage (to what and to whom they apply), on the level of detail and on the technical details themselves. This difference in coverage also means that for some products or services, some Member States may have established detailed rules whereas in others there are no rules in place.

The current divergence in national legislation is likely to increase in the future, as Member States have committed to implementing the general provisions of the United Nations Convention on the Rights of Persons with Disabilities, to which the EU is also a party. Member States implement these provisions in different ways at national level. **There is currently no EU-wide coordination of national legislation regarding the accessibility of products and services. In particular, there is no common definition on how products and services should be made accessible.** Provisions in some EU laws that require certain products or services to be accessible imply that Member States will develop accessibility requirements to meet these obligations, and in the absence of coordinated action there is a risk of varying approaches and requirements.

Economic operators who would like to sell their products or services in other Member States may face additional costs related to understanding the various rules applicable and, more significantly, to adapting their product/service to meet the requirements of a particular national or even regional market. This prevents them from making best use of economies of scale, and means that they cannot fully benefit from the size of the single market. Products and services produced for a limited number of consumers are more expensive, as economic operators cannot benefit from larger markets, which would allow them to absorb the fixed costs of accessibility features. Costs of adapting products or services to differing national requirements may be especially burdensome for small and medium-sized enterprises (SMEs).

The largest number of reported issues has concerned the built environment, **transport and ICT, including the web**. These areas are key components for the accessibility of services. On the basis of a screening exercise, reflecting EU competences, and following a methodology described in more detail in the impact assessment, **a priority list has been created. It identifies the products and services for which accessibility features are most needed**, in areas where there is most legislative divergence and greatest market fragmentation, or where there is a very strong likelihood that these will occur, with consequential risks to the working of the single market:

- **computers and operating systems;**
- **digital TV services and equipment;**
- **telephony services and related terminal equipment;**
- **eBooks;**
- **self-service terminals** including ATMs, ticketing and check-in machines;
- **eCommerce;**
- **banking services;**
- **passenger transport services**, including air, rail, bus and maritime;
- **hospitality services.**

Lack of EU coordination on how to implement accessibility obligations in areas such as **public procurement or the European Structural and Investment funds** is a further issue. The current situation discourages cross-border participation in public procurement. **Recent studies show that the current level of cross-border public procurement is very low** and that the differences in national legal requirements and the variety of practices used by contracting authorities, including on accessibility, constitute a barrier to cross-border public procurement. This situation can create uncertainty for European industry around what is actually required by the contracting authority and how to compete with other industries offering similar products and services.

This divergence of accessibility legislation and related single market issues in areas such as public procurement and European Structural and Investment funds is expected to increase. While accessibility requirements have become obligatory in the new European frameworks, the relevant EU law does not define what accessibility means and what it entails, leaving this to be defined in national or sector-specific rules. It is important to note that EU funding from programmes like the European Structural and Investment Funds or the Connecting Europe Facility are often spent through public procurement.¹

A lack of cross-border competition due to the existence and further introduction of differing accessibility standards for public procurement processes is expected to have a negative impact on public sector budgets, as prices are likely to increase.

2. ANALYSIS OF SUBSIDIARITY

On the **basis of Article 114 of the TFEU**, the European Union has a right to act to improve the conditions for the establishment and functioning of the single market for accessible products and services. This article allows accessibility requirements to be harmonised at EU level and also allows for barriers dissuading economic operators from taking full advantage of the benefits of the single market to be addressed. The current differences in legislation on accessibility of products and services creates legal uncertainty and higher transaction costs, and may dissuade business from investing in new and more innovative accessible products and services.

This initiative fully respects the principle of subsidiarity by focusing only on those products and services for which there is evidence of a problem with the single market, hence the need to address it at EU level - either because different national requirements create an effective obstacle to trade, or because they already fall under the remit of EU law. Since Member States cannot tackle this problem alone, there is a need to establish a coherent legal framework that will allow for the free flow of accessible products and services in the single market. Member States would continue to be responsible for regulating the accessibility requirements for products and services for which there is no evidence of an internal market issue.

