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STANDING COMMITTEE OF THE EFTA STATES

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SUBCOMMITTEE IV ON FLANKING AND HORIZONTAL POLICIES

EEA EFTA Comment

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 (European Accessibility Act)

1. EXECUTIVE SUMMARY

1. The EEA EFTA States welcome and support the Commission initiative on a European Accessibility Act (EAA). At the same time, they emphasise that the financial and administrative burden needs to be kept to a minimum in order to minimize the impact on companies and especially Small and Medium Sized Entreprises (SMEs).
2. The proposal for the European Accessibility Act includes a range of references to already existing legislation in the fields of public procurement, ICT/telecoms and transport. Some of these already contain accessibility requirements and sometimes enforcement rules – this could lead to undesirable legal uncertainty and excess litigation. The EEA EFTA States are therefore of the opinion that these uncertainties should be clarified in the final version of the EAA and that if these are sufficiently covered in other acts they could be removed from the EAA.
3. The EEA EFTA States believe that the obligation in Article 22(2) of the Commission proposal for competent authorities to make an assessment of disproportionate burden would introduce a burden to the competent authorities without proving its added value. They therefore propose that the competent authority should only have a legal obligation to provide the assessment referred to in Article 22 only upon a request from the Commission.
4. While the EEA EFTA States understand the Commission's aim to make the EAA "future-proof", they believe that terms such as "general purpose computer hardware and operating systems" deserve clearer definitions in order to ensure legal certainty in the long run.

5. **Existing Norwegian regulation does at this stage already impose universal design requirements on small businesses. The experience has been that imposing such requirements from the very beginning is often the less expensive option. It could however be debated whether exceptions could be made for very small enterprises.**
6. **The EEA EFTA States conceive of the proposal for a European Accessibility Act as a contribution to make products and services accessible to as many as possible, and where each individual should be able to perform tasks and make use of products to their own needs and benefits. In this perspective, it would be appropriate to include people with temporary disabilities, in addition to people with permanent disabilities.**

2. INTRODUCTION

7. The EEA EFTA States refer to the European Commission's proposal for a directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services (European Accessibility Act (EAA)).
8. The EEA EFTA States welcome and support the Commission initiative on an EAA. Demand for accessible products and services is high throughout the European Economic Area (EEA) and will increase significantly with the ageing population. An environment in which products and services are more accessible is therefore a welcome step in allowing for greater inclusion and participation of citizens in society.
9. Creating a harmonised approach to accessibility will also contribute towards a better functioning of the Internal Market, in which the EEA EFTA States – Iceland, Norway and Liechtenstein – participate. The EEA EFTA States would like to refer in this context to their comment of 15 July 2015 on the upcoming Single Market Strategy for Goods and Services, where they emphasised their commitment to a well-functioning Single Market as a key driver to boost economic growth and jobs throughout Europe.
10. While thus fully supporting the underlying goal of the proposal for an EAA, the EEA EFTA States would also like to emphasise that no disproportionate burden should be placed on companies, especially not on small and medium-sized enterprises (SMEs). The EEA EFTA States would therefore like to use this note to contribute to finding the right balance between the positive effect of enhanced accessibility and obligations and costs for companies.

3. ACCESSIBILITY LEGISLATION IN THE EEA EFTA STATES

11. Norway and Iceland have ratified the Convention on the Rights of Persons with Disabilities (CRPD). In all three EFTA EEA States, dedicated and systematic efforts apply in order to increase and strengthen accessibility for persons with disabilities.
12. The EEA EFTA States recommend that the CRPD interpretation of disability should apply to the EAA.

13. Over the years, Norway has upgraded its quality standards on accessibility substantially, with an emphasis on equal opportunities, social inclusion and universal design. Universal accessibility is part of Norwegian legislation. The Anti-discrimination and Accessibility Act prohibits discrimination on grounds of disability, and includes provisions on universal design and accessibility. In addition, accessibility is included in sectoral regulations encompassing, among others, buildings, transport, information technology, self-service machines and public procurement.

