



Council of the  
European Union

Brussels, 4 December 2015  
(OR. en)

14799/15

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**Interinstitutional File:  
2015/0278 (COD)**

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**SOC 700  
MI 770  
ANTIDISCRIM 15**

**PROPOSAL**

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	3 December 2015
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2015) 615 final
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

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Delegations will find attached document COM(2015) 615 final.

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Encl.: COM(2015) 615 final



Brussels, 2.12.2015  
COM(2015) 615 final

2015/0278 (COD)

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**

(Text with EEA relevance)

{SWD(2015) 264 final}

{SWD(2015) 265 final}

{SWD(2015) 266 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

This explanatory memorandum presents in further detail the proposal for a new Directive aiming at the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements of products and services.

At present, economic operators are confronted with divergent, and often contradictory, national accessibility requirements preventing them from benefitting from the internal market potential.

The proposed Directive supports Member States to achieve their national commitments as well as their obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)<sup>1</sup> regarding accessibility.

Accessibility is at the heart of the UNCRPD, to which the EU is a party together with 25 of its Member States.<sup>2</sup> It is one of the priorities of the European Disability Strategy 2010-2020<sup>3</sup> that sets actions for the implementation of the UNCRPD at EU level. Accessibility prevents or removes barriers to the use of mainstream products and services. It allows the perception, operation and understanding of those products and services by persons with functional limitations, including people with disabilities,<sup>4</sup> on an equal basis with others.

#### 1.1. Objectives and context of the Proposal

The proposal aims to contribute to improve the proper functioning of the internal market and remove and prevent barriers for the free movement of accessible products and services.

The demand for accessible products and services is high and the number of citizens with disabilities and/or functional limitations will increase significantly with the ageing of the European Union's population. Taking into account demographic ageing, it is expected that in 2020 approximately 120 million persons in the European Union will have multiple and/or minor disabilities. Improving the functioning of the internal market for specific accessible products and services, serves both the needs of these consumers and industry. An environment where products and services are more accessible allows for more inclusion and participation of citizens in society. It supports independent living and autonomous choice. It also contributes to the application of the principle of equal treatment in the access to goods and services by persons with disabilities.<sup>5</sup>

Differences in legislation, standards and guidelines on accessibility exist and are very likely to increase as Member States develop new accessibility rules. This is a consequence of the entry

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<sup>1</sup> United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), available at: <http://www.un.org/disabilities/default.asp?id=150>.

<sup>2</sup> While all the EU Member States have signed the UN CRPD, at present, Finland, Ireland and the Netherlands are in the process of ratifying the Convention.

<sup>3</sup> European Disability Strategy 2010-2020, COM (2010) 636 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:en:PDF>

<sup>4</sup> According to the United Nations Convention on the Rights of Persons with Disabilities, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

<sup>5</sup> The Commission presented a proposal providing, inter alia, that persons with disabilities be treated on equal terms to others, COM(2008) 426 final.

into force of the UNCRPD for the EU and the majority of the Member States, as well as the general character of its provisions, which are open to different interpretations and practices when they are implemented at national level. An example of divergent rules is the case of Web accessibility, where Member States use different versions of the W3C/WCAG guidelines, another is the Audio Visual Media services where different standards are used for subtitles and audio description. Furthermore changes in EU legislation making accessibility compulsory in general terms without providing a definition like in the case of the Public Procurement Directives will have a similar effect.

The non-harmonised national approaches to accessibility create barriers in the internal market. Suppliers that operate cross-border would face additional production costs to comply with divergent accessibility rules. Competition, competitiveness and economic growth are hampered because enterprises, SMEs in particular, may lack the know-how and capacity to cope with learning and putting in action all the different national requirements and procedures. Consequently, it is important to include SMEs in the scope of this proposal as otherwise their products and services could be considered as second-rate or sub-quality.

National authorities, manufacturers and services providers face uncertainties concerning the accessibility requirements for potential cross-border services, and concerning the applicable policy framework for accessibility.

The described situation demonstrates the need to act and to ensure the free movement of products and services, by defining and using common accessibility requirements for the selected products and services and by using the same requirements for EU legislation that establishes general obligations on accessibility. This will contribute to increase competition among industry. The proposal aims at lowering and preventing barriers to cross-border trade.

Harmonisation of national measures on accessibility is being proposed as a necessary condition to put an end to the legislative divergence.

## 1.2. Technical background

Manufacturers and service providers worldwide currently use different approaches to comply with accessibility requirements whenever they do produce/provide products and services with specific accessibility features. These approaches sometimes rely on national or international standards; most of the time without harmonisation of standards between regions or countries.

A number of accessibility standards are under development at European level following standardisation requests by the European Commission to the European standardisation organisations (ESO). These standardisation requests (non-legislative actions) invited ESOS to align the development of voluntary European standards to global developments. The requests relevant to accessibility are: M/376<sup>6</sup> (2005) on ICT which resulted in a European standard EN 301 549<sup>7</sup> adopted in February 2014; M/420<sup>8</sup> (2007) on built environment and M/473<sup>9</sup> on

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<sup>6</sup> M/376 standardisation mandate CEN, CENELEC and ETSI in support of European accessibility requirements for public procurement of products and services in the ICT domain

<http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=333>

<sup>7</sup> This standard is well harmonised with the US standards under US section 508 of the Rehabilitation Act.

<sup>8</sup> M/420 Standardisation mandate to CEN, CENELEC and ETSI in support of European accessibility requirements for public procurement in the built environment:

<http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=392;>

[http://www.cen.eu/cen/Sectors/Sectors/Accessibility/Construction/Pages/Allpresentations.aspx.](http://www.cen.eu/cen/Sectors/Sectors/Accessibility/Construction/Pages/Allpresentations.aspx)

<sup>9</sup> M/473 Standardisation mandate to CEN, CENELEC and ETSI to include “Design for All” in relevant standardisation initiatives:

mainstreaming accessibility following a "design for all" approach in the European standardisation. These standardisation requests were issued after a positive opinion of the Member States in the Committee set up by Article 5 of Directive 98/34/EC and invite the ESOs to develop certain voluntary accessibility standards and to review, when possible, existing standards to give better guidance concerning "design for all" principles.

This requested voluntary European standardisation work is lengthy and in the absence of European standards it is possible that national standardisation work will occur. Therefore voluntary European standardisation will need to be underpinned by regulatory intervention to achieve the intended European wide harmonisation. The functional accessibility requirements set in the Directive are given in terms of general objectives. One of the ways to assess conformity with those requirements is by applying voluntary harmonised standards that are adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European Standardisation.<sup>10</sup>

The European standards resulting from the above-mentioned requests, or any other suitable existing European standards, should be used in this initiative as a basis for those harmonised standards to provide presumption of conformity with accessibility requirements.

### 1.3. Policy background

The main aim of this Directive is to improve the functioning of the internal market for accessible products and services. This is well in line with President Juncker's Political guidelines for *"the next Commission to build on the strength of our single market and to fully exploit its potential in all its dimensions"*. This Directive will also contribute to implement the 2015 Commission Work Programme<sup>11</sup> which reiterates the Commission's commitment to accessibility as a catalyst for social inclusion: *"The European Commission is committed to equality of opportunity for people with disabilities, in full respect of the UN Convention on the Rights of Persons with Disabilities. This includes accessibility to the physical environment, transportation, information and communications technologies and systems (ICT) and other facilities/services."*

Article 9 of the United Nations Convention on the Rights of Persons with Disabilities obliges the EU and Member States, to the extent of its competences, as parties to the Convention, to take appropriate measures to ensure accessibility. Article 3 refers to accessibility as a general principle of the Convention that should be considered in relation to the enjoyment of the rights and fundamental freedoms stated in the Convention.

The legal character of the obligations on accessibility under the UN CRPD is confirmed in the General Comment on Article 9 of the Convention on Accessibility<sup>12</sup> issued by the UN Committee on the Rights of Persons with Disabilities in April 2014. It states that "State parties are obliged to adopt, promulgate and monitor national accessibility standards [...]. State parties should undertake a comprehensive review of the laws on accessibility in order to identify, monitor and address gaps in legislation and its implementation". It further states that "State parties should establish a legislative framework with specific, enforceable, time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private entities of their previously inaccessible services into accessible ones. State parties should also

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<http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=461>  
<ftp://ftp.cenelec.eu/CEN/Sectors/List/Accessibility/DfAmandate.pdf>

<sup>10</sup> OJ L 316, 14.11.2012, p. 12.

<sup>11</sup> COM(2014) 910 Commission Work Programme 2015 - A New Start, available at:

[http://ec.europa.eu/atwork/pdf/cwp\\_2015\\_en.pdf](http://ec.europa.eu/atwork/pdf/cwp_2015_en.pdf)

<sup>12</sup> <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

ensure that all newly procured goods and other services are fully accessible for persons with disabilities."

The commitment to a barrier-free Europe was renewed in 2010 in the European Disability Strategy 2010-2020. This strategy was drawn up in line with the UNCRPD. EU action supports and supplements national activities for implementing accessibility and removing existing barriers.

Accessibility is included in several EU initiatives. Some detailed accessibility requirements are foreseen in EU legislation related to specific products or services, or sectors. Others, such as the Public Procurement Directives and the European Structural and Investment Funds Regulations have a general accessibility requirement (first in the 2007-2013 period, and even more reinforced provisions in the 2014-2020 period). However, a common definition of accessibility at European level is lacking.

In the accompanying Action Plan 2010-2015<sup>13</sup> to the European Disability Strategy, under the specific objective of preventing, identifying and eliminating obstacles and barriers to accessibility, the Commission committed itself to prepare a European Accessibility Act setting out a general accessibility framework in relation to products and services.

#### **1.4. Consistency with other policies and objectives of the Union**

In many cases, EU legislation addresses the situation of persons with disabilities with a focus on a specific area. This is the case of the Passenger Rights Regulations for all modes of transport (air, rail, waterborne, bus and coach) that focus on non-discrimination and the provision of assistance for persons with reduced mobility when using transport.<sup>14</sup> There is also EU legislation concerning the accessibility of passenger transport vehicles, such as low platform buses<sup>15</sup>, rail rolling stock<sup>16</sup> and waterborne<sup>17</sup> and there are technical standards ensuring the accessibility of vehicles for different transport modes. Their scope of application will not be affected by this proposal. Nevertheless, the improved accessibility of transport which this initiative will bring about may facilitate the provision of assistance and/or reduce its need and related costs.