In addition, **this action would respect the principle of proportionality** by giving Member States flexibility in deciding how to achieve EU-wide objectives and by allowing for a gradual implementation. This principle would also be considered for economic operators by including certain safeguards on the proportionality of the obligations.

¹ The related Regulations also require accessibility to be observed when spending the funds, a measure to support further accessibility.

This initiative is consistent with other EU and international policies and would have a positive impact on several of the rights set out in the Charter of Fundamental Rights of the European Union.

3. OBJECTIVES OF THIS EU INITIATIVE

In order to address current and potential single market fragmentation, the general objectives of this initiative are to **improve the functioning of the single market** for specific accessible products and services, while serving the needs of industry and consumers, and to contribute to implementing the Europe 2020 strategy, the European disability strategy 2010-2020 and the UN Convention on the Rights of Persons with Disabilities. The **specific objectives** are to **reduce barriers to cross-border trade** and **increase competition** for selected accessible products and services and in public procurement. The operational objectives would be to set out EU-wide accessibility requirements for selected products and services, that would also be used when implementing general accessibility obligations set in EU law – such as EU public procurement rules - and to improve enforcement of accessibility requirements.

4. POLICY OPTIONS

Five policy options were discarded at an early stage of the impact assessment process, as being either unrealistic, unable to meet the objectives or disproportionate. These were:

- a horizontal framework applying to all relevant products and services;
- setting accessibility requirements for all private sector websites;
- self-regulation by industry;
- voluntary European standardisation alone; and
- a Regulation setting common accessibility requirements in all Member States.

A preliminary screening showed that this EU initiative should only cover selected priority areas, where obstacles to the functioning of the single market were visible and likely to increase and where action at European level would add more value. Regulatory intervention allowing Member States flexibility in implementation appears to be the most efficient form of EU intervention for tackling current and expected problems with the functioning of the single market. A Directive in particular would be in line with the approach taken in previous Commission Communications and instruments, and would ensure the unobstructed movement of accessible products and services without going beyond that which is necessary.

The following four options were retained for further impact analysis:

Option 1: No further action at EU level (baseline scenario).

Option 2: EU Recommendation defining common accessibility requirements for the selected products and services, as well as in the area of public procurement. This option addresses the problem in the baseline scenario by including accessibility requirements which may be applied to a defined list of products and services and to public procurement processes.

Option 3: EU Directive defining common accessibility requirements for the selected products and services as well as in the area of public procurement - applicable to the Member States when they regulate on accessibility. Under this option, Member States will not be required to legislate on accessibility requirements by a given date, but **if** they do or have already done so, they will have to follow EU rules in order to ensure consistency across the single market. All Member States will have to ensure the free circulation of accessible products and services, even if they do not regulate on accessibility, and to use common accessibility requirements in public procurement processes.

Option 4: EU Directive defining common accessibility requirements for the selected products and services, as well as in the area of public procurement – immediately applicable to all Member States. This option requires all Member States, including those which have not yet legislated on accessibility, to introduce new legislation on accessibility in accordance with the EU rules proposed. It fully harmonises accessibility rules across all Member States.

5. ASSESSMENT OF IMPACT

Separate assessments have been made of the impact on each product and service, and different policy options could be used for each of them.

Each of the four policy options has been assessed in terms of its social, economic and environmental impacts and the extent to which it meets the policy objectives and broader EU objectives. The assessment criteria for ‘effectiveness’ and ‘efficiency’ take into account how the option would improve cross-border trade in the selected products and services and in public procurement and how the option would increase competition among industry for the selected products and services and in public procurement.

Economic impact was assessed in terms of the costs to businesses of meeting different national accessibility requirements for the products and services in the baseline scenario, and of the potential savings, from those costs, under each of the policy options resulting from the harmonisation of EU-level requirements. When considering the possible impact on different social groups, particular consideration was given to the impact on older consumers and consumers with disabilities. Consideration of the impact of each option on fundamental rights was an integral part of the exercise and these potential impacts are therefore evaluated throughout the assessment.