4. HORIZONTAL ISSUES

4.1. Financial and administrative burden

14. It is important that the EAA does not place unnecessary financial or administrative burden on the Member States, economic operators or relevant authorities. Accordingly, the EEA EFTA States advocate that efforts should be made to minimise the financial and administrative burden.
15. The EEA EFTA States support the approach that accessibility obligations under the EAA should only affect new products placed on the market after the application of the proposed directive. They believe, however, that there is some ambiguity in the proposal on whether products already on the market would need to be replaced after the entry into force of the EAA. If this should be the case, a sufficient transition period would be necessary.
16. The EEA EFTA States also support the inclusion of Articles 12 and 22, ensuring that no disproportionate burden is placed on the economic operators or competent authorities. The EEA EFTA States would welcome clearer indications as to the threshold for a disproportionate burden in order to increase legal certainty.

4.2. Clarification of the relation to existing legislation

17. The EEA EFTA States understand that the goal of the EAA is to harmonise accessibility requirements for a list of products and services, and to use those same accessibility requirements to define and give content to current but undefined obligations of accessibility laid down in EU law.
18. At the same time, however, the latter might lead to uncertainty as to the relationship between current legislation and the EAA as regards enforceability. This is the case, for example, with regard to public procurement, where existing legislation already has an enforcement system in place (see section 5.1).

5. SECTORAL ISSUES

5.1. Public procurement

19. The EEA EFTA States would like to propose the following amendments in the field of public procurement.

Applicability of Chapter VII regarding enforcement on public procurement, cf. Article 1, paragraph 3, first sentence:

20. The EEA EFTA States recognise the importance of national rules that allow for effective enforcement of the directive. It is, in general, important that consumers can take action where an individual has been discriminated against as a result of inaccessibility. The EEA EFTA States therefore welcome the provisions in Chapter VII (enforcement, penalties, transposition, report and review).
21. However, in some areas, such as public procurement, the provisions in Chapter VII might cause undesirable legal uncertainty and excess litigation. There are already applicable enforcement procedures covering the relevant public procurement directives. These procedures are implemented in the Member States and enable entities with legitimate interest to enforce the rights conferred to them under the EAA.
22. The EEA EFTA States are concerned that the EAA would introduce legal uncertainty. The EEA EFTA States suggest that the enforcement rules regarding accessibility in public procurement are either brought in line with the rules that already exist in Directive 89/665/EC (Remedies Directive), or are introduced as an amendment to the Remedies Directive itself. In the view of EEA EFTA States, this would reduce the risk of legal uncertainty and ensure a coherent understanding and application of the remedies available for the review of public procurement procedures.

Applicability of the EAA to the Concessions Directive, cf. Article 1, paragraph 3, subsection (a) and Article 21, paragraph 1, subsection (a):

23. The EEA EFTA States note that the EAA proposal includes a reference to Directive 2014/23/EU (Concessions Directive), as well to Directives 2014/24/EU and 2014/25/EU. While the latter two directives contain references to accessibility requirements for disabled persons, this is not the case for the Concessions Directive. The EEA EFTA States underline that the scope of the EAA proposal is to harmonise accessibility requirements and “define and give content to the – already existing, but undefined – obligations of accessibility laid down by EU law, such as in the area of Public Procurement”.
24. The EEA EFTA States understand that the reference to accessibility requirements under the Concessions Directive is intended to come into force only if the contracting authority has introduced a voluntary accessibility obligation in the public contract. However, this is not clear from the current wording in the EAA proposal. The EEA EFTA States therefore propose that the reference to the Concessions Directive is removed either in its entirety or, at the very least, that the voluntary nature of the accessibility requirements under the Concessions Directive is made clear and unambiguous.