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<sup>13</sup> Initial plan to implement the European Disability Strategy 2010-2020, List of Actions 2010-2015, SEC/2010/1324 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1324:FIN:en:PDF>

<sup>14</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1; Regulation (EC) 1371/2007 on rail passengers' rights and obligations, OJ L 315/14 of 3.12.2007; Regulation (EU) 1177/2010 concerning the rights of passengers when travelling by sea and inland waterway, OJ L 334/1 of 17.12.2010; Regulation (EU) 181/2011 concerning the rights of passengers in bus and coach transport, OJ L 55/1 of 28.2.2011

<sup>15</sup> Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 200, 31.7.2009, p. 1)

<sup>16</sup> Directive 2008/57/EC of 17 June 2008 on the interoperability of the rail system within the Community (Recast) (OJ L 191, 18.7.2008, p.1) and Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system (OJ L 64, 7.3.2008, p. 72)

<sup>17</sup> Directive 2009/45/EC on safety rules and standards for passenger ships, OJ L 163 of 25.6.2009

This proposal is in synergy with the proposal for a Directive on the accessibility of public sector bodies' websites<sup>18</sup>, which covers a specific set of public sector bodies' websites offering specific services. This initiative complements that proposal by addressing some private sector websites. Together, they contribute the realisation of an inclusive e-society put forward in the Digital Single Market Strategy by ensuring the accessibility of websites from providers of basic services to citizens. To ensure that responsible authorities have to implement the same accessibility specifications independent of the type of website, the web-accessibility requirements used in this proposed Directive are identical to those of the proposal for a Directive on the accessibility of public sector bodies' websites.

By defining requirements for accessibility, the proposal would clarify the accessibility obligations of EU legislation establishing obligations on accessibility without providing requirements or specification, for example in the field of public procurement or European Structural and Investment Funds.

It will therefore apply to these initiatives without amending them, despite their different objectives and legal basis, having the benefit of detailing further what is understood by accessibility, contributing to improved legal certainty.

Future legislation with accessibility obligations could reflect the common accessibility requirements of this initiative improving coherence in the internal market.

Furthermore, the concept of active ageing promoted by the European Commission during the European Year for Active Ageing and Solidarity Between Generations in 2012 highlighted the importance of creating accessible or “age-friendly environments” to enable people to live an independent life in the local community for as long as possible. Accessibility is one of its essential components. Given the strong correlation between disability and ageing,<sup>19</sup> accessibility is essential for older persons to remain active, live independently and contribute to the silver economy.<sup>20</sup>

At international level, the US has a wide framework of accessibility legislation, often with detailed compulsory standards and rules.<sup>21</sup> Therefore, and as expressed by several stakeholders (from the ICT industry in particular), the proposal aims to bring coherence between provisions applicable in US and EU rules, given the global character of some products and services. This aim will be facilitated by the standardisation work done under standardisation request M/376.<sup>22</sup> This EU initiative on accessibility could set a framework where accessibility standards developed with a global view could help to create a transatlantic market.

This proposal would foster the effective application of other standards related to accessibility and stemming from the Commission’s standardisation requests M/376, M/420 and M/473.

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<sup>18</sup> COM(2012) 721 final, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0721:FIN:EN:PDF>

<sup>19</sup> EU-SILC data and WHO Global burden of disease report.

<sup>20</sup> COM(2012) 83 Taking forward the Strategic Implementation Plan of the European Innovation Partnership on Active and Healthy Ageing.

<sup>21</sup> Section 255 of Telecoms Act, Communications and Video Accessibility Act, Section 508 of Rehabilitation Act, Air carriers Act, ADA (American with Disabilities Act), Help America Vote Act.

<sup>22</sup> Concerning European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain: <http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=333>

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

### **2.1. Consultations with interested parties**

Numerous public consultations and studies were carried out to identify problems and needs, addressing Member States, industry and civil society (consumers including those with disabilities):

- Online public consultation with a view to a European Accessibility Act (2012)<sup>23</sup>;
- Eurobarometer on Accessibility (2012)<sup>24</sup>;
- SME Panel conducted through Enterprise Europe Network (2012)<sup>25</sup>;
- Direct consultations and meetings with representatives of major civil society organisations, including those representing people with disabilities, of industries and of European industry associations; among these there was a High-Level Dialogue on 'Growth and Accessibility' hosted by Vice-President of the European Commission, Viviane Reding (December 2013);
- 5<sup>th</sup> Disability High Level Group (Member States' experts group) Report on the implementation of the UN Convention on the rights of persons with disabilities<sup>26</sup>;
- Study on the socio-economic impact of new measures to improve accessibility of products and services for people with disabilities (2013)<sup>27</sup>;
- Studies on accessibility legislation in the 27 Member States and enforcement in the EU by the Academic Network of European Disability experts (ANED) (2012)<sup>28</sup>.

### **2.2. Impact assessment**

An Impact Assessment Steering Group, led by the Directorate-General for Justice, was established with a wide representation of services and departments of the Commission.

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.

A preliminary screening showed that this EU initiative should only cover selected priority areas, where obstacles to the functioning of the single market were most visible and likely to increase or where action at European level would add more value. The following four options were retained for further impact analysis:

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

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<sup>23</sup> Report by Deloitte to be published at the same time of the adoption of the proposal.

<sup>24</sup> Eurobarometer number 345:

[http://ec.europa.eu/public\\_opinion/archives/flash\\_arch\\_360\\_345\\_en.htm](http://ec.europa.eu/public_opinion/archives/flash_arch_360_345_en.htm)

<sup>25</sup> SME Panel report by Deloitte to be published at the same time of the adoption of the proposal.

<sup>26</sup> [http://ec.europa.eu/justice/discrimination/files/dhlg\\_5th\\_report\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/dhlg_5th_report_en.pdf)

<sup>27</sup> Deloitte Study's final report to be published at the same time of the adoption of the proposal.

<sup>28</sup> [www.disability-europe.net/](http://www.disability-europe.net/)



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.

Regulatory intervention appeared to be the most efficient form of EU intervention for tackling current and expected problems in the functioning of the single market. A Directive in particular was found to be in line with the approach taken in previous Commission Communications and instruments and would ensure the unobstructed circulation of accessible products and services without going beyond what is necessary.

The Impact Assessment report, prepared by the European Commission services, received a positive opinion from the Impact Assessment Board after careful examination. The final version of the Impact Assessment incorporates the changes made to address the Impact Assessment Board's recommendations.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

#### **3.1. Legal basis**

Article 114(1) of the Treaty on the Functioning of the European Union (TFEU).

#### **3.2. Subsidiarity Principle**

The subsidiarity principle applies insofar as the issues addressed by this proposal do not fall under the exclusive competence of the EU. According to Article 4(2) a) and g) of the TFEU, respectively, the areas of internal market and transport are areas of shared competence between the Union and the Member States.

There is a need for EU action, since Member States alone cannot tackle the problem, as it entails transnational aspects that cannot be dealt with by individual Member States' actions. There are obstacles to the normal functioning of the internal market – both in the sense of present barriers to trade and in the sense of barriers to the development of the full potential of the internal market. National differences in approach put burdens and barriers on companies that seek to interact across borders.

The problems caused by the divergence of national legislations on accessibility requirements, which is likely to increase with Member States implementation of their accessibility obligations under the UNCRPD, can only be tackled effectively through a common approach at EU level. Only a coherent legal framework will allow the free flow of accessible products and services in the internal market, as is confirmed by stakeholders' consultations.

Action at EU level would respect the principle of subsidiarity by focusing on those products and services for which there is clear evidence of a significant internal market problem – because different national requirements create obstacles to trade. Hence there is the need to address it at EU level. Member States would continue to be fully responsible for regulating the accessibility requirements of other products and services.

EU action will add value to national accessibility legislation by creating rules that will ensure the free movement of accessible products and services in the internal market and promoting a more efficient use of resources. Member States must accept products and services exported from another Member State when complying with the accessibility requirements of the proposed Directive. Ensuring this free movement will have positive economic effects. By creating a level playing field for economic operators and preventing fragmentation of the internal market, the proposal will create legal certainty and offer economic operators an expanded market in which to sell their products and services. As a further benefit, consumers with functional limitations, including persons with disabilities and older persons, will benefit from a wider choice of accessible products and services, with better quality and at lower prices: a triple win.

### **3.3. Proportionality Principle**

Regarding proportionality, the content and form of the proposed action does not exceed what is necessary to achieve the goal of ensuring the proper functioning of the internal market.

The timing provided for implementation takes account of product life cycles. The products and services included were thoroughly selected. Accessibility obligations affect only new products placed in the market after the application of the Directive and for services provided from that date on.

Common objectives and general rules are set, but the definition on how to achieve those objectives, taking into account national circumstances, is left to the discretion of Member States. Hence the accessibility requirements being only defined at functional level.

The proportionality of the obligations has been carefully considered and is reflected for example in the light conformity assessment (self-declaration) and market surveillance chosen procedures. They are based on those normally used in internal market harmonisation legislation.<sup>29</sup> The compliance costs for manufacturers, service providers and public administrations have been assessed. The analysis concluded that the benefits of harmonisation mostly outweigh these costs.

In addition and in line with the 'think small first' principle, safeguard clauses are introduced to protect economic operators from carrying a disproportionate burden or avoiding (the costs imposed by) the fundamental alteration of their products and services. These clauses take into account inter alia the size, resources and nature of the economic operators concerned. In line

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<sup>29</sup> See Annex II of Decision No 768/2008/EC on the marketing of products, OJ L 218 of 13.8.2008.

with Commission policy, a full exemption for microenterprises was considered but discarded in favour of the above mentioned clauses as these will better target the actual population of economic operators for which burdens may, in individual well justified cases, potentially be disproportionate relative to benefits. The clauses in question also allow for a better control of the overall impact of these safeguards on the achievement of the objectives of the legislation.

