ORGALIME

Position Paper

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The European Accessibility Act calls for clearer requirements to thrive within the EU Single Market

Orgalime comments on the EC Proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services COM(2015) 615 final of 2/12/2015[1].

1. INTRODUCTION

Our industry cares about addressing the needs of people with disabilities and is already providing many assistive technologies and products that respond in a tailored manner to the variety of needs. Therefore, Orgalime acknowledges the initiative of the European Commission to present a new Directive aiming to approximate Member States' legislation on accessibility requirements for persons with functional limitations or disabilities.

Overall, we would like to reiterate our conviction that harmonising accessibility requirements should not bring yet another layer of complexity to the functioning of the Single Market for goods and services. Therefore, we call on the European Parliament and the Council to improve the Commission's proposal with a view to serving the needs of people with disabilities while conserving the benefits of the Single Market at the same time, specifically in the following sections of the Directive:

- Scope and Definitions
- Exemption clause
- CE marking

2. COMMENTS ON THE PROPOSAL

Scope and Definitions – Articles 1 and 2

We believe the Directive's scope is too vague. There should be a clear definition of the categories of goods and services covered.

We raise the following examples to illustrate our point of view:

- **General purpose hardware** – The directive is not clear on what type of hardware falls under this category. Specifically, would the Directive apply to all computers, or only those used in precise situations, such as computers intended for public areas?
- **E-commerce** – We believe the definition is too broad and unclear as to whether the requirements relate to e-commerce services or to the devices/equipment used to fulfil e-commerce services? There is too much room for interpretation as to the type of website which would be impacted and as to how the requirements would affect them.

[1] http://ec.europa.eu/social/main.jsp?catId=750&langId=en&newsId=2400&moreDocuments=yes&tableName=news

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- **Public procurement** – we assume that if this Directive comes into force, only products within the scope will have to be compliant to the legal requirements of the Directive.

Our view is that the scope should be limited to the public space such as public buildings and publicly accessible machines (e.g. ATMs).

The definitions of "*persons with functional limitations*" and "*persons with disabilities*" are not specific enough to enable manufacturers to understand what adjustments are needed to meet the legal requirements as to produce their products in accordance with the legislation. Furthermore, it should be acknowledged that not all products can be modified to "all uses" and "all users".

Exemption clause – Article 12

According to the Commission's proposal, it would be possible for the manufacturer to be exempted from applying the accessibility requirements under certain conditions (Article 3). Therefore, if an economic operator considers that fulfilling the Directive would be a disproportionate burden, he can ask for an exemption. To be granted such exemption the economic operator must notify the relevant market surveillance authority in all Member States in which the product or service is intended to be placed on the market or made available. We believe this would severely limit the free circulation of goods in the Internal Market.

However, it is not clear how this exemption could be used and who would be responsible for allowing it. In addition, we need further clarification on the assessment process determining which products may be exempted - we wonder whether the manufacturer will be solely responsible for a self-assessment or will there be a public authority involved.

In our view this clause may lead to establishing a pre-marketing requirement which would result in a disproportionate administrative burden, not only for manufacturers but also for market surveillance authorities. We suggest a similar solution as provided for *microenterprises* in Art. 12(6), which requires manufacturers to provide evidence of their self-assessment only in the case of a reasoned request from the market surveillance authority.

CE marking – Article 16

The Commission Proposal states in its article 5 that "*where compliance of a product with the applicable accessibility requirements has been demonstrated (…), manufacturers shall (…) affix the CE marking*."

We believe that the proposed wording distorts the meaning of the CE marking to include accessibility requirements. We believe this will create unnecessary confusion for manufacturers, Member States' authorities, and consumers and will cause further administrative burdens.

In addition, the proposed directive is only partly aligned with other Directives that foresee the CE marking, which symbolises conformity to all applicable legislation for the placing on the market of products.

3. CONCLUSIONS

Orgalime fully understands and appreciates the need to include people with disabilities in society. However, we question the potential achievements of the current proposal to fulfil this objective. As it stands today, the proposal weakens the smooth operation of the Single Market for goods and services.

The proposal should be limited to relevant areas, avoiding disproportionate administrative and financial burdens for manufacturers and users. For the sake of better regulation, we call on the European Parliament and the Council to amend the Commission's proposal with a view to clarify its scope and the definitions of its key elements, so as to enable manufacturers, Member States authorities and consumers to fully understand their rights and obligations. This would be particularly necessary for the application of the exemption clause, the conformity assessment procedure, and CE marking under the proposed directive. As it is written today, industry is neither in a position to determine if a product falls under the scope of the legislation nor how to fulfil the requirements.

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