The administrative burden of the proposed notification procedure, cf. Article 22, paragraph 4:

25. The proposed procedure does not seem to be consistent with the EU's initiative to simplify procedures and reduce the administrative burden in the field of public contracts, enacted through the new EU directives on public procurement. The EEA EFTA States are of the opinion that the EAA should not introduce a burden on the competent authorities when there is no proven added value.
26. The EEA EFTA States therefore propose that the competent authority, only upon request from the Commission, shall have a legal obligation to provide the assessment referred to in Article 22. This amendment will ensure that the assessment is documented, public and available for review. They also note that the amended procedure will be more in line with the procedures already established for documenting the procurement process.

5.2. Telecom & ICT

27. The EEA EFTA States understand that the Commission would like to ensure that the EAA is "future-proof" and that future technological developments do not require constant amendments. At the same time, the EEA EFTA States believe that definitions need to be sufficiently clear in order to ensure legal certainty. For the EEA EFTA States, it is for example not sufficiently clear what "general purpose computer hardware and operating systems" or "advanced computing capacity" refer to. As stated in the progress report of the Slovak Presidency, "advanced" will depend on technological developments.
28. The EEA EFTA States note that both the proposal for a directive establishing the European Electronic Communications Code (EECC) and the proposal for an updated Audiovisual Media Services Directive (AVMSD) contain references to accessibility requirements. The EEA EFTA States therefore take the position that if these are sufficiently covered by the EECC and AVMSD they could be removed from the EAA.
29. Some doubts have been raised that small businesses will not be able to comply with the requirements of the EAA. Existing Norwegian regulations do impose universal design requirements on small businesses whereas in Iceland, the existing Icelandic regulations do not impose universal design requirements on small businesses. The experience of the EEA EFTA States is that it is less expensive to develop a universally designed website from the very start than to develop a website that does not comply with the requirements of universal design.
30. The EEA EFTA States view the proposal for an EAA as a contribution towards making products and services accessible to as many people as possible, where each individual should be able to perform tasks and make use of those products to their own needs and benefits. In this perspective, the EEA EFTA States consider it appropriate to include people with temporary disabilities, in addition to people with permanent disabilities.
31. The EEA EFTA States support the reasoning behind the requirements imposed on products and services in Annex I, with focus on functionality requirements rather than

technical specifications. This in order to ensure that regulations do not become outdated or hinder innovation.

32. A reference to EN 301 549 “Accessibility Requirement Suitable for Public Procurement of ICT Products and Services in Europe” is only made in paragraph 17 in the preamble. The EEA EFTA States are in favour of having some minimum requirements suitable for public procurement of ICT products and services, and would therefore welcome the incorporation of EN 301 549 as minimum requirements in order to harmonise EEA States. Harmonisation is important for European industry, especially SMEs.

5.3. Transport

33. The EEA EFTA States note that certain elements of the accessibility requirements laid down in the EAA are already covered by existing legislative Union acts in the field of transport, such as the Passenger Rights Regulations: 26/2004/EC, 1107/2006/EC, 1371/2007/EC, 1177/2010/EU and 181/2011/EU. As mentioned under horizontal issues, the relationship with current legislation is at this stage not entirely clear to the EEA EFTA States. The EAA should not create legal uncertainties as to which concrete obligations are imposed upon the legal subjects. The EEA EFTA States believe that more ambitious and detailed accessibility obligations should be implemented in sectoral regulations.
34. Based on the above, the EEA EFTA States also believe that there should be a presumption under Article 3 of the proposal that if the information requirements in the passenger transport services regulations are fulfilled, the information requirements in the EAA are automatically considered as fulfilled.

6. CONCLUSION

35. The EEA Agreement between the European Union and Norway, Iceland and Liechtenstein gives companies and citizens in the EEA EFTA States access to the Internal Market and guarantees equal rights and conditions of competition, security and predictability. The EEA EFTA States will thus continue sharing their views and experience with EU partners in order to find the right balance in the EAA between the positive effects of enhanced accessibility for citizens and new market opportunities for goods and service providers, with economic costs for companies that satisfy both CRPD obligations and Internal Market criteria.

These comments are given without prejudice to further comments from the EEA EFTA States on the proposed directive.