

SPANISH COMMITTEE OF REPRESENTATIVES OF PERSONS WITH DISABILITIES, CERMI, POSITION PAPER ON THE PROPOSAL FOR A DIRECTIVE COM (2015) 615 / F1 ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES IN REGARD TO ACCESSIBILITY REQUIREMENTS OF PRODUCTS AND SERVICES

1. ABOUT US

CERMI is established as the association most representative of different types of disabilities at national level, as a unitary platform of representative action in defence of the rights and interests of persons with disabilities and their families, with national orientation as regards relations with Spanish national and regional authorities, as well as European and Ibero- American orientation towards and as regards relations with European Union Institutions and other European and international bodies. CERMI's mission, established and assumed by its member organizations, consists in articulating and structuring the Spanish disability social movement to develop a representative political action in defence of the rights and interests of persons with disabilities and their families, from the cohesion and unity of the sector and always respecting the inherent pluralism of such a diverse social segment.

CERMI is an associative organization with a representative character, which does not, therefore, carries out final assistance activities, which seeks political impact to influence bodies, authorities and individuals to make them adopt decisions that will have a direct or indirect impact on persons with disabilities and their families.

CERMI is a body of consultation and representative action before the public authorities and the Spanish and international institutions, as well as a platform for proposals to draft and implement comprehensive policies in favour of persons with disabilities and their families.

The values that inspire and guide the actions of CERMI are those supporting the International Convention on the Rights of Persons with Disabilities of 13 December 2006 and also and in particular the unity, internal cohesion, democratic functioning, transparency, independence and political or ideological neutrality, equality between women and men, respect for diversity, ethical behavior and social solidarity.

2. OVERALL APPRAISAL

Following years of advocacy, CERMI welcomes the publication of the *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*, a proposal which confirms the commitment of the European Commission to improve accessibility for persons with disabilities in the European Union. This significant development is also the result of personal efforts by Commissioner Marianne Thyssen to secure publication as quickly as possible; CERMI would like to thank her for her efforts and, at the same time, express our commitment to work towards swift adoption of the proposal.

It is important to recall that the main goal of what is also known as the 'European Accessibility Act' is to align and harmonise Member States' legislation in the area of accessibility. The inclusion of accessibility measures in national legislation is an obligation which those countries that have signed the *United Nations Convention on the Rights of Persons with Disabilities* have already taken on board by virtue of its article 9. The European Union is therefore helping Member States meet

their obligations by harmonising regulations in the field, thus avoiding fragmentation in the EU internal market.

In this respect, it is important to contextualise the proposal in the framework of the review of the European Union by the United Nations Committee on the Rights of Persons with Disabilities, during which the constructive dialogue took place at the 14th period of sessions (on August 27th and 28th 2015, in Geneva). Stemming from this dialogue, the CRPD Committee adopted its *Concluding Observations on the EU*, where reference to the proposed Directive and related issues was particularly prominent, as we see in paragraph 29 in the section on article 9 (Accessibility). In this paragraph the CRPD Committee calls on the European Union *to adopt an amended European Accessibility Act, including effective and accessible enforcement and complaint mechanisms and following the guidelines set out in the Committee's general comment No. 2, in consultation with DPOs.*

The importance of this recommendation has been underlined by the Committee as it is included in the measures for follow-up, which means that the European Union must *submit, within 12 months and in accordance with article 35 (2) of the Convention, information in writing on the measures taken to implement this specific recommendation.*

Furthermore, the *Concluding Observations* include additional key recommendations when considering other articles that are linked to accessibility of goods and services by the European Union, and these recommendations should be addressed in the current legislative proposal. CERMI has attempted to summarise these in the following section.

In general terms the 'Act' can be considered to provide broad coverage to Information and Communication Technologies (ICT) products and services, an important point which is to be welcomed. Nevertheless, the scope is one area where there is real room for improvement to cover a more extensive range of goods and services. We at CERMI, in line with the EDF position, call for the scope to be widened to include TIC but also to cover transport, healthcare, education, training, housing, tourism, insurance policies, electrical appliances, the retail sector, legal matters, justice, culture, leisure activities and sport.

