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Baroness Neville-Rolfe
Minister for Intellectual Property
Department for Business, Innovation and Skills
1 Victoria Street
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9 February 2016

Dear Lucy

14799/15: 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

Thank you for your Explanatory Memorandum (EM) regarding the proposed European Accessibility Directive, which the Internal Market Sub-Committee considered at its meeting on 8 February 2016.

Having taken legal advice, our initial assessment is that the Commission's proposal is not in breach of the principle of subsidiarity. The Commission's Impact Assessment provides a wide range of evidence of fragmentation of the single market in terms of accessibility requirements, and we find the argument that divergence is likely to increase in future persuasive, given that all EU Member States are signatories of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). If the Government believes that the Commission's evidence base is weak, we would welcome more detailed information regarding its concerns in order to better inform our assessment.

You note that the Commission's analysis rests heavily on the extent to which regulatory fragmentation in accessibility requirements is problematic. The economic modelling in the Commission's Impact Assessment suggests that the cost to businesses and governments of operating in an increasingly fragmented regulatory environment will amount to €20 billion per annum by 2020. The Commission's modelling projects that adopting a more coordinated approach to meeting these standards will reduce the cost of compliance by €9 billion per annum or 45 per cent. Does the Government believe that this modelling is flawed? If so, we would welcome further detail of its concerns.

In your Explanatory Memorandum you observe that “there are currently no accessibility standards in the UK Equality Act in relation to manufactured goods (although there are some obligations on service providers)”. Here, we note that Article 9 of the UNCRPD sets out various obligations incumbent on the signatories as regards accessibility. These extend to the “identification and elimination of obstacles and barriers to accessibility” within a range of goods and services. The Convention also requires signatories to “promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.” To what extent do you consider the Commission’s proposals to be consistent with these aims? We would also be grateful for an account of what the Government has done, and is doing, to improve accessibility in the specific range of goods and services that the Commission has identified.

We note that the Government’s assessment of this proposal is framed primarily in terms of the cost to business, and less so in terms of the impact that these proposals would have on people with disabilities. How has the latter impact been assessed and balanced against the concerns that the Government raises?

In terms of the impact on business, we agree with you that the ‘disproportionate burden’ clause, which will reduce the burden on SMEs, is a welcome inclusion. We also welcome that an extended six year compliance period is envisaged, which is said to reflect the life cycles of the products in question. Nonetheless, your EM suggests that the Directive will require all ATMs to be updated in order to meet the requirements of the Directive. Which other products does the Government estimate will need to be altered in accordance with this Directive outside of their normal product life cycle? Do you believe that the Commission’s proposals are problematic for every good and service in relation to which intervention is proposed or only to a number of them?

We would also appreciate any information that you can provide us with about whether the Commission, in developing its proposals, considered foreseeable technological advances such as the ‘Internet of Things’. For example, if smartphones were able to communicate with ATMs, they might be able to perform some of the functions that are envisaged, such as providing a person with information through another sensory channel. Whilst we cannot expect everyone with a disability to own a smartphone, it is important that such developments are given due weight.

Your EM noted that the Government was concerned that the proposal might conflict with the EU Audio Visual Media Services Directive. Can you explain in more detail why the Government believes this to be the case?

We would be grateful if you could provide us with a summary of the other Member States’ opinion of this proposal, as well as any further information about the Dutch Presidency’s intentions regarding this file.

We would also welcome a summary of the results of the Government's consultation, including the specific stakeholders who were engaged and a summary of their views.

We look forward to receiving a response to this letter in due course.

I am copying this letter to Sir William Cash MP, Chair of the Commons European Scrutiny Committee; Eve Samson, Clerk to the Commons European Scrutiny Committee; Les Saunders, Cabinet Office; and Marzena Bujalska, Departmental Scrutiny Co-ordinator, Department for Business, Innovation and Skills.

Yours sincerely,

Tim Boswell

Boswell of Aynho
Chairman of the European Union Committee