EXPLANATORY MEMORANDUM ON EUROPEAN UNION LEGISLATION


Commission Staff Working Document: Impact Assessment (in three parts)

Commission Staff Working Document: Executive Summary of the Impact Assessment

Commission Staff Working Document: Implementation Plan

Submitted by the Department for Business, Innovation and Skills on 22 December 2015

SUBJECT MATTER

1. This Directive aims to harmonise existing laws, regulations and administrative provisions of Member States regarding accessibility requirements of certain products and services. The products covered include:
   - General purpose computer hardware and operating systems;
   - Self-service terminals (Automatic Teller Machines (ATMs), ticketing machines, check-in machines);
   - Consumer terminal equipment (with advanced computing capability) related to telephony services and audio-visual media services.

2. The services covered include:
   - Telephony services and audio-visual media services;
   - Air, bus, rail and waterborne passenger transport services;
   - Banking services;
   - e-books;
   - e-commerce.

3. There are also provisions on public procurement and European Structural Funds in relation to these goods and services.
4. The Directive sets out various requirements that the goods and services must meet (for example in relation to packaging, instructions, user interface and functionality) in order to be deemed 'accessible'. In line with other Single Market Directives, it also places a number of administrative obligations on manufacturers, importers, distributors and service providers, including requirements for labelling and the provision and retention of certain documentation. Finally, it makes provision for a process of conformity assessment and market surveillance to enable enforcement of the Directive.

SCRUTINY HISTORY

5. There is no previous scrutiny history.

MINISTERIAL RESPONSIBILITY

6. This Directive is primarily the responsibility of the Secretary of State for Business, Innovation and Skills due to its Single Market implications and potential impact on business. However, due to the cross-cutting nature of the Directive, a number of other Ministers have an interest:

- The Secretary of State for Work and Pensions has an interest due to the interaction with the Government's strategy on disability.
- The Secretary of State for Transport has an interest due to the implications for the transportation sector.
- The Secretary of State for Culture, Media and Sport has an interest due to the implications for communication products and services.
- The Chancellor of the Exchequer has an interest due to the implications of the proposal for the banking sector.
- The Minister for the Cabinet Office has an interest due to the implications for public procurement and the related Directive on Public Sector Website Accessibility, for which the Cabinet Office (Government Digital Service) is the lead policy department.
- The Minister for Women and Equalities has an interest due to the interaction with the Government's policy on equality.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

7. The internal market for products and services is a reserved matter under the UK's devolution settlements. However, some enforcement of the legislation in this area is taken at a devolved or local level. In addition:
- Equality legislation is fully devolved in Northern Ireland, and partially devolved in Scotland and Wales;
- Transport policy is largely devolved;
- The devolved administrations each have devolved powers in relation to public procurement and will have an interest in those elements of the Directive where they relate to procurements made by devolved public bodies.

The Devolved Administrations have been consulted in preparation of this EM.
LEGAL AND PROCEDURAL ISSUES

8. i. Legal basis

The legal base is Article 114 (1) of the Treaty on the Functioning of the European Union (TFEU).

ii. European Parliament Procedure

Ordinary Legislative Procedure will apply.

iii. Voting Procedure

This will be subject to Qualified Majority Voting

iv. Impact on United Kingdom Law

Based on our initial analysis, there will be potential overlaps with the Equality Act 2010. In addition, it could interact with UK Regulations implementing the following EU legislation:

- The Universal Service Directive;
- The Audio Visual Media Services Directive;
- The Public Procurement Directive;
- The Utilities Contracts Directive;
- Concessions Contracts Directive;
- The Rail Passengers “Rights and Obligations Regulation;
- The Web Accessibility Directive (currently being negotiated).

However, it is not clear at this stage whether any of these pieces of legislation would need to be amended if the Directive came into force.

v. Application to Gibraltar

In so far as the Directive applies to free movement of goods, it would not be applicable in Gibraltar. In so far as the Directive applies to free movement of services, it would be applicable in Gibraltar.

vi. Fundamental Rights Analysis

Elements of the proposed Directive may be argued to impact on the rights of economic operators to conduct a business (Article 16 of the Charter of Fundamental rights) and the right to property (Article 17 of the Charter). However, these rights are not absolute, and interference may be justified subject to the principle of proportionality, bearing in mind the potential to increase intra-EU trade, and a positive impact on the direct or indirect facilitation of 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).