It is also clear that the proposed Directive will have a direct impact on the *Single Market Strategy*, in which the benefits of accessibility for European citizens who need it must be considered. The impact also stretches to education, growth and competitiveness in the European Union, which should serve to raise the labour force participation rate for this group of Europeans, which has traditionally fallen victim to discrimination. In fact, in our opinion there should be discussion on the Directive's impact on the 'Circular Economy Package' where, for instance, the contribution that can be made by certain instruments such as universal design has not been addressed.

As we said before, and in adding our voice to the overall opinion expressed by the European Disability Forum (EDF), the European Blind Union (EBU), Inclusion Europe and the Spanish Committee of representatives of Persons with Disabilities (CERMI), we welcome the proposal while wishing to put forward some suggestions to enhance it and to increase its effectiveness in certain areas. Widening the scope would be one of the key improvements, in order to make accessible goods and services a reality for the 80 million people with disabilities and their families in the EU and also for other people with functional limitations such as, for instance, older people.

3. POSITIVE ASPECTS OF THE PROPOSAL

3.1 Form

We are very satisfied to see that the legislative form of this proposal is a directive because it will be transposed into national law by all Member States, it has binding effect and, bearing in mind its

content, it is 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.

3.2 Scope (Article 1)

We find very convenient its legal basis, the internal market, which implies that there is not needed unanimity in the Council for the proposal to be succeed, but a qualified majority, in order to facilitate its adoption and avoiding the risk to block it. For us it is essential negotiations won't take longer than necessary.

3.3 Obligations of manufacturers (Article 5)

CERMI welcomes the comprehensive provisions in this article, especially the requirement in 5.3, requiring manufacturers to ensure that their products remain "in conformity". We have too often seen an accessible "version 1" of a product followed by an inaccessible "version 2".

3.4 Authorised representatives, obligations of importers and Obligations of distributors (Articles 6, 7 and 8)

We consider positive the fact that the proposal covers all of these economic actors. It is most important that the proposal places requirements on the whole chain of production, supply and service. One broken link in that chain can render ineffective all efforts to make a product or service accessible.

3.5 Cases in which obligations of manufacturers apply to importers and distributors (Article 9)

We appreciate this stipulation that importers and distributors have the same obligations as manufacturers for the purposes of this Directive. It is more than reasonable as the three of them are part of the production chain.

3.6 Obligations of service providers (Article 11)

We are pleased to see the inclusion in the proposal of these specific obligations of the service providers. Without this, accessibility could not be ensured.

3.7 Common technical specifications (Article 14)

CERMI welcomes this article permitting further standardisation (in areas where this is lacking) to meet the Directive's requirements.

We find very positive the fact that when 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.

3.8 EU declaration of conformity of products (Article 15)

We appreciate very much the requirement to declare conformity, and for the declaration to be kept "continuously updated", it is really important keep the accesible features, and improve them, on new versions of products that already exist.

3.9 Procedure for dealing with products presenting a risk related to accessibility at national level (Article 19)

CERMI welcomes the presence of this procedure in the Directive.

3.10 Union safeguard procedure (Article 20)

We appreciate the specification paragraph 3 of this article, as we believe it is essential that the Commission may adopt regulations based on standards to correct situations where there is a real risk, tested, and attributable a failure of the applicable accessibility standards.

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

CERMI believes that clause “a” is helpful in linking this requirement to public contracts and public procurement; both of which have a large and powerful effect on the level of accessibility for disabled people in many areas of life.

4. PROPOSALS FOR IMPROVEMENT

Based on the previous sections with a general assesment as well as the positive aspects, CERMI would like to highlight as well some specific areas that could benefit from some changes in order to make the directive more effective. These recomendations are made on the basis of CERMI experience in the area of accessibility as well as the general contributions being drafted by the European representative organisations of persons with disabilities.

