



# DRAFT EDF position on the proposal for a European Accessibility Act

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## EDF position on the proposal for a European Accessibility Act

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The European Disability Forum is an independent NGO that represents the interests of 80 million Europeans with disabilities. EDF is a unique platform which brings together representative organisation of persons with disabilities from across Europe. EDF is run by persons with disabilities and their families. We are a front runner for disability rights. We are a strong, united voice of persons with disabilities in Europe.

### Introduction

After almost five years of campaigning EDF welcomes the [proposal for a European Accessibility Act](#)<sup>1</sup> (EAA). It confirms the European Commission's commitment to improve accessibility for persons with disabilities in the EU and it follows the recommendations made by the United Nations Committee on the Rights of Persons with Disabilities earlier this year. EDF would like to thank the Commissioner, Marianne Thyssen, for the publication of the Act and EDF is now looking forward to work on the proposal and promote its swift adoption.

It is important to keep in mind that the main purpose of the proposed Accessibility Act is to align and harmonize the Member States' legislation concerning accessibility. Incorporating accessibility in the national legislation is an obligation that the signatories of the [United Nations Convention on the Rights of Persons with Disabilities](#)<sup>2</sup> (UN CRPD) have already, according to Article 9 CRPD. The EU is thus helping the Member States to fulfil their obligations by harmonizing those rules to avoid fragmentation of the Internal Market of the EU.

EDF warmly welcomes the proposal and approves of its general form and the content. EDF also has some suggestions for enhancing the effectiveness of the act in in certain areas to make accessibility of products and services a reality for the 80 Million persons with disabilities in the EU and other persons who experience function limitations, such as older people, which will be detailed in the following section.

### Analysis

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<sup>1</sup> <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2400&furtherNews=yes>

<sup>2</sup> <http://www.un.org/disabilities/convention/conventionfull.shtml>



- **Form**

The proposal takes the form of a [Directive](#)<sup>3</sup>, which is very positive. This is what EDF has been [campaigning](#)<sup>4</sup> for and it will ensure that the obligations are sufficiently strong and have to be transposed into national law by the Member States. A Directive being the second strongest legislative instrument in EU law (after Regulations) proves that accessibility is an important issue and benefits from harmonization on EU level. It is also consistent with the EU Treaties and the UN CRPD which is part of the EU legal order and a legal commitment of EU Member States.

Another important feature of the proposal is the fact that it sets up clear obligations to the economic operators (i.e. manufacturers, importers, distributors, and service providers), and requires effective surveillance and enforcement mechanisms from national authorities. A good text can be rendered weak and ineffective if these mechanisms are missing to make sure that the rules are applied properly in practice.

It is also appropriate that all economic operators including manufacturers, importers, distributors and service providers are addressed under the Directive. This will make sure that the whole product chain is included and there are multiple points of control. The only level that is not included is the retailers – something which would even further improve the text.

- **Scope (Article 1)**

Concerning the scope, it is first of all important to keep in mind that the legal base of this proposal is [Article 114 of the Treaty on the Functioning of the European Union](#)<sup>5</sup> (TFEU) which deals with the Internal Market of the EU. That means, the scope is not determined by non-discrimination principles but by economic principles.

Products and services related to Information and Communication Technologies (ICT) have been extensively covered, which is extremely important and welcome. Nevertheless, the scope of the Act is a point which can really be improved: with Article 114 TFEU as legal base, the scope can be broader including a more comprehensive range of products and services.

Especially the built environment which is reduced to an “enabling clause” in Article 3 can be addressed more fully and concretely based on the findings in the [Impact Assessment](#) which was conducted prior to the publication of the proposal.

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<sup>3</sup> [http://europa.eu/eu-law/decision-making/legal-acts/index\\_en.htm](http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm)

<sup>4</sup> [http://www.edf-feph.org/Page\\_Generale.asp?DocID=13854&thebloc=27027](http://www.edf-feph.org/Page_Generale.asp?DocID=13854&thebloc=27027)

<sup>5</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E114&from=EN>



Accommodation services should also be added to the scope. This is consistent with the objectives of the Act and the findings of the Impact Assessment.

- **Definitions (Article 2)**

The Commission has chosen the definition of “persons with functional limitations” rather than “persons with disabilities”. This is much broader and includes also persons that have temporary impairments rather than a disability. It includes older people, and any person who has a temporary functional limitation which correctly reflects that accessibility measures are positive for a huge proportion of our population.

A definition of “service providers” should be added for clarification even if this definition already exists in the [Services Directive](#)<sup>6</sup>.

- **Accessibility requirements (Article 3)**

The European Commission chose to provide only functional requirements, i.e. it is determined what aspects of the good/service have to be accessible but it does not specify how this is technically done. It is thus less descriptive than detailed technical specifications or standards - which permits further innovation by the economic operators.

The requirements for the built environment are not sufficient, stating that Member States “may decide” to include the built environment if it is related to the provision of the product or service. This can be strengthened by requiring that the related built environment must be accessible as it will not make a difference for persons with disabilities if a service or product is accessible if they cannot physically have access to it.

- **Fundamental alterations and disproportionate burden (Article 12)**

While it is understandable that there may be exceptions and this has to be taken account of in this legal text, the principles of “Fundamental alterations” and “disproportionate burden” have to be scrutinized carefully and it has to be made certain that they are not used as a loophole to avoid compliance.

It means that economic operators can still place an inaccessible good on the market if they can prove that it would either require an alteration of the good that changes its basic nature or if it means that it would be too expensive to make it accessible. In any case, the economic operator will need to notify the market surveillance authorities and

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<sup>6</sup> Directive 2006/123 on services in the internal market, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123>



include an assessment based on costs and benefits, as well as size, resources and nature of the economic operator.