APPLICATION TO THE EUROPEAN ECONOMIC AREA

9. The Commission’s Directive is not applicable to the EEA.

SUBSIDIARITY

10. The Commission’s arguments in favour of harmonisation rely very heavily on the claim that the fragmentation of accessibility standards is problematic. The Government believes it is important to ensure that the evidence base supports this claim. Otherwise that there is not a strong case for action at EU level. This evidence is similarly needed to support the Commission’s choice of sectors for proposed action.

11. The Government recognises that better quality evidence base will also be essential to establish whether the proposal is proportionate or introduces unnecessary burdens on business – both of which link to the question of subsidiarity. The Government will further consider the arguments for subsidiarity in the light of the informal consultation proposed in paragraph 18.

POLICY IMPLICATIONS

12. The UK is generally seen as a leader in Europe in relation to accessibility for disabled people. The impact of the proposed Directive therefore depends on the extent to which it brings other Member States in line with what the UK is already doing, or whether it seeks to raise the bar overall.

13. In terms of the requirements on goods and services that this Directive would introduce, there are currently no accessibility standards in the UK Equality Act in relation to manufactured goods (although there are some obligations on service providers). There is therefore a risk that the requirements in the Directive could impose significant new burdens on businesses in the areas within scope of the legislation.

14. To this end, the Government has undertaken an initial sectoral analysis of the impacts:
   • On transport, analysis of impacts varies by transport mode. It appears that whilst similar obligations may already exist in some areas, in others there are concerns that this could impose new burdens on (for example) train operators.
   • On audio-visual and media services, we are concerned that this proposed Directive is in conflict with the EU Audio Visual Media Services Directive (AVMSD). Our view is that the AVMSD is already working well. Therefore any further regulation of accessibility in this area would need to be undertaken primarily with a view to supporting consumer choice by: preserving the country of origin principle that maintains a stable regulatory framework in an increasingly converging audio-visual market; supporting the growth of European creative industries; and protecting consumers.
• On banking services, the impact on the industry would be significant. As set out above, there are no accessibility standards that apply in UK law that firms have to conform to in offering financial products or services. Firms would have to refresh the entirety of their customer information, online banking services, financial product design, and ATM network at significant cost, and without the ability to phase in the changes at their own pace – despite the extended ‘application phase’ envisaged, the lead time for refreshing a bank’s entire ATM network could be longer. The Act presently includes optional provisions on high street branches. If these were to become mandatory it would threaten branch networks and could lead to further local closures where existing facilities can’t be adapted to comply.

15. In terms of the administrative requirements to be met by economic operators, the Government’s initial view is that, whilst similar provisions are often deployed in safety-related legislation, they may be disproportionate in relation to accessibility. Further work would be needed with stakeholders to understand the full implications of these obligations on administrative burdens.

16. We are also concerned about the impact of the proposals on public procurement as we already have an extensive and effective regime in this area which takes account of accessibility issues. There is also a lack of flexibility in the way the Directive is drafted in that the accessibility requirements would apply in each and every case.

CONSULTATION

17. The Commission undertook its own consultation exercise in 2012-3, which fed into the text of this proposal. This included an online public consultation, an SME Panel, meetings with representatives of major civil society organisations and two externally-commissioned studies.

18. The Government has not yet undertaken its own consultation, but plans to identify and contact key UK stakeholders will be set out early in the New Year.

IMPACT ASSESSMENT

19. The proposal is accompanied by an Impact Assessment (SWD(2015)264) which includes the potential administrative burden reductions that this proposal could create across a number of sectors. As part of the consultation process outlined above, the Government will shortly carry out its own analysis of the likely costs, risks and benefits of the Commission’s proposal. We will keep the Scrutiny Committees updated on this work and provide a fuller assessment of the impacts as soon as possible.

FINANCIAL IMPLICATIONS

20. As set out above, the proposed accessibility requirements would create administrative and compliance costs for manufacturers, distributors and Member States. The burden of regulation falls more heavily on SMEs than on large enterprises. We welcome the proposal’s safeguard against reporting requirements which impose disproportionate burdens on economic operators, with the size of
operator a key factor in its application. There is also a provision in the proposal that excludes microbusinesses from certain obligations. However, we are keen to see any cost implications for SMEs minimised.

TIMETABLE

21. We understand that the Dutch Presidency will deal with this as a priority but they have not yet set out specific plans for doing so.

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