These comments are also made on the basis of the concluding observations made by the UN CRPD committee to the European Union, more specifically observation 29: *The Committee recommends that the European Union take efficient measures towards the prompt adoption of an amended European Accessibility Act that is aligned to the Convention, as developed in the Committee’s general comment No. 2 (2014) on accessibility, including effective and accessible enforcement and complaint mechanisms. The Committee also recommends that the European Union ensure the participation of persons with disabilities, through their representative organizations, in the adoption process.*

4.1 Scope (Article 1)

Concerning the scope, although the legal base of this proposal is [Article 114 of the Treaty on the Functioning of the European Union](#)¹ (TFEU) which deals with the Internal Market of the EU it is important to remind that the provisions of this proposed directive need to be in compliance with and be a means to implement the United Nations Convention on the Rights of Persons with Disabilities.

CERMI believes that the scope of the proposed directive is a point which should be enlarged: Article 114 TFEU as legal base allows the scope to be broader including a more comprehensive range of products and services. CERMI supports calling for an extensive scope including ICT but also transport, accommodation services, healthcare, education, training, housing, tourism, safety, insurance, household appliances, consumer and environmental protection, retail, legal matters, justice, culture, leisure, and sports.

The scope should also refer to an **inclusive design of (all) products, including so-called “white goods”**. This Directive only covers selected ones, which is problematic in an increasingly technologically “converged” world.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E114&from=EN>

It would be needed to have a **broad right of access to all services**.

Another concept that could be added is the fast-emerging “**internet of things**”, which most experts agree will have massive societal impact over the coming years.

Unfortunately, the Directive appears to not cover “apps”, despite access via apps accounting for a large part of modern internet use. Therefore is needed to ensure a **broad coverage of digital content**.

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

The built environment has to be seen as a pre-requisite to be able to use products and services in general. This is consistent with the objectives of the Act and the findings of the Impact Assessment.² All EU member states already have some kind of accessibility legislation or standards concerning the built environment³. Including this in the proposed directive would benefit persons with disabilities, but also create a common approach to accessibility of the built environment in the EU, beneficial to businesses, etc. A mandatory requirement to make all new built environments comply with the accessibility requirement of this Directive could be a reasonable solution. In terms of partial coverage, we note that the Directive has only non-binding requirements on the design of the built environment and lacks a broadly-framed mobility requirement.

Another aspect which CERMI believes the present Directive does not sufficiently cover is **the right to access websites, including websites of private companies**. Although one of the items of the scope is e-commerce, this will leave websites of manufacturers and services providers uncovered. Therefore, we believe that all websites of economic operators shall be made accessible. This argument is supported by two main reasons: persons with disabilities have the right to make informed decisions as any other consumer and consequently also need to be able to access the information in the website of the economic operators, despite not having an e-commerce service in these websites. Furthermore, the second reason is based on the fragmentation of web accessibility legislation across Member States. This fragmentation could be solved along with the proposal for a Directive on accessibility of public sector bodies’ websites⁴ (currently on process).

Considering the services which are listed by the Commission, it can be questioned why only e-books and e-commerce are considered. Other e-services such as e-trainings, e-learning, e-recreations (e.g. virtual museum tours or exhibitions) should also be included to be consistent. It can also be added e-identification/signatures and related trust services as defined in the e-IDAS Regulation⁵, as this regulation did not provide a mandatory accessibility requirement in its Article

² See for example p. 3 of the Executive Summary of the Impact Assessment, http://ec.europa.eu/smart-regulation/impact/ia_carried_out/docs/ia_2015/swd_2015_0265_en.pdf

³ Academic Network of European Disability Experts (ANED), Dotcom database, <http://www.disability-europe.net/dotcom>

⁴ <http://ec.europa.eu/digital-agenda/en/news/proposal-directive-european-parliament-and-council-accessibility-public-sector-bodies-websites>

⁵ Regulation 910/2014: “‘trust service’ means an electronic service normally provided for remuneration which consists of: (a) the creation, verification, and validation of electronic signatures, electronic seals or electronic time stamps, electronic registered delivery services and certificates related to those services, or (b) the creation, verification and validation of certificates for website authentication; or (c) the preservation of electronic signatures, seals or certificates related to those services”. This Regulation requests in article 15 “Where feasible, trust services provided and end-user products used in the provision of those services shall be made accessible for persons with disabilities”, and therefore is not mandatory provision. Available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2014.257.01.0073.01.ENG