### **3.4. Impact on fundamental rights**

The proposal below would have a positive impact on several rights recognised in the Charter of Fundamental Rights of the European Union. Such an EU initiative would directly or indirectly facilitate the exercise of the following rights: the right to human dignity (Article 1), the right to integrity of the person (Article 3), the right to education (Article 14), the right to choose an occupation and the right to engage in work (Article 15), the rights of the elderly (Article 25), the right to integration of persons with disabilities (Article 26), and the right to freedom of movement and residence (Article 45).

Regarding economic operators, this proposal would have a mixed impact on rights such as the freedom to conduct a business (Article 16) and the right to property (Article 17). First and foremost, by increasing the potential of the internal market through the elimination of obstacles to trade, the initiative would be beneficial for the exercise of those two rights. In some cases the initiative could also entail a limited restriction to the exercise of those rights with the adoption of new rules in some Member States. However, the restrictions resulting from these new rules would be justified and proportional and would result in an increase of the potential for intra-EU trade, from which the economic operators themselves could benefit. The new rules would also be justified with a view to promoting other fundamental rights, such as those mentioned above.

### **3.5. Proposal**

The proposed Directive will provide for a common EU definition and implementation framework for accessibility requirements of certain products and services. The elements of the proposed Directive can be summarised as follows:

#### **Scope**

The proposed Directive will:

- Harmonise accessibility requirements for a list of products and services; and
- Use the same accessibility requirements to define and give content to the – already existing, but undefined – obligation of accessibility laid down in EU law, such as in the area of Public Procurement and the Structural and Investment Funds. The scope of application is the one of their respective legal instruments, which is not modified by this proposed Directive.

#### **Accessibility requirements and free movement**

The proposed Directive will improve the functioning of the internal market by removing barriers created by divergent national legislation with harmonised compulsory accessibility requirements for a list of products and services. The list results from a screening, based on several external public and internal consultations, on the needs of the industry and people with disabilities, on an expert survey on accessibility legislation and their enforcement in 27

Member States as well as on the analysis of current national legislative divergences in nine EU Member States covering about 80% of the EU GDP and 77% of the EU population.

It ensures that all products and services complying with the accessibility requirements will benefit from free circulation on the internal market.

It supports industry to address accessibility by using the same functional accessibility requirements to render operational the obligation to buy/fund accessible products and services as laid down in EU law.

Safeguard clauses have been included.

### **Implementation by the Member States**

- The proposed Directive harmonises accessibility requirements at EU level for a number of products and services and removes barriers for their free circulation;
- It does not prescribe in detail how the obligation to render a product or service accessible by complying with the defined accessibility requirements has to be achieved in practice. In case this still leads to obstacles in the internal market, the Commission can consider other options in the future to provide guidance to Member States such as standardisation or implementing measures;
- The Directive includes the possibility of using voluntary harmonised standards to provide presumption of conformity with the accessibility requirements;
- In order to secure proper implementation and enforcement of accessibility, the Directive makes use of light conformity assessment (self-declaration) and existing market surveillance mechanisms to assess compliance of products with accessibility requirements. It also provides a lighter procedure for checking compliance of services;
- The Directive sets out the date of entry into force of the laws, regulations and administrative provisions necessary to comply with this Directive by two years after its entry into force at the latest;
- The Directive requires Member States to set the application of all measures, including the free circulation of products and services and those prescribed in Article 3, by six years after the entry into force of the Directive;
- The deadline for the application of the measures in Chapter VI – on defining accessibility by reference to the requirements of this Directive in the cases where EU law puts obligations on accessibility without further containing definitions or specification - is six years after the entry into force of the Directive.

### **Explanatory documents**

The Commission considers that in this particular case it is justified to ask Member States to communicate explanatory documents to the Commission in order to clarify the relationship between the provisions of this Directive and the corresponding parts of national transposition documents.

- National legislation and its implementation in the field of accessibility is challenging due to the great variation of the legal traditions in the different Member States, for example some Member States regulate accessibility under anti-discrimination law,

others under disability law, others under sector-specific legal instruments. In addition, this Directive covers accessibility requirements for a selected list of products and services. It therefore contains a wide variety of legal obligations.

- The Directive's implementation will require the amendment of various branches of the national legal order in the Member States. Its provisions will be transposed through amendments to national rules, laws, regulations and administrative provisions. It is likely that the implementation will not only concern the central/national level of legislation in the Member States, but touch different levels of regional and local legislation. The transposition at national level is therefore indeed expected to be scattered throughout the national legal order.

For these reasons the Commission considers that explanatory documents accompanying the notification of transposition measures will be essential to understand fully the national transposition process. Against this background it is proportionate to ask Member States to take on the administrative burden of providing explanatory documents in order to achieve the objective of putting the Commission in a position to carry out its task of overseeing the transposition of this cross-cutting Directive, which is central to the EU measures on accessibility.

### **How will the system work?**

- The proposed Directive will prevent and dismantle existing obstacles in the internal market due to divergent national legislation. As a consequence, it will guide Member States' compliance with the UNCRPD in what concerns accessibility.

When entering into force, the harmonisation of accessibility in the EU will be at the level of functional accessibility requirements, namely, general principles based on a "design for all" approach, and not at detailed technical level. This level would be sufficient to ensure the good functioning of the internal market for the products and services covered.

However, the Directive also caters for situations where further detailed harmonisation for some products and services would be needed or where industry needs more detail and guidance to facilitate their conformity. The Directive provides for a number of options in this case: the use of voluntary harmonised standards and, in the absence of harmonised standards, the use of implementing acts to further define the accessibility requirements included. Typically these options would be used only after a reasonable period of application of the Directive, and would depend on the market's/consumers' proved need for further harmonisation and would be based on evidence of either market or regulatory failures.

The possibility to request the development of European standards in accordance with Regulation (EU) No 1025/2012 is an established way of further detailing legal requirements given in EU Internal market legislation. Those harmonised standards will contain technical details on "How" to make products and services accessible. Regulation (EU) No 1025/2012 also regulates transparency and inclusiveness of the standardisation process leading to adoption of requested standards.

Application of harmonised standards will remain voluntary. However, when using harmonised standards, the references of which have been published in the *Official Journal*, there is a presumption of conformity that the accessibility requirements of the

Directive covered by those standards or parts thereof have been complied with, allowing the free circulation of these products and services in the EU internal market. Regulation (EU) No 1025/2012 also provides for the procedures for objections to harmonised standards where those standards do not entirely satisfy the accessibility requirements set out in this Directive.

- The proposed Directive will support industry to address accessibility by using the same functional accessibility requirements to define accessibility obligation laid down in EU law, such as the obligation for Member States to buy/fund accessible products and services enshrined in the revised Public Procurement Directives.

#### **Implementing powers and final provisions**

- Implementing powers will be used when there is a need to provide for uniform conditions for implementation of the obligations of this Directive.
- The Commission shall be assisted by a committee as described in Regulation (EU) No 182/2011. References are made to the examination procedures that are distinctively applied under the articles of this Directive.

A review shall be carried out of the application of this Directive within five years from its application.

#### **4. BUDGETARY IMPLICATION**

The proposal has very limited budgetary implications. The only operational costs relate to the preparation of the report on the application of this Directive, i.e. operational appropriation of €0.2 million under existing budget line, as well as administrative expenditure of around €0,182 million per year after the adoption of the Directive for running the related committee meetings. This expenditure will be borne by internal redeployment and not entail an increase in the funds.

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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>30</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The purpose of this Directive is to contribute to the proper functioning of the internal market by approximating laws, regulations and administrative provisions of the Member States, by eliminating barriers to the free movement of certain accessible products and services. This will increase the availability of accessible products and services on the internal market.
- (2) The demand for accessible products and services is high and the number of citizens with disabilities and/or functional limitations will increase significantly with the ageing of the European Union's population. An environment where products and services are more accessible allows for a more inclusive society and facilitates independent living.
- (3) The disparities between the laws and administrative measures adopted by the Member States in relation to accessibility of products and services for persons with functional limitations including persons with disabilities create barriers to the free movement of such products and services and distort effective competition in the internal market. Economic operators, in particular small and medium-sized enterprises (SMEs), are particularly affected by those barriers.

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<sup>30</sup> OJ C , , p .

- (4) Due to the differences in national accessibility requirements, individual professionals, SMEs and micro-enterprises in particular are discouraged from entering into business ventures outside their own domestic markets. The national, or even regional or local, accessibility requirements that Member States have put in place currently differ as regards both coverage and level of detail. Those differences negatively affect competitiveness and growth, due to the additional costs incurred in the development and marketing of accessible products and services for each national market.
- (5) Consumers of accessible products and recipients of accessible services are faced with high prices due to limited competition among suppliers. Fragmentation among national regulations reduces potential benefits from sharing experiences with national and international peers in responding to societal and technological developments.
- (6) The approximation of national measures at Union level is therefore necessary for the proper functioning of the internal market in order to put an end to fragmentation in the market of accessible products and services, to create economies of scale, to facilitate cross-border trade and mobility, as well as to help economic operators to concentrate resources on innovation instead of using those resources for complying with fragmented legal requirements across the Union.
- (7) The benefits of harmonising accessibility requirements for the internal market have been demonstrated by the application of Directive 2014/33/EU of the European Parliament and of the Council regarding lifts<sup>31</sup> and Regulation (EC) No 661/2009 of the European Parliament and of the Council<sup>32</sup> in the area of transport.
- (8) In Declaration No 22 annexed to the Treaty of Amsterdam, the Conference of the Representatives of the Member States agreed that, in drawing up measures under Article 114 of the Treaty, the institutions of the Union are to take account of the needs of persons with disabilities.
- (9) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community and to promote the application of Article 26 of the Charter of Fundamental Rights of the European Union.
- (10) The overall aim of the 'Digital Single Market Strategy', is to deliver sustainable economic and social benefits from a connected digital single market. Union consumers still do not enjoy the full benefits of prices and choice that the single market can offer, because cross-border online transactions are still very limited. Fragmentation also limits demand for cross-border e-commerce transactions. There is also a need for concerted action to make sure that new electronic content is also fully available to persons with disabilities. It is therefore necessary to harmonise accessibility requirements across the digital single market and to ensure that all Union citizens regardless of their abilities can enjoy its benefits.