In addition, a specific assessment of the impacts on SMEs and micro-enterprises (the ‘SME test’) has been carried out, including by consulting an SME panel. Because of their size and limited resources, differences in national accessibility requirements cause disproportionate problems for SMEs. SMEs would therefore be expected to benefit in particular from the elimination of divergence in accessibility requirements. The impact assessment has not shown any need for specific measures for SMEs.

5.1. Assessment of option 1

If no further action is taken, the problems identified would be expected to increase, as a growing number of Member States put in place non-harmonised accessibility requirements to meet their obligations under the United Nations Convention on the Rights of Persons with Disabilities. Based on a set of underlying assumptions, including market volume, proportion of cross-border trade and proportion of development costs, an assessment of the expected

market situation in 2020 has been calculated in monetary terms. The total overall annual **cost of the baseline scenario is estimated to be around EUR 20 billion in 2020.**

As the *status quo* would not require specific changes in investment or administrative burden, these costs are estimated to be zero in this option.

5.2. Assessment of option 2

Due to its non-binding nature, this option is expected to be implemented in only a limited number of Member States, depending on the products and services considered. On the basis of calculations made for each relevant market and illustrating that sometimes added accessibility costs will constitute a fraction of these initial costs, this option is expected to have an overall annual cost of EUR 16 billion representing a **cost savings of 20 %** in comparison with the baseline scenario.

The administrative burden introduced by requiring firms to provide information on the accessibility of their products would amount to around EUR 20 million.

5.3. Assessment of option 3

Option 3 would achieve the policy objectives. It removes existing fragmentation and prevents future fragmentation as it would be applicable when Member States legislate on accessibility. This option is expected to have an overall annual cost of EUR 10 billion and would achieve the highest cost savings of the considered options with **cost savings of 50 %** in comparison with the baseline scenario.

The total annual administrative burden related to this option (for the companies reporting on accessibility) would be around EUR 107 million.

5.4. Assessment of option 4

Like the previous option, option 4 would achieve the objectives of the initiative. It would eliminate the fragmentation caused by different national accessibility requirements, as a result of the simultaneous introduction of uniform accessibility requirements in all Member States for each of the selected products and services across the entire single market. It would give rise to some additional costs to businesses and would yield fewer savings than option 3. Nevertheless, this **cost reduction is estimated at 45 %** of the baseline scenario. Its overall cost would be of EUR 11 billion.

The administrative burden on companies would be around EUR 126 million, as option 4 would extend requirements to provide information to all companies supplying the EU market.

6. COMPARISON OF POLICY OPTIONS

Option 2 would insufficiently address the objectives; in particular, it would not eliminate fragmentation in the single market.

Options 3 and 4 are the policy options that would best address the problem identified and consequently would most improve the functioning of the single market for accessible products and services. A comparison of the impacts of those two policy options shows differences mainly in their effectiveness, costs savings and proportionality.

While both options 3 and 4 would result in a positive impact on fundamental rights, the most beneficial effects on harmonising the single market, leading to the biggest social positive impacts, would result from option 4.

However, option 3 seems to be less costly for companies and more subsidiarity-friendly and proportional as it does not impose a strict timeframe for Member States to regulate on accessibility. The administrative burden is expected to be higher for option 4, as it covers immediately all Member States and therefore introduces more obligations for industry.

In conclusion, option 3 is initially more beneficial from an economic perspective, but less effective to remove and prevent the emergence of new barriers to the smooth functioning of the single market. Option 4 can be more beneficial in terms of effectiveness and social benefits, as it creates immediately a bigger market, that could compensate its bigger immediate costs.

7. MONITORING AND EVALUATION ARRANGEMENTS

The Commission is the guardian of the Treaty and will need to regularly check how Member States have implemented and ensured the compliance of the relevant products and services with the accessibility requirements.

The impact of this proposal will be monitored through indicators such as the number of court cases relating to accessibility problems with relevant products and services or the number of public calls for tender that refer to accessibility and EU-level accessibility requirements. A range of existing information sources will be used to provide the necessary data. Five years after the entry into application of this initiative, the Commission will evaluate its impact. This will include an assessment of its actual effects, the collection of lessons to be learned and considerations for potential improvements, including regarding the scope of the proposal.