15. A more general term could be added to cover also other possible emerging services and products.

In order to fulfil the accessibility needs of all persons with disabilities, the following principles should apply when creating new products for the market: **reducing complexity, accessible information (Easy-to-read), and access to help.**

Furthermore, the Directive aims only to apply to products and services that will be newly developed. This would mean that existing products and services remain unimproved and inaccessible and leave many persons with disabilities without access to products and services that they may require for their everyday life. It is also not clear, how people would be informed if a new product is placed in the market that already fulfils the accessibility requirements. Therefore, we suggest a gradual introduction of accessibility standards to existing products and services.

In the areas already defined by the directive, it is important to highlight that further clarification is needed in the terminology:

- Clarification of the meaning of “consumer terminal equipment with advanced computing capability related to audio-visual media services”.
- “smart”

The concept of having categories in the Directive specifically for products/ services like "eBooks" might be in danger of being unworkable in the converged digital world we now live in.

CERMI believes that this proposed directive must be complemented by strong anti-discrimination legislation. That can best be achieved by the completion of work to agree the proposed Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)426).⁶

4.2 Definitions (Article 2)

The Commission has specified that the proposed directive will benefit “persons with functional limitations” and persons with disabilities. Apparently this could be much broader and include also persons that have temporary impairments rather than a disability. It would include older people, and any person who has a temporary or permanent functional limitation which correctly reflects that accessibility measures are positive for a huge proportion of our population.

However:

- The definition is not in line with the principles of the UN CRPD. The Convention insists on the paradigm shift from the medical to the social model and defines disability as a socially constructed phenomenon, caused by various environmental, social and other barriers that exist in the surroundings, rather than an actual lack of ability of the person affected. Since the CRPD demands human rights approach as opposed to the functional approach, which focuses on the assessment of medical condition and functional limitation, we suggest using the “person with disability” or “person with reduced mobility”
- It is not clear from these definitions what makes “functional limitations” temporary and how this is different from “persons with reduced mobility” as used in other pieces of EU-legislation.⁷

⁶ Proposal for a Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008)426, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008PC0426>

⁷ Definition used in Transport legislation such as Passengers' Rights (Regulations 1107/2006, 1177/2010, 1371/2007, 181/2011) and the TSI-PRM Regulation (1300/2014)

Certain definitions have been omitted completely, such as a definition of “**website**”. A definition of “**service providers**” should also be added for clarification even if this definition already exists in the [Services Directive](#)⁸. Nevertheless, also the definition under the Services Directive is not sufficient as it excludes already a variety of service providers so it would have to be broadened for the proposed directive.

It seems that the Directive replicates the wording 'perceivable, operable and understandable' from WCAG 2.0. However, WCAG 2 also includes another important factor: '**robust**'. The relevant WCAG standard text is:

In this regard, the definition of **Robust** (*Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies*) This means that users must be able to access the content as technologies advance (as technologies and user agents evolve, the content should remain accessible). We would welcome the inclusion of the concept of “robust” in the Directive.

4.3 Accessibility requirements (Article 3)

It has to be ensured that the requirements are accompanied by comprehensive and more detailed requirements and explanations in the Annex of the proposal, addressing the needs of all persons with disabilities including women and girls with disabilities and persons with disabilities requiring more intensive support.

Due to this relative open formulation, it is imperative that the implementation – no matter how it is done by the Member States – is scrutinized carefully and on a regular basis. One way to monitor progress with the implementation is to oblige Member States to provide a strategy or plan for implementation on national level which would allow the EU institutions to follow the process, as it is for example the case under Regulation 1300/2014 (TSI-PRM).

Furthermore, according to CERMI, the requirements for the built environment are not sufficient. It is stated that Member States “*may decide*” to include the built environment if it is related to the provision of the product or service. This has to 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. For example, an inaccessible shop selling accessible products and services would not give access to persons with disabilities and other persons with functional limitations (and eventually this will limit the number of customers this retailer has) This example shows that it is absolutely necessary to include the built environment to a full extend in order to make the requirements outlined in this proposal effective.