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<sup>31</sup> Directive 2014/33/EU of the European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts (OJ L 96, 29.3.2014, p.251).

<sup>32</sup> Regulation (EC) No 661/2009 of the European Parliament and of the Council of 13 July 2009 concerning type-approval requirements for the general safety of motor vehicles, their trailers and systems, components and separate technical units intended therefor (OJ L 200, 31.7.2009, p.1).



- (11) In accordance with Article 216(2) of the Treaty, agreements concluded by the Union are binding upon the institutions of the Union and on its Member States. Thus, after the conclusion by the Union of the United Nations Convention on the Rights of Persons with Disabilities (the Convention), its provisions have become an integral part of the Union legal order.
- (12) In its Article 9, the Convention requires its parties to the Convention to take appropriate measures to ensure that persons with disabilities have access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas, on an equal basis with others. The United Nations Committee on the Rights of Persons with Disabilities has indicated the need to create a legislative framework with concrete, enforceable and time-bound benchmarks for monitoring the gradual implementation of accessibility.
- (13) The entry into force of the Convention in the Member States' legal orders entails the need to adopt additional national provisions on accessibility of products and services which without Union action would further increase disparities between national provisions.
- (14) It is therefore necessary to facilitate the implementation of the Convention by providing common Union rules.
- (15) The European Disability Strategy 2010-2020 – A Renewed Commitment to a Barrier-Free Europe<sup>33</sup> – in line with the Convention, establishes accessibility as one of the eight areas of action, and aims at ensuring accessibility of products and services.
- (16) Products and services falling within the scope of this Directive are the result of a screening exercise, carried out during the preparation of the Impact Assessment that identified those relevant products and services for persons with functional limitations, including persons with disabilities and older persons, for which Member States have adopted or are likely to adopt diverging national accessibility requirements.
- (17) Each product and service has to comply with the accessibility requirements identified in Article 3 and listed in Annex I to be accessible for persons with disabilities and older persons. The e-commerce accessibility obligations also apply to the online sale of services under Article 1(2)(a) to (e) of this Directive.
- (18) It is necessary to introduce the accessibility requirements in the least burdensome manner for the economic operators and the Member States, notably by only including in the scope the products and services which have been thoroughly selected.
- (19) It is therefore necessary to specify accessibility requirements for the placing on the market of products and services which fall within the scope of this Directive in order to ensure their free circulation in the internal market.
- (20) This Directive should make compulsory the use of functional accessibility requirements in terms of general objectives. These should be precise enough to create legally binding obligations and sufficiently detailed so as to make it possible to assess conformity in order to ensure the good functioning of the internal market for the products and services covered.

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<sup>33</sup> COM (2010) 636.

- (21) The Commission's proposal for a Directive of the European Parliament and of the Council<sup>34</sup> includes accessibility requirements for a specific set of public sector bodies' websites. In addition, it proposes to establish the basis for a monitoring and reporting methodology of the compliance of the relevant websites with the requirements listed in that Directive. Both the accessibility requirements and the monitoring and reporting methodology included in that Directive are to apply to the public sector bodies' websites. With the purpose of, notably, ensuring that relevant authorities implement the same accessibility requirements independently of the type of regulated website, the accessibility requirements set out in this Directive should be aligned to those of the proposed Directive on the accessibility of public sector bodies' websites. Activities of e-commerce of public sector websites not covered by that Directive, fall under the scope of this proposal, in order to ensure that the online sale of products and services is accessible for persons with disabilities and older persons, irrespective of their public or private sale.
- (22) Member States shall take all appropriate measures to ensure that, where the products and services covered by this Directive comply with the relevant accessibility requirements, their free movement within the Union is not impeded due to reasons of accessibility.
- (23) In some situations, common accessibility requirements of the built environment would facilitate the free movement of the related services and of persons with disabilities. Therefore, this Directive enables Member States to include the built environment used in the provision of the services under the scope of this Directive, ensuring compliance with the accessibility requirements set in Annex X.
- (24) It is necessary to provide that, for legislative acts of the Union establishing accessibility obligations without providing accessibility requirements or specifications, accessibility is defined by reference to the accessibility requirements of this Directive. That is the case of Directive 2014/23/EU of the European Parliament and of the Council,<sup>35</sup> Directive 2014/24/EU of the European Parliament and of the Council,<sup>36</sup> and Directive 2014/25/EU of the European Parliament and of the Council,<sup>37</sup> which require that technical specifications and technical or functional requirements of the concessions, works or services falling within their scope take into account accessibility criteria for persons with disabilities or "design for all" users.
- (25) Accessibility should be achieved by the removal and prevention of barriers, preferably through a universal design or "design for all" approach. Accessibility should not exclude the provision of reasonable accommodation when requested by national or Union law.
- (26) Most jobs in the Union are provided by SMEs and micro-enterprises. They have a crucial importance for future growth, but very often face hurdles and obstacles in developing their products or services, notably in the cross-border context. It is therefore necessary to

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<sup>34</sup> Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites COM(2012) 721.

<sup>35</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1).

<sup>36</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65°).

<sup>37</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

facilitate the work of the SMEs and micro-enterprises by harmonising the national provisions on accessibility while maintaining the necessary safeguards.

- (27) This Directive should be based on Decision No 768/2008/EC of the European Parliament and of the Council<sup>38</sup> as it concerns products already subject to other Union acts, this way ensuring the consistency of Union legislation.
- (28) All economic operators intervening in the supply and distribution chain should ensure that they make available on the market only products which are in conformity with the accessibility requirements of this Directive. It is necessary to provide for a clear and proportionate distribution of obligations which correspond to the role of each operator in the supply and distribution process.
- (29) Economic operators should be responsible for the compliance of products and services, in relation to their respective roles in the supply chain, so as to ensure a high level of protection of accessibility and to guarantee fair competition on the Union market.
- (30) The manufacturer having detailed knowledge of the design and production process is best placed to carry out the complete conformity assessment procedure. The obligations for conformity assessment should rest with the manufacturer.
- (31) Distributors and importers should be involved in market surveillance tasks carried out by national authorities, and should participate actively, providing the competent authorities with all necessary information relating to the product concerned.
- (32) Importers should ensure that products from third countries entering the Union market comply with the accessibility requirements of this Directive and in particular that appropriate conformity assessment procedures have been carried out by manufacturers with regard to those products.
- (33) When placing a product on the market, every importer should indicate, on the product, its name and the address at which the company can be contacted.
- (34) Distributors should ensure that their handling of the product does not adversely affect the compliance of the product with the accessibility requirements of this Directive.
- (35) Any economic operator that either places a product on the market under his own name or trademark or modifies a product in such a way that compliance with applicable requirements may be affected should be considered to be the manufacturer and should assume the obligations of the manufacturer.
- (36) For reasons of proportionality, accessibility requirements should only apply to the extent that they do not impose a disproportionate burden on the economic operator concerned, or require a change in the products and services which would result in their fundamental alteration in accordance with the specified criteria.
- (37) This Directive should follow the principle of 'think small first' and should take account of the administrative burdens that SMEs are faced with. It should set light rules in terms of conformity assessment and should establish safeguard clauses for economic operators,

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<sup>38</sup> Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products (OJ L 218, 13/08/2008, p. 82).

rather than providing for general exceptions and derogations for those enterprises. Consequently, when setting up the rules for the selection and implementation of the most appropriate conformity assessment procedures, the situation of SMEs should be taken into account and the obligations to assess conformity of accessibility requirements should be limited to the extent that they do not pose a disproportionate burden on SMEs. In addition, market surveillance authorities should operate in a proportionate manner in relation to the size of undertakings and to the small serial or non-serial nature of the production concerned, without creating unnecessary obstacles for SMEs and without compromising the protection of public interests.

- (38) All economic operators should act responsibly and in full accordance with the legal requirements applicable when placing or making products available on the market or providing services on the market.
- (39) In order to facilitate conformity assessment with applicable requirements it is necessary to provide for a presumption of conformity for products and services which are in conformity with voluntary harmonised standards that are adopted in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council<sup>39</sup> for the purpose of expressing detailed technical specifications of those requirements. The Commission has already issued a number of standardisation requests to the European standardisation organisations on accessibility which would be relevant for the preparation of harmonised standards.
- (40) In the absence of harmonised standards and where needed for market harmonisation purposes, the Commission should be able adopt implementing acts establishing common technical specifications for the accessibility requirements set in this Directive.
- (41) To ensure effective access to information for market surveillance purposes, the information required to declare compliance with all applicable Union acts should be available in a single EU declaration of conformity. In order to reduce the administrative burden on economic operators, they should be able to include in the single EU declaration of conformity relevant individual declarations of conformity.
- (42) For conformity assessment of products, this Directive should use the Internal Production Control of "Module A", described in Annex II to Decision No 768/2008/EC, as it enables economic operators to demonstrate, and the competent authorities to ensure, that products made available in the market conform to the accessibility requirements while not imposing a disproportionate burden.
- (43) For services, the information necessary to assess the conformity with the accessibility requirements should be provided in the general terms and conditions, or equivalent document.
- (44) The CE marking, indicating the conformity of a product with the accessibility requirements of this Directive, is the visible consequence of a whole process comprising conformity assessment in a broad sense. This Directive should follow the general

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<sup>39</sup> Regulation (EU) No 1025/2012 of 25 October 2012 of the European Parliament and of the Council on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12)

principles governing the CE marking of Regulation (EC) No 765/2008 of the European Parliament and of the Council<sup>40</sup> setting out the requirements for accreditation and market surveillance relating to the marketing of products.

