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Testimony of David Capozzi, Executive Director, U.S. Access Board

to the

Committee on Employment and Social Affairs

of the European Parliament

on the European Accessibility Act

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Mr. Chairman and members of the committee. Thank you for the opportunity to testify today. My name is David Capozzi; I'm the Executive Director of the U.S. Access Board -- the only U.S. federal agency whose primary mission is accessibility for people with disabilities.

I have over 30 years of experience in the disability field. I was one of nine attorneys who served on a legal team that advised Congress in the development of the Americans with Disabilities Act (ADA) and I served as chairman of the Department of Transportation's federal advisory committee which developed the ADA regulations for public and private transportation. While at the Access Board I have been responsible for over 20 proposed and 15 final regulations on accessibility issues along with managing 14 advisory committees involving 350 organizations on a variety of topics. It's with this experience that I offer comments on four issues regarding the draft European Accessibility Act.

First, while you are to be congratulated for addressing important accessibility issues in certain products and services I was surprised at the limited scope of the Act. Notably omitted are areas intended for public access such as outdoor areas and interior and exterior elements of buildings and transportation facilities.

Our agency has issued accessibility requirements over the years addressing access to federal, state and local, and private sector buildings and facilities in new construction and alterations. These include office buildings and commercial facilities, courtrooms, restaurants, theaters, arenas, playgrounds, swimming pools, sports facilities, fishing piers, boating facilities, golf courses, amusement rides, trails, picnic and camping sites, and beach access routes. We are finalizing new requirements for sidewalks, curb ramps, street crossings, on-street parking, and hiker-biker trails along with new provisions for medical diagnostic equipment.

By omitting areas intended for public access, the draft Act is incomplete. It also underscores the importance of the Commission's work under Mandate 420 whose objective is to develop a European Standard (at the level of common functional requirements) for accessibility in the built environment.

Second, the Act sets accessibility requirements at a functional level. Let me give you an example of how that approach hasn't worked in the U.S. In 1991, we issued the Americans with Disabilities Act Accessibility Guidelines. A provision that addressed ATM accessibility (Section 4.34.5) required that "instructions and all information for use shall be made accessible to and independently usable by persons with vision impairments." The provision was so vague that it resulted in ATMs with large placards of braille instructions, but with no change to the ATM's operating system, the machines were unusable.

Frustrated over a lack of access, blind advocates demanded that ATMs provide audio output. A court case later held that because our guidelines were so vague and non-specific, audio output was not mandated and could not be required under the law as it stood.

In 2004 we revised ADAAG to, among many other things, require that ATMs be speech enabled, provide receipt information, a specific keyboard layout, new height and reach requirements, and a standard headphone jack. It was reported that in 2012, there were over 100,000 ATMs in the U.S. that were speech enabled.

Our information and communication technology standards under section 508 of the Rehabilitation Act (which covers much of what your draft Act intends to address) uses functional performance criteria as well. However, we also require measurable technical criteria. Our functional performance criteria are used for overall product evaluation and for technologies or components for which there is no specific requirement. If there are applicable technical provisions that fully address a product or service, then one does not need to look to the functional performance criteria. Only when products are not fully addressed by the technical provisions, must one look to the functional performance criteria.

As we speak, our ICT standards are being updated and have largely been harmonized with EN 301 549, Europe's new ICT public procurement standard (developed under Mandate 376). I should mention that the EN has functional performance criteria and technical provisions (not just performance criteria alone) – just like our requirements in the U.S. Even with the additional guidance in Annex 1, the Act would be strengthened if it used the EN as the starting point for accessibility.

Third, I would caution you on the use of the CE mark – or any other mark to indicate accessibility of products and services especially in light of setting accessibility requirements only at a functional level. Often, ICT accessibility is not a binary choice – either accessible or not. Functional requirements are essentially aspirational and difficult to measure. What one manufacturer or provider deems to be accessible may be different than another who makes the same product; thus a product or service with an accessibility mark may be meaningless or at least misleading to consumers. For example, Automatic Teller Machines would be required under Annex I (Section II) to provide for "modes of operation with limited reach and strength". If controls were placed at 48 inches (1220 mm) from the ground would that be sufficient? What about 60 inches (1524 mm)? Would 2 pounds of force be too much? What about 5 pounds? It would seem that manufacturers could select any of these choices and claim accessibility. We do not require a mark or label for ICT covered by section 508 for just this reason.

Finally, I urge you to have a more robust enforcement scheme. The Directive makes use of "light" conformity assessments and existing market surveillance mechanisms to assess compliance of products and provides a "lighter procedure" for checking compliance of services. Although the Act recognizes the right for individual legal action, more is needed.

Our accessibility laws are founded largely on civil rights principles and are enforced through citizen complaints, civil penalties, and private litigation. It is understandable to want to "think small first". However, without a more robust enforcement mechanism, and dedicated entities to oversee enforcement, the Act will likely fail to achieve its desired outcome. Rights without a remedy are no rights at all.

Thank you for the opportunity to share my comments.