4.4 Obligations of manufacturers (Article 5), Authorised Representatives (Article 6), Obligations of importers (Article 7), Obligations of distributors (Article 8)

As it was mentioned before, CERMI welcomes the fact that the proposal for the Accessibility Act covers all of these economic operators but regrets that **it misses retailers** as part of this chain. The proposed Directive should cover all economic operators, public and private, without exception. CERMI would also like to point out that under Article 5 (9), manufacturers should be in the position to provide information on the accessibility features of the products at any moment and not only further to a “reasoned request from a competent national authority”

⁸ Directive 2006/123 on services in the internal market, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123>

4.5 Fundamental alterations and disproportionate burden (Article 12)

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. The text in its current form does not guarantee economic operators, especially SMEs and Microenterprises, will invest to make their products and services more accessible.

CERMI fears that this provision might jeopardize the implementation of the proposed Directive as the current wording would allow economic operators to 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. Even if the economic operator will need to notify the market surveillance authorities if they make use of this exception and include an assessment based on costs and benefits, it is not entirely clear from the wording of the proposal how this will be enforced in practice. A clearer definition of what “fundamental alterations” and “disproportionate burden” represent is necessary, including on how the analysis is carried out in practice.

One possibility to ensure a correct enforcement and scrutiny of the proposed exemptions would be to establish an Advisory Body which could draw up principles for the assessment of the exemptions to make sure they are coherent. This body would include both representatives of Disabled Persons’ Organisations, representatives of consumers, as well as independent experts on accessibility and disability issues.

CERMI is also concerned about the wording in recital 37 of the Explanatory Memorandum related to this Article which states that “This Directive should follow the principle of “think small first” – this does not reflect the intention to implement the provision of the UNCRPD concerning accessibility and CERMI encourages the EU decision-makers to take a more ambitious stance.

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

4.6 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 establishing these standards given the barriers that users’ organisations, and especially DPOs, face in the standardisation processes which are mainly led and decided by industry representatives. CERMI believes that standardisation as a tool to implement accessibility should be included, but the standardisation system should become more inclusive to systematically allow DPOs’ involvement in the process in accordance with article 4.3 of the UN CRPD.

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 in which DPOs and other relevant stakeholders should be able to provide their views.

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

There are some risks with using the CE-marking label method: first of all, it is self-assessed by manufacturers and not awarded by an independent body. Manufacturers may not have the knowledge and skills to test for accessibility. 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.

Furthermore, CE-marking is already used on non-accessible products – how would a consumer be able to make a difference between new goods, that are CE-marked with accessibility requirements, and old ones? How this would work in practice is unclear.

CERMI is also not aware of exceptions for businesses due to size or resources when applying CE-marking to their products for the current criteria such as health and safety. If a manufacturer wants to apply the CE-marking to his product, all of the award criteria should be the same and accessibility should not be singled out in this respect.

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. Ideally, persons with disabilities should be able to easily recognise accessible good and services, without having to look each time for the small print. Considering these difficulties, CE marks are not a way to demonstrate compliance for services. ONCE believes that a compliance scheme for services, similar to the CE mark, should be set up.

Finally, but very importantly, CERMI wonders to what degree a product would have to conform to the Directive's requirements, in order to achieve the CE mark. Would a product made accessible for some impairment groups only meet the criteria, or for all? CERMI believes this matter must be clarified to ensure the proper working of the Directive.

4.8 Market surveillance of products (Article 17)

Information about non-compliance with the accessibility requirements that is held by the authorities should be made public systematically and not just upon request. A data base such as [RAPEX](#), which was developed in the context of consumer safety, would give an overview of non-compliant products. Public administration must facilitate the access to a unique data-base with the information on the degree of accessibility of existing products in the market. It is important that persons with disabilities and their representative organizations are involved in the market surveillance process as they will be the end users of the products and services with capacity to consult in advance the degree of accessibility.