- (45) In accordance with Regulation (EC) No 765/2008 by affixing the CE marking to a product, the manufacturer declares that the product is in conformity with all applicable accessibility requirements and that he takes full responsibility therefor.
- (46) In accordance with Decision No 768/2008/EC, Member States are responsible for ensuring strong and efficient market surveillance of products in their territories and should allocate sufficient powers and resources to their market surveillance authorities.
- (47) Member States should check the compliance of services with the obligations of this Directive and should follow up complaints or reports related to non-compliance in order to ensure that corrective action has been taken.
- (48) Member States are expected to ensure that market surveillance authorities check the compliance of the economic operators with the criteria referred to in Article 12 (3) in accordance with Chapter V.
- (49) Member States are expected to ensure that competent authorities indicated in Article 22 notify the Commission of the use of the exceptions referred to in Article 22 (1) as well as include the assessment referred to in paragraph (2) in accordance with Chapter VI.
- (50) A safeguard procedure should be set up which applies only in the event of disagreement between Member States over measures taken by a Member State under which interested parties are informed of measures intended to be taken with regard to products not complying with the accessibility requirements of this Directive. It should allow market surveillance authorities, in cooperation with the relevant economic operators, to act at an earlier stage in respect of such products.
- (51) Where the Member States and the Commission agree as to the justification of a measure taken by a Member State, no further involvement of the Commission should be required, except where non-compliance can be attributed to shortcomings of a harmonised standard.
- (52) In order to ensure uniform conditions for the implementation of chapter IV of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.<sup>41</sup>
- (53) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a Directive and

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<sup>40</sup> Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13/08/2008, p. 30).

<sup>41</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.02.2011, p. 13).

the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

- (54) Since the objective of this Directive, namely, the elimination of barriers to the free movement of certain accessible products and services to contribute to the proper functioning of the internal market, cannot be sufficiently achieved by the Member States because it requires the harmonisation of different rules currently existing in their respective legal systems, but can rather, by reason of defining common accessibility requirements and rules for the functioning of the single market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS DIRECTIVE:

# CHAPTER I

## GENERAL PROVISIONS

### *Article 1*

#### ***Scope***

1. Chapters I, II to V, and VII apply to the following products:
  - (a) general purpose computer hardware and operating systems;
  - (b) the following self-service terminals:
    - (i) Automatic Teller Machines;
    - (ii) ticketing machines;
    - (iii) check-in machines.
  - (c) consumer terminal equipment with advanced computing capability related to telephony services;
  - (d) consumer terminal equipment with advanced computing capability related to audio-visual media services.
2. Chapters I, II to V, and VII, apply to the following services:
  - (a) telephony services and related consumer terminal equipment with advanced computing capability;
  - (b) audiovisual media services and related consumer equipment with advanced computing capability;
  - (c) air, bus, rail and waterborne passenger transport services;
  - (d) banking services;
  - (e) e-books;
  - (f) e-commerce.
3. Chapters I, VI and VII of this Directive apply to the following:

- (a) public contracts and concessions which are subject to Directive 2014/23/EU<sup>42</sup> Directive 2014/24/EU and Directive 2014/25/EU.
- (b) the preparation and implementation of programmes under Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund;<sup>43</sup> and Regulation (EU) No 1304/2013 of the European Parliament and of the Council.<sup>44</sup>
- (c) tender procedures for public passenger transport services by rail and by road under Regulation (EC) No 1370/2007 of the European Parliament and of the Council.<sup>45</sup>
- (d) transport infrastructure in accordance with Regulation (EU) No 1315/2013 of the European Parliament and of the Council.<sup>46</sup>

## *Article 2*

### ***Definitions***

For the purposes of this Directive, the following definitions shall apply:

- (1) “accessible products and services” are products and services that are perceptible, operable and understandable for persons with functional limitations, including persons with disabilities, on an equal basis with others;
- (2) “universal design” referred to also as “design for all” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design; “universal design” does not exclude assistive devices for particular groups of persons with functional limitations, including persons with disabilities where this is needed;
- (3) “persons with functional limitations” means persons who have any physical, mental, intellectual or sensory impairment, age related impairment, or other human body performance related causes, permanent or temporary, which in interaction with various

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<sup>42</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p. 1)

<sup>43</sup> Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 ( OJ L 347, 20.12.2013, p. 320).

<sup>44</sup> Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006.

<sup>45</sup> Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) 1191/69 and 1107/70 (OJ L 315 of 3.12.2007, p.1).

<sup>46</sup> Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network (OJ L 348, 20.12.2013, p.1).



barriers result in their reduced access to products and services, leading to a situation that requires adaptation to their particular needs of those products and services;

- (4) “persons with disabilities” include persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;
- (5) “product” means a substance, preparation or good produced through a manufacturing process other than food, feed, living plants and animals, products of human origin and products of plants and animals relating directly to their future reproduction;
- (6) "audiovisual media services" means services within the meaning of Article 1(1)(a) of Directive 2010/13/EU of the European Parliament and of the Council;<sup>47</sup>
- (7) “Telephony services” means services within the meaning of Article 2(c) of Directive 2002/21/EC of the European Parliament and of the Council;<sup>48</sup>
- (8) “making available on the market” means any supply of a product for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge;
- (9) “placing on the market” means the first making available of a product on the Union market;
- (10) “manufacturer” means any natural or legal person who manufactures a product or has a product designed or manufactured, and markets that product under his name or trademark;
- (11) “authorised representative” means any natural or legal person established within the Union who has received a written mandate from a manufacturer to act on his behalf in relation to specified tasks;
- (12) “importer” means any natural or legal person established within the Union who places a product from a third country on the Union market;
- (13) “distributor” means any natural or legal person in the supply chain, other than the manufacturer or the importer, who makes a product available on the market;
- (14) “economic operators” means the manufacturer, the authorised representative, the importer, the distributor, and the service provider;
- (15) “consumer” means any natural person who purchases the relevant product or is a recipient of the relevant service for purposes which are outside his trade, business, craft or profession;
- (16) “microenterprise” means an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

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<sup>47</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 95, 15.04.2010, p. 1)

<sup>48</sup> Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ L 108, 24.4.2002, p. 33).

- (17) "harmonised standard" means harmonised standard as defined in point 1(c) of Article 2 of Regulation (EU) No 1025/2012;
- (18) "common technical specifications" means a technical specification as defined in Article 2(4) of Regulation (EU) No 1025/2012 that provides a means to comply with the accessibility requirements applicable to a product or service;
- (19) "recall" means any measure aiming at the return of a product that has already been made available to the end user;
- (20) "withdrawal" means any measure aiming at preventing a product in the supply chain from being made available on the market;
- (21) "e-commerce" means the online sale of products and services.

## CHAPTER II

### ACCESSIBILITY REQUIREMENTS AND FREE MOVEMENT

#### *Article 3*

##### *Accessibility requirements*

1. Member States shall ensure that the products and services referred to in Article 1(1) and 1(2) comply with the accessibility requirements set out in Annex I in accordance with paragraphs 2 to 9 of this Article.
2. General purpose computer hardware and operating systems shall comply with the requirements set out in Section I of Annex I.
3. The following self-service terminals: Automatic Teller Machines, ticketing machines and check-in machines shall comply with the requirements set out in Section II of Annex I.
4. Telephony services, including emergency services and the related consumer terminal equipment with advanced computing capability, shall comply with the requirements set out in Section III of Annex I.
5. Audiovisual media services and the related consumer equipment with advanced computing capability shall comply with the requirements set out in Section IV of Annex I.
6. Air, bus, rail and waterborne passenger transport services, the websites, the mobile device-based services, smart ticketing and real-time information and Self-service terminals, ticketing machines and check-in machines used for provision of passenger transport services shall comply with the corresponding requirements set out in Section V of Annex I.
7. Banking services, the websites, the mobile device-based banking services, self-service terminals, including Automatic Teller machines used for provision of banking services shall comply with the requirements set out in Section VI of Annex I.
8. E-books shall comply with the requirements set out in Section VII of Annex I.
9. E-commerce shall comply with the requirements set out in Section VIII of Annex I.
10. Member States may decide, in the light of national conditions, that the built environment used by clients of passenger transport services including the environment that is managed by service providers and by infrastructure operators as well as the built environment used by clients of banking services, and customer services centres and shops under the scope of telephony operators shall comply with the accessibility

requirements of Annex I, section X, in order to maximise their use by persons with functional limitations, including persons with disabilities.

#### *Article 4*

#### ***Free movement***

Member States shall not impede the making available on the market in their territory of products and services that comply with this Directive for reasons related to accessibility requirements.

### **CHAPTER III**

## **OBLIGATIONS OF ECONOMIC OPERATORS**

#### *Article 5*

#### ***Obligations of manufacturers***

1. When placing their products on the market, manufacturers shall ensure that the products have been designed and manufactured in accordance with the applicable accessibility requirements set out in Article 3.
2. Manufacturers shall draw up the technical documentation in accordance with Annex II and carry out the conformity assessment procedure set out in that Annex or have it carried out.

Where compliance of a product with the applicable accessibility requirements has been demonstrated by that procedure, manufacturers shall draw up an EU declaration of conformity and affix the CE marking.

3. Manufacturers shall ensure that procedures are in place for series production to remain in conformity. Changes in product design or characteristics and changes in the harmonised standards or in other technical specifications and by reference to which conformity of a product is declared shall be adequately taken into account.
4. Manufacturers shall keep a register of complaints, of non-conforming products and products recalls, and shall keep distributors informed of any such monitoring.
5. Manufacturers shall ensure that their products bear a type, batch or serial number or other element allowing their identification, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the product.
6. Manufacturers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product. The address must indicate a single point at which the manufacturer can be contacted.

7. Manufacturers shall ensure that the product is accompanied by instructions and safety information in a language which can be easily understood by consumers and end-users, as determined by the Member State concerned.
8. Manufacturers who consider or have reason to believe that a product which they have placed on the market is not in conformity with this Directive shall immediately take the necessary corrective measures to bring that product into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the product presents a risk related to accessibility, manufacturers shall immediately inform the competent national authorities of the Member States in which they made the product available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.
9. Manufacturers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the product, in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market and to ensure compliance with the requirements referred to in Article 3.