This Article should be regarded with caution: it will require close surveillance to make sure that the principle is not misused as this could render the Directive less effective.

- **Presumption of conformity (Article 13) & Common technical specifications (Article 14)**

European harmonised standards, meaning those published in the Official Journal of the EU for the purpose of proving compliance with EU harmonised legislation (such as this Directive), will be a way for economic operators to meet the accessibility requirements of this Directive (those in Annex I).

Disabled Persons' Organisations (DPOs) are not systematically involved in these procedures given the barriers that users' organisations, and especially DPOs, face in the standardisation processes which are mainly led and decided by industry players. Nevertheless, EDF believes that this option is worth being included despite this shortcoming.

In case there are no European standards available that meet the requirements of the Directive, the Commission will be able to publish Common Technical Specifications (CTS) following a procedure that involves Member States and the European Parliament. This is positive, however, this can also be a lengthy and complicated procedure.

- **General principles of the CE-marking of products (Article 16)**

The European Commission has chosen CE-marking rather than a new label for accessibility because it already works in practice. There are some risks with using this method: first of all, it is self-assessed by manufacturers and not awarded by an independent body. That means the manufacturer can attach the CE-mark to a product and the market surveillance authority can only check it afterwards, i.e. an inaccessible product might be already circulating on the market and only recognised later. It is also not clear for consumers that CE-marking is associated with accessibility. Awareness raising and information campaigns are important to ensure that the CE-marking fulfils its potential under this Directive.

- **Market surveillance of products (Article 17)**



Information held by the authorities should be made public systematically and not just upon request. A database such as [RAPEX](#), which was developed in the context of consumer safety, would be preferable to have an overview of non-compliant products.

- **Compliance of services (Article 18)**

Since CE-marking can only be used for products, there is currently no proper way to certify the compliance of services with accessibility requirements. This means that the provider does not have to draw up a technical file and notify the authorities, it will be documented in a lighter way than the products. This can be done by including information about the accessibility requirements in the general terms and conditions but it will not be checked by the authorities.

A similar certification system for services should be developed to make sure the accessibility requirements are applied systematically. Checks could be done on sample cases to encourage compliance by service providers.

- **Applicability of accessibility requirements to other Union acts (Article 21)**

The Article details the relationship with the [Public Procurement Directive](#), the [Structural Funds](#), the [PSO-Regulation](#) (rail) and the [TEN-T Regulation](#) (rail). It does not clarify how far other legislation and legislative proposals such as the [Web Accessibility Directive](#), the [Audiovisual Media Services Directive](#), the [Universal Service Directive](#), or existing legislation such as the [TSI-PRM](#) are affected. It is important that the relationship is clear so that the provisions for accessibility are not lowered or watered down due to interaction or overlap with another piece of legislation.

- **Enforcement (Article 25)**

This is a very important element of the proposed EAA and a strong feature that should be retained. Since it refers to “individual legal action” that consumers can take it is important to point out that this can only be the last resort. The burden of enforcement should not rely on individual actions of consumers but is done first and foremost through a comprehensive system.

- **Penalties (Article 26)**

This provision goes hand in hand with Article 25 and is crucial to the proposal. To strengthen this aspect even further the necessary human resources should be put in place to collect the penalties and the funds raised should be re-invested in accessibility related measures.

- **Transposition (Article 27):**



Considering that most products and services under the proposed EAA are related to ICT which are subject to a quick evolution and relatively short lifespan, the suggested transition phase of six years is too long. Therefore, the implementation period can be shortened.

If the scope of the EAA can be widened to include the built environment, the transition period could be increased. By how much needs to be determined depending on the nature of the products and services concerned.

- **Annexes:**

The Annexes of the Directive give details about the functional accessibility requirements mentioned in Article 3 of the Directive (Annex I), and the process and documentation on how manufacturer (Annex II) and the service provider (Annex III) can assess and prove compliance with the accessibility requirements.

As for the functional requirements to achieve accessibility, these are based on existing standards and accessibility resources, such as WCAG (standard on web accessibility) or CEN-CENELEC Guide 6 (a Guide to address accessibility in standards). This kind of wording can facilitate their understanding to those manufacturers and service providers familiar with accessibility.

EDF will explore in collaboration with its members, experts and other relevant stakeholders how to improve the Annex I, whether it would require additional accessibility requirements or further explanation through definitions, rephrasing or examples. For instance, in the section of audio-visual services, when the requirement reads “alternatives to non-text content shall be provided”, in practical terms we will be referring to audio-description and audio subtitles, and an audio output when navigating in the TV set. Similarly, in the same section, it would help to explain that the requirement: “the information content shall be available in text formats that can be used to generate alternative assistive formats to be presented in different ways by the users and via more than one sensory channel”, it means, for instance, closed captions.

## **Conclusion:**

EDF welcomes the publication of the EAA and fully supports the proposal in order to improve accessibility of products and services for everyone in the EU. Nevertheless, certain provisions can be more comprehensive in order to maximise the potential of the EAA.



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## Related documents

- [Commission 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 \(European Accessibility Act\), COM \(2015\) 615](#)
- [EDF report: European Accessibility Act – State of play \(2014\)](#)
- [EDF Position on the European Accessibility Act \(2013\)](#)
- [EDF reply to the Commission consultation on the European Accessibility Act \(2012\)](#)

## Contact person at the EDF secretariat:

Marie Denninghaus, Mobility and Transport Officer

Tel: +32 (0) 2 286 51 84, Email: [marie.denninghaus@edf-fehp.org](mailto:marie.denninghaus@edf-fehp.org)

Should you have any problems in accessing the documentation, please contact the EDF Secretariat. (Tel: +32 (0) 2 282 46 00, Email: [info@edf-fehp.org](mailto:info@edf-fehp.org)).