#### *Article 6*

##### ***Authorised representatives***

1. A manufacturer may, by a written mandate, appoint an authorised representative. The obligations laid down in Article 5(1) and the drawing up of technical documentation shall not form part of the authorised representative's mandate.
2. An authorised representative shall perform the tasks specified in the mandate received from the manufacturer. The mandate shall allow the authorised representative to do at least the following:
  - (a) further to a reasoned request from a competent national authority, provide that authority with all the information and documentation necessary to demonstrate the conformity of a product;
  - (b) co-operate with the competent national authorities, at their request, on any action taken to eliminate the risks posed by products covered by their mandate.

#### *Article 7*

##### ***Obligations of importers***

1. Importers shall place only compliant products on the market.
2. Before placing a product on the market importers shall ensure that the conformity assessment procedure set out in Annex II has been carried out by the manufacturer. They shall ensure that the manufacturer has drawn up the technical documentation required by that Annex, that the product bears the CE marking and is accompanied by the required documents and that the manufacturer has complied with the requirements set out in Article 5(5) and (6).

3. Where an importer considers or has reason to believe that a product is not in conformity with the accessibility requirements referred to in Article 3, he shall not place the product on the market until it has been brought into conformity. Furthermore, where the product presents a risk, the importer shall inform the manufacturer and the market surveillance authorities to that effect.
4. Importers shall indicate their name, registered trade name or registered trade mark and the address at which they can be contacted on the product or, where that is not possible, on its packaging or in a document accompanying the product.
5. Importers shall ensure that the product is accompanied by instructions and information in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned.
6. Importers shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the accessibility requirements referred to in Article 3.
7. Importers shall keep a register of complaints, of non-conforming products and product recalls, and shall keep distributors informed of such monitoring.
8. Importers who consider or have reason to believe that a product which they have placed on the market is not in conformity with the requirements referred to in Article 3 shall immediately take the necessary corrective measures to bring that product into conformity, to withdraw it or recall it, if appropriate. Furthermore where the product presents a risk, importers shall immediately inform the competent national authorities of the Member States in which they made the product available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.
9. Importers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have placed on the market.

#### *Article 8*

##### ***Obligations of distributors***

1. When making a product available on the market distributors shall act with due care in relation to the requirements of this Directive.
2. Before making a product available on the market distributors shall verify that the product bears the CE marking, that it is accompanied by the required documents and by instructions and information in a language which can be easily understood by consumers and other end-users in the Member State in which the product is to be made available on the market and that the manufacturer and the importer have complied with the requirements set out in Article 5(5) and (6) and Article 7(4).
3. Where a distributor considers or has reason to believe that a product is not in conformity with the accessibility requirements referred to in Article 3, they shall not make the

product available on the market until it has been brought into conformity. Furthermore, where the product presents a risk, the distributor shall inform the manufacturer and the market surveillance authorities to that effect.

4. Distributors shall ensure that, while a product is under their responsibility, storage or transport conditions do not jeopardise its compliance with the requirements referred to in Article 3.
5. Distributors who consider or have reason to believe that a product which they have made available on the market is not in conformity with this Directive shall make sure that the necessary corrective measures are taken to bring that product into conformity, to withdraw it or recall it, if appropriate. Furthermore, where the product presents a risk, distributors shall immediately inform the competent national authorities of the Member States in which they made the product available to that effect giving details, in particular, of the non-compliance and of any corrective measures taken.
6. Distributors shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of a product. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by products which they have made available on the market.

#### *Article 9*

##### ***Cases in which obligations of manufacturers apply to importers and distributors***

An importer or distributor shall be considered a manufacturer for the purposes of this Directive and he shall be subject to the obligations of the manufacturer under Article 5, where they place a product on the market under his name or trademark or modifies a product already placed on the market in such a way that compliance with the requirements of this Directive may be affected.

#### *Article 10*

##### ***Identification of economic operators***

1. Economic operators shall, on request, identify the following to the market surveillance authorities:
  - (a) any economic operator who has supplied them with a product;
  - (b) any economic operator to whom they have supplied a product.
2. Economic operators shall be able to present the information referred to in paragraph 1 for a period of 10 years after they have been supplied with the product and for a period of 10 years after they have supplied the product.

#### *Article 11*

##### ***Obligations of service providers***

1. Service providers shall ensure that they design and provide services in accordance with Article 3.
2. Service providers shall prepare the necessary information in accordance with Annex III explaining how the services meet the accessibility requirements referred to in Article 3. The information shall be made available to the public in written and oral format, including in a manner which is accessible to persons with functional limitations and persons with disabilities. Service providers shall keep the information as long as the service is in operation.
3. Service providers shall ensure that procedures are in place guaranteeing that the continuous provision of services remains in conformity with the accessibility requirements referred to in Article 3. Changes in the characteristics of the provision of the service and changes in accessibility requirements referred to in Article 3 shall be adequately taken into account by the service providers. In case of non-conformity, service providers shall take the necessary corrective measures to bring the service in conformity with the accessibility requirements referred to in Article 3.
4. Service providers shall, further to a reasoned request from a competent authority, provide it with all information necessary to demonstrate the conformity of the service with the accessibility requirements referred to in Article 3. They shall cooperate with those authorities, at their request, on any action taken to bring the service in conformity with those requirements.

## *Article 12*

### ***Fundamental alteration and disproportionate burden***

1. The accessibility requirements referred to in Article 3 apply to the extent that they do not introduce a significant change in an aspect or feature of a product or service that results in the alteration of the basic nature of the product or service.
2. Accessibility requirements referred to in Article 3 apply to the extent that they do not impose a disproportionate burden on the economic operators concerned.
3. In order to assess whether compliance with accessibility requirements regarding products or services imposes a disproportionate burden, the economic operators shall take account, of the following:
  - (a) the size, resources and nature of the economic operators;
  - (b) the estimated costs and benefits for the economic operators in relation to the estimated benefit for persons with disabilities, taking into account the frequency and duration of use of the specific product or service.
4. The burden shall not be deemed disproportionate where it is compensated by funding from other sources than the economic operator's own resources, whether public or private.



5. The assessment of whether compliance with accessibility requirements regarding products or services imposes a fundamental alteration or disproportionate burden shall be performed by the economic operator.
6. Where the economic operators have used the exception provided for in paragraphs 1 to 5 for a specific product or service they shall notify the relevant market surveillance authority of the Member State in the market of which the product or service is placed or made available. Notification shall include the assessment referred to in paragraph 3. Microenterprises are exempted from this notification requirement but must be able to supply the relevant documentation upon request from a relevant market surveillance authority.

## **CHAPTER IV**

### **HARMONISED STANDARDS, COMMON TECHNICAL SPECIFICATIONS AND CONFORMITY OF PRODUCTS AND SERVICES**

#### *Article 13*

##### ***Presumption of conformity***

Products and services which are in conformity with harmonised standards or parts thereof the references of which have been published in the *Official Journal of the European Union*, shall be presumed to be in conformity with the accessibility requirements covered by those standards or parts thereof, referred to in Article 3.

#### *Article 14*

##### ***Common technical specifications***

1. Where no reference to harmonised standards has been published in the *Official Journal of the European Union* in accordance with Regulation (EU) No 1025/2012, and where further detail for the accessibility requirements of certain products and services would be needed for harmonisation of the market, the Commission may adopt implementing acts establishing common technical specifications ('CTS') for the accessibility requirements set out in Annex I to this Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2) of this Directive.
2. Products and services which are in conformity with the CTS referred to in paragraph 1 or parts thereof shall be deemed to be in conformity with the accessibility requirements referred to in Article 3, covered by those CTS or parts thereof.

## *Article 15*

### ***EU declaration of conformity of products***

1. The EU declaration of conformity shall state that the fulfilment of the relevant accessibility requirements referred to in Article 3 has been demonstrated. Where the exception provided for in Article 12 has been used, the EU declaration of conformity shall state which accessibility requirements are subject to that exception.
2. The EU declaration of conformity shall have the model structure set out in Annex III to Decision No 768/2008/EC. It shall contain the elements specified in Annex II to this Directive and shall be continuously updated. The requirements concerning the technical documentation shall avoid imposing any disproportionate burden for micro, small and medium-sized enterprises. It shall be translated into the language or languages required by the Member State in the market of which the product is placed or made available.
3. Where a product is subject to more than one Union act requiring an EU declaration of conformity, a single EU declaration of conformity shall be drawn up in respect of all such Union acts. That declaration shall contain the identification of the acts concerned including the publication references.
4. By drawing up the EU declaration of conformity, the manufacturer shall assume responsibility for the compliance of the product.

## *Article 16*

### ***General principles of the CE marking of products***

The CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008.

## **CHAPTER V**

### **MARKET SURVEILLANCE, COMPLIANCE AND UNION SAFEGUARD PROCEDURE**

## *Article 17*

### ***Market surveillance of products***

1. Article 15(3) and 16 to 29 of Regulation (EC) No 765/2008 shall apply to products.
2. When carrying out market surveillance of products market surveillance authorities shall review the assessment referred to in Article 12.

3. Member States shall ensure that information held by market surveillance authorities concerning the compliance of economic operators with the applicable accessibility requirements set out in Article 3 and the assessment of the exceptions provided for in Article 12, is made available to consumers upon request and in an accessible format, except where that information cannot be provided for reasons of confidentiality as provided for in Article 19(5) of Regulation (EC) No 765/2008.

## *Article 18*

### ***Compliance of services***

1. Member States shall establish, implement and periodically update adequate procedures in order to:
  - (a) check the compliance of services listed in Article 1(2) with the requirements set out in this Directive and the assessment of the exceptions provided for in Article 12;
  - (b) follow up complaints or reports on issues relating to non-compliance of services referred to in Article 1(2) with the accessibility requirements set out in Article 3;
  - (c) verify that the economic operator has taken the necessary corrective action.
2. Member States shall designate the market surveillance authorities responsible for the implementation of the procedures referred to in paragraph 1.

Member States shall ensure that the public is informed of the existence, responsibilities and identity of the authorities referred to in the first subparagraph. Those authorities shall make the information available in accessible formats upon request.

## *Article 19*

### ***Procedure for dealing with products presenting a risk related to accessibility at national level***

1. Where the market surveillance authorities of one Member State have taken action pursuant to Article 20 of Regulation (EC) No 765/2008, or where they have sufficient reason to believe that a product covered by this Directive presents a risk related to accessibility aspects covered by this Directive, they shall carry out an evaluation in relation to the product concerned covering all the requirements laid down in this Directive. The relevant economic operators shall fully cooperate with the market surveillance authorities.

Where, in the course of that evaluation, the market surveillance authorities find that the product does not comply with the requirements laid down in this Directive, they shall without delay require the relevant economic operator to take all appropriate corrective action to bring the product into compliance with those requirements, to withdraw the product from the market, or to recall it within a reasonable period, commensurate with the nature of the risk, as they may prescribe.

Article 21 of Regulation (EC) No 765/2008 shall apply to the measures referred to in the second subparagraph.

2. Where the market surveillance authorities consider that non-compliance is not restricted to their national territory, they shall inform the Commission and the other Member

States of the results of the evaluation and of the actions which they have required the economic operator to take.

3. The economic operator shall ensure that all appropriate corrective action is taken in respect of all the products concerned that it has made available on the market throughout the Union.
4. Where the relevant economic operator does not take adequate corrective action within the period referred to in the second subparagraph of paragraph 1, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict products being made available on their national markets, to withdraw the product from that market or to recall it. The market surveillance authorities shall inform the Commission and the other Member States, without delay, of those measures.
5. The information referred to in paragraph 4 shall include all available details, in particular the data necessary for the identification of the non-compliant product, the origin of the product, the nature of the alleged non-compliance and the risk involved, the nature and duration of the national measures taken and the arguments put forward by the relevant economic operator. In particular, the market surveillance authorities shall indicate whether the non-compliance is due to any of the following:
  - (a) the failure of the product to meet requirements relating to those set out in Article 3 of this Directive, or
  - (b) the shortcomings in the harmonised standards referred to in Article 13 conferring a presumption of conformity.
6. Member States other than the Member State initiating the procedure shall without delay inform the Commission and the other Member States of any measures adopted and of any additional information at their disposal relating to the non-compliance of the product concerned, and, in the event of disagreement with the notified national measure, of their objections.
7. Where, within three months of receipt of the information referred to in paragraph 4, no objection has been raised by either a Member State or the Commission in respect of a provisional measure taken by a Member State, that measure shall be deemed justified.
8. Member States shall ensure that appropriate restrictive measures are taken in respect of the product concerned, such as withdrawal of the product from their market, without delay.

#### *Article 20*

#### ***Union safeguard procedure***

1. Where, on completion of the procedure set out in Article 19(3) and (4), objections are raised against a measure taken by a Member State, or where the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator or operators and shall evaluate the national measure. On the basis of the results

of that evaluation, the Commission shall decide whether the national measure is justified or not.

The Commission shall address its decision to all Member States and shall immediately communicate it to them and the relevant economic operator or operators.

2. If the national measure is considered justified, all Member States shall take the measures necessary to ensure that the non-compliant product is withdrawn from their market, and shall inform the Commission accordingly. If the national measure is considered unjustified, the Member State concerned shall withdraw the measure.
3. Where the national measure is considered justified and the noncompliance of the product is attributed to shortcomings in the harmonised standards referred to in Article 19(5)(b), the Commission shall apply the procedure provided for in Article 11 of Regulation (EU) No 1025/2012.

## CHAPTER VI

### ACCESSIBILITY REQUIREMENTS IN OTHER UNION LEGISLATION

#### *Article 21*

##### *Applicability of accessibility requirements to other Union acts*

The Accessibility requirements set out in Section IX of Annex I shall apply:

- (a) When establishing the technical specifications and award criteria related to all public contracts and concessions the object of which is intended for use by persons, whether general public or staff of the contracting authority or contracting entity, which are subject to Directive 2014/23/EU,<sup>49</sup> Directive 2014/24/EU<sup>50</sup> and Directive 2014/25/EU.<sup>51</sup>
- (b) When establishing the accessibility requirements referred to in the preparation and implementation of programmes under Regulation (EC) No 1303/2013 on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and Regulation (EU) No 1304/2013 on the European Social Fund;
- (c) When establishing the accessibility requirements related to social and quality criteria established by competent authorities in tender procedures for public

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<sup>49</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts.

<sup>50</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

<sup>51</sup> Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors.

passenger transport services by rail and by road under Regulation (EC) No 1370/2007;

- (d) To transport infrastructure in accordance with Article 37 of Regulation (EU) No 1315/2013.

#### *Article 22*

#### ***Disproportionate burden***

1. Accessibility requirements referred to in Article 21 apply to the extent that they do not impose a disproportionate burden on the competent authorities for the purposes of that Article.
2. In order to assess whether compliance with accessibility requirements referred to in Article 21 imposes a disproportionate burden, the competent authorities concerned shall take account, of the following:
  - (a) the size, resources and nature of the competent authorities concerned;
  - (b) the estimated costs and benefits for the competent authorities concerned in relation to the estimated benefit for persons with disabilities, taking into account the frequency and duration of use of the specific product or service;
3. The assessment of whether compliance with accessibility requirements referred to in Article 21 imposes a disproportionate burden shall be performed by the competent authorities concerned.
4. Where a competent authority has used the exception provided for in paragraphs 1, 2 and 3 for a specific product or service it shall notify the Commission thereof. The notification shall include the assessment referred to in paragraph 2.

#### *Article 23*

#### ***Common technical specifications for other Union acts***

Conformity with CTS adopted in accordance with Article 14(1) or parts thereof shall provide compliance with Article 21.

## **CHAPTER VII**

## **IMPLEMENTING POWERS AND FINAL PROVISIONS**

#### *Article 24*

#### ***Committee procedure***

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

#### *Article 25*

#### ***Enforcement***

1. Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive.
2. The means referred to paragraph 1 shall include:
  - (a) provisions whereby a consumer may take action under national law before the courts or before the competent administrative bodies to ensure that the national provisions transposing this Directive are complied with;
  - (b) provisions whereby public bodies or private associations, organisations or other legal entities which have a legitimate interest, in ensuring that the provisions of this Directive are complied with, may take action under national law before the courts or before the competent administrative bodies on behalf of consumers to ensure that the national provisions transposing this Directive are complied with.

#### *Article 26*

#### ***Penalties***

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented.
2. The penalties provided for shall be effective, proportionate and dissuasive.
3. Member States shall, without delay, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.
4. Penalties shall take into account the extent of the non-compliance, including the number of units of non-complying products or services concerned, as well as the number of people affected.

#### *Article 27*

#### ***Transposition***

1. Member States shall adopt and publish, by [... *insert date - two years after the entry into force of this Directive*] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.



2. They shall apply those provisions from [... insert date - six years after the entry into force of this Directive].
3. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
4. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
5. Member States using the possibility provided for in Article 3(10) shall communicate to the Commission the text of the main provisions of national law which they adopt to that end and shall report to the Commission on the progress made in their implementation.

#### *Article 28*

#### ***Report and review***

By [...insert date - five years after the application of this Directive], and every five years thereafter, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the application of this Directive.

1. The report shall, inter alia, address in the light of social, economic and technological developments the evolution of the accessibility of products and services and the impact on economic operators and persons with disabilities, identifying where possible, areas for burden reduction, with a view to assessing the need to review this Directive.
2. Member States shall communicate to the Commission in due time all the information necessary for the Commission to draw up such a report.
3. The Commission's report shall take into account the viewpoints of the economic stakeholders and relevant non-governmental organisations, including organisations of persons with disabilities and those representing older persons.

#### *Article 29*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 30*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## LEGISLATIVE FINANCIAL STATEMENT

### FRAMEWORK OF THE PROPOSAL/INITIATIVE

#### *Title of the proposal/initiative*

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 of products and services and amending Regulation (EC) No 2006/2004.

#### *Policy area(s) concerned in the ABM/ABB structure<sup>52</sup>*

Title 33 (co-delegation to EMPL)

#### Nature of the proposal/initiative

- The proposal/initiative relates to **a new action**
- The proposal/initiative relates to **a new action following a pilot project/preparatory action<sup>53</sup>**
- The proposal/initiative relates to **the extension of an existing action**
- The proposal/initiative relates to **an action redirected towards a new action**

#### Objective(s)

*The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

To address commitments undertaken in the European Disability Strategy 2010-2020 by removing internal market barriers to the free circulation of a targeted set of products and services that are important to support the full participation of people with disabilities in society.

#### *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective: to promote and protect the rights of people with disabilities

ABM/ABB activity(ies) concerned Rights of persons with disabilities (co-delegation from 33 02)

<sup>52</sup> ABM: activity-based management – ABB: activity-based budgeting.

<sup>53</sup> As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

### *Expected result(s) and impact*

*Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

Improve the functioning of the internal market of specific accessible products and services, also in the area of public procurement.

Facilitate the work for industry and serving the needs of consumers with functional limitations including older persons and those with disabilities.

Lower barriers to cross-border trade and increase competition in the selected products and services and in the area of public procurement.

Facilitate access by consumers with disabilities to a wider range of competitively priced accessible products and services.

### *Indicators of results and impact*

*Specify the indicators for monitoring implementation of the proposal/initiative.*

Number of products for which a technical file for CE marking is prepared that includes accessibility;

Number of public calls for tender with reference to accessibility and EU level accessibility requirements;

Number of complaints on products and services because they do not comply with accessibility requirements;

Number of court cases on accessibility problems for the concerned products and services;

Availability of harmonised accessibility standards adopted by European standardisation organisations;

Number of new EU legal Acts that make reference to the EAA to define accessibility.

### **Grounds for the proposal/initiative**

*Requirement(s) to be met in the short or long term*

Remove divergences of national accessibility requirements related to products and services placed and provided in the EU market and related to public procurement specifications, which leads to a fragmentation of the internal market.

Defining common EU accessibility requirements for selected products and services and for public procurement of products and services.

Improving enforcement of accessibility requirements.

### *Added value of EU involvement*

The proposal will eliminate internal market fragmentation causing obstacles to cross-border trade and distortions of competition, as well as enhance the protection of consumers, taking into account new market developments.

Only action at the EU level can create a harmonised and coherent legal framework that will allow a free flow of accessible products and services in the internal market.

This initiative will contribute to a coherent and effective implementation of the UN Convention across the EU facilitating Member States' compliance with the above mentioned international commitments benefiting industry and consumers.

### *Lessons learned from similar experiences in the past*

Currently the area is only partially regulated at EU level.

Experiences on the Directive 2001/83/EC on Packaging of medicines, Directive 95/16/EC on Lifts or in the area of Transport Regulation (EC) No 661/2009 have shown the benefits of harmonising accessibility requirements for the Internal market.

In addition there are a number of problem drivers that justify the need of EU action in the areas under the scope of the proposed Directive:

The divergence of national accessibility requirements is driven either by lack of EU coordination of which products and services should be accessible or, when EU law or International agreements prescribes at a general level that certain products or services need to be accessible (for instance the UN Convention or the EU public procurement rules), it does not provide detailed rules on which accessibility requirements would actually apply.

Currently, this is left completely to the discretion of national authorities, which has resulted in the current patchwork of divergent accessibility requirements.

### *Compatibility and possible synergy with other appropriate instruments*

This proposal is consistent with the objectives of the European Disability Strategy 2010-2020 and the UN Convention on the rights of persons with disabilities to which the EU and the majority of Member States are a party.

The proposal is complementary to existing EU law addressing assistance to persons with disabilities or with reduced mobility like the Passenger Rights in all modes of transport (air, rail, waterborne, bus and coach).

The proposal also complements the proposal for a web accessibility Directive that covers in its scope only certain public sector websites.

## Duration and financial impact

- Proposal/initiative of **limited duration**
  - Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
  - Financial impact from YYYY to YYYY
  - Proposal/initiative of **unlimited duration**
- Implementation with a start-up period from YYYY to YYYY,  
followed by full-scale operation.

## Management mode(s) planned<sup>54</sup>

### From the 2015 budget

- Direct management** by the Commission
  - by its departments, including by its staff in the Union delegations;
  - by the executive agencies;
- Shared management** with the Member States
- Indirect management** by delegating implementation tasks to:
  - third countries or the bodies they have designated;
  - international organisations and their agencies (to be specified);
  - the EIB and the European Investment Fund;
  - bodies referred to in Articles 208 and 209 of the Financial Regulation;
  - public law bodies;
  - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
  - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
  - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

*If more than one management mode is indicated, please provide details in the "Comments" section.*

## Comments

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<sup>54</sup> Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: [http://ec.europa.eu/budget/biblio/documents/regulations/regulations\\_en.cfm](http://ec.europa.eu/budget/biblio/documents/regulations/regulations_en.cfm)

The implementation is not expected to require significant funds.

## MANAGEMENT MEASURES

### *Monitoring and reporting rules*

*Specify frequency and conditions.*

By five years after the application of the Directive, and thereafter every five years, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive, accompanied, where necessary, by proposals for adapting it to social, technical and economic developments, in particular with respect to the proper functioning of the internal market

The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

### **Management and control system**

*Risk(s) identified*

Late transposition of the Directive by Member States

Inadequate monitoring (and evaluation) of the Directive's transposition

No specific financial risk.

*Information concerning the internal control system set up*

Standard Commission control/infringement procedures concerning the transposition and enforcement of the Directive.

*Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error*

Standard costs related to transposition checks and possible infringement procedures.

### **Measures to prevent fraud and irregularities**

*Specify existing or envisaged prevention and protection measures.*

Not applicable

## ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

### Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Heading Number 3	Diff./non-diff. ( <sup>55</sup> )	from EFTA countries <sup>56</sup>	from candidate countries <sup>57</sup>	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
3	33.02.02 – Promoting non-discrimination and equality	Diff	NO	NO	NO	NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [... ]Heading..... .....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[... ][XX.YY.YY.YY]		YES/N O	YES/N O	YES/N O	YES/NO

<sup>55</sup> Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

<sup>56</sup> EFTA: European Free Trade Association.

<sup>57</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.



## Estimated impact on expenditure

[This section should be filled in using the **spreadsheet on budget data of an administrative nature** (second document in annex to this financial statement) and uploaded to CISNET for interservice consultation purposes.]

### Summary of estimated impact on expenditure

EUR million (to three decimal places)

<b>Heading of multiannual financial framework</b>	Number 3	Heading Security and Citizenship
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DG: EMPL			Year 2015 <sup>58</sup>	Year 2016	Year 2017	Year 2018	Year 2019	Year 2020	TOTAL
• Operational appropriations									
Number of budget line 33 02 02	Commitments	(1)	0	0	0		0.20		0.20
	Payments	(2)	0	0	0			0.20	0.20
Number of budget line	Commitments	(1a)							
	Payments	(2a)							
Appropriations of an administrative nature financed from the envelope of specific programmes <sup>59</sup>									
Number of budget line		(3)							
<b>TOTAL appropriations</b>	Commitments	=1+1a +3					0.20		0.20

<sup>58</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>59</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

<b>for DG EMPL</b>	Payments	=2+2a +3						<b>0.20</b>	<b>0.20</b>
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According to Article 28 of the proposal a review will take place in year n+5. It is likely that such a review will be accompanied by an external assistance or study.

• TOTAL operational appropriations	Commitments	(4)						<b>0.20</b>	<b>0.20</b>
	Payments	(5)						<b>0.20</b>	<b>0.20</b>
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)							
<b>TOTAL appropriations for DG EMPL of the multiannual financial framework</b>	Commitments	=4+ 6						<b>0.20</b>	<b>0.20</b>
	Payments	=5+ 6						<b>0.20</b>	<b>0.20</b>
	Payments	=5+ 6							

<b>Heading of multiannual financial framework</b>	<b>5</b>	" Administrative expenditure "
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EUR million (to three decimal places)

		Year 2018	Year 2019	Year 2020	Year 2021	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: EMPL									
• Human resources									
• Other administrative expenditure		0,014	0,028	0,028	0,028	0,028	0,028	0,028	<b>0,182</b>
<b>TOTAL DG EMPL</b>	Appropriations	0,014	0,028	0,028	0,028	0,028	0,028	0,028	<b>0,182</b>

<b>TOTAL appropriations for HEADING 5 of the multiannual financial framework</b>	(Total commitments = Total payments)	0,014	0,028	0,028	0,028	0,028	0,028	0,028	<b>0,182</b>
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EUR million (to three decimal places)

		Year 2018	Year 2019	Year 2020	Year 2021	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
<b>TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial</b>	Commitments	0,014	0,228	0,028	0,028	0,028	0,028	0,028	0,382
	Payments	0,014	0,028	0,228	0,028	0,028	0,028	0,028	0,382

framework									
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*Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs  ↓			Year 2018		Year 2019		Year 2020		Enter as many years as necessary to show the duration of the impact (see point 1.6)						TOTAL			
	OUTPUTS																	
	Type <sup>60</sup>	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No total	Total cost
SPECIFIC OBJECTIVE No 1 <sup>61</sup> ... Specific objective: to promote and protect the rights of people with disabilities																		
- Output	Study	0.2			1	0,20											1	0,200
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE NO 2 ...																		
- Output																		
Subtotal for specific objective No 2																		

<sup>60</sup> Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

<sup>61</sup> As described in point 1.4.2. ‘Specific objective(s)...’

TOTAL COST			1	0,20									1	0,200
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*Estimated impact on appropriations of an administrative nature*

Summary

The proposal/initiative does not require the use of appropriations of an administrative nature

The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year N <sup>62</sup>	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
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<b>HEADING 5 of the multiannual financial framework</b>								
Human resources								
Other administrative expenditure	0,014	0,028	0,028	0,028	0,028	0,028	0,028	0,182
<b>Subtotal HEADING 5 of the multiannual financial framework</b>	<b>0,014</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,182</b>

<b>Outside HEADING 5<sup>63</sup> of the multiannual financial framework</b>								
Human resources								
Other expenditure of an administrative nature								
<b>Subtotal outside HEADING 5 of the multiannual financial framework</b>								

<b>TOTAL</b>	<b>0,014</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,028</b>	<b>0,182</b>
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The human resources appropriations required will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

<sup>62</sup> Year N is the year in which implementation of the proposal/initiative starts.

<sup>63</sup> Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

## Estimated requirements of human resources

The proposal/initiative does not require the use of human resources.

The proposal/initiative requires the use of human resources, as explained below:

*Estimate to be expressed in full time equivalent units*

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
<b>• Establishment plan posts (officials and temporary staff)</b>							
XX 01 01 01 (Headquarters and Commission's Representation Offices)							
XX 01 01 02 (Delegations)							
XX 01 05 01 (Indirect research)							
10 01 05 01 (Direct research)							
<b>• External staff (in Full Time Equivalent unit: FTE)</b> <sup>64</sup>							
XX 01 02 01 (CA, SNE, INT from the "global envelope")							
XX 01 02 02 (CA, LA, SNE, INT and JED in the delegations)							
XX 01 04 yy <sup>65</sup>	- at Headquarters						
	- Delegations						
XX 01 05 02 (CA, SNE, INT - Indirect research)							
10 01 05 02 (CA, INT, SNE - Direct research)							
Other budget lines (specify)							
<b>TOTAL</b>							

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	Not applicable

<sup>64</sup> CA= Contract Staff; LA = Local Staff; SNE= Seconded National Expert; INT = agency staff; JED= Junior Experts in Delegations).

<sup>65</sup> Sub-ceiling for external staff covered by operational appropriations (former "BA" lines).



*Compatibility with the current multiannual financial framework*

Proposal/initiative is compatible the current multiannual financial framework.

Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

Explain what reprogramming is required, specifying the budget lines concerned and the corresponding amounts.

Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework<sup>66</sup>.

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

*Third-party contributions*

The proposal/initiative does not provide for co-financing by third parties.

The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations cofinanced								

<sup>66</sup> See points 19 and 24 of the Interinstitutional Agreement (for the period 2007-2013).

## Estimated impact on revenue

Proposal/initiative has no financial impact on revenue.

Proposal/initiative has the following financial impact:

on own resources

on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative <sup>67</sup>							
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			
Article .....									

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

<sup>67</sup> As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25% for collection costs.