According to Article 17 (3), exceptions from this obligation to provide information are allowed for "reasons of confidentiality", CERMI fears that this exception could be abused as information about products can be justified too easily as being commercially sensitive, at least in the development stage.

4.9 Compliance of services (Article 18)

Since CE-marking can only be used for products, there is currently no way to certify the compliance of services with accessibility requirements under the proposed. This means that the provider does not have to draw up a technical file and notify the authorities as it is the case for products. Services will be documented in a lighter way than products. The documentation 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 to CE-marking 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. Furthermore, it should also be ensured that service providers receive the necessary training to be aware of the accessibility requirements for all persons with disabilities, including persons with intellectual disabilities or psychosocial disabilities. Persons with disabilities, through their representative organisations, will be an excellent resource for such training.

CERMI believes that the Directive should include more than a requirement to “periodically update adequate procedures” and there should be a more clearly defined timeline and method for checking the compliance of services. The compliance of services with the accessibility requirements outlined in the proposed text should also be assessed in cooperation with persons with disabilities and their representative organisations.

4.10 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 would also be important to understand the relationship with the proposed Horizontal Non-Discrimination Directive, which also includes references to accessibility.

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. For example, the possibility to use EU-funding to produce or procure inaccessible products and services should be eliminated by aligning the legislation listed above according to the highest standard.

4.11 Committee procedure (Article 24)

CERMI would like to better understand how it is intended that this Committee function. It is vital that it include and represent the views and concerns of disabled people and their organisations. We would like to know more about how this would happen.

4.12 Enforcement (Article 25)

This is a very important element of the proposed directive and a strong feature that should be retained. Since it refers to “individual legal action” that consumer can take it is important to point out that this can only be the last resort. Currently, many persons with disabilities but also other consumers face problems accessing the legal system in the EU Member States and the additional stress and costs this imposes on the consumer is not justified.

It is positive that the draft proposed directive mentions that consumers and/or public bodies or private associations may take legal action at their national court if they experience non-compliance with the Directive. However, considering the challenges that many persons with disabilities face when trying to access the justice system itself, this provision is not satisfying to take sufficient action against economic operators. The burden of enforcement should thus not rely on individual actions of consumers but is done first and foremost through a comprehensive system of implementation and monitoring, combined with a consumer complaints mechanism as it is done in the US legislation⁹. Member States would have to give strong powers to the market surveillance authorities to monitor and enforce the correct application of the Directive.

4.13 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. Funds raised should be re-invested in accessibility related measures. It also has to be avoided that paying penalties can be seen as a “cheap” option in order not to apply the accessibility requirements outlined in Article 3.

It is also not clear from the proposed text what actions the European Commission may take if Member States do not comply with the rules on penalties and do not set up an effective system to collect and enforce them.

There would be a significant risk, however, that penalties may have an adverse effect on accessibility if manufacturers believed that they could merely pay a fine rather than take the trouble to address accessibility requirements. However, we understand that this Directive’s provisions for penalties would be a sanction for inaction / slow action in meeting accessibility requirements, but NOT an alternative for the economic actor to the fulfilment of its responsibilities to make its products or services accessible.

CERMI believes that it is worth addressing how the penalties collected under this Article will be used. They might, for instance, be used to fund the provision of accessible adaptations, but the Directive is silent on this matter.

At the same time, we also consider interesting that Directive includes, among penalties in case of not fulfilling accessibility requirements in products and services, the inability to participate in tender process and public contracts with Public Administrations. This measure has been showed as one of the most efficient tools for promoting legislation enforcement.

4.14 Transposition (Article 27)

For new products the applications of the provisions should start without delay after transposition. 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, it will not be burdensome to apply the provisions without any postponement.

If the scope of the proposed directive is widened to include the built environment there would be an argument to increase the transposition period.

⁹ For built environment: <https://www.access-board.gov/aba-enforcement/file-a-complaint> Or for telecommunications goods and services: <https://consumercomplaints.fcc.gov/hc/en-us/articles/204231424>

4.15 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.

For this first assessment of the proposed text, EDF will make some more general remarks about the requirements listed in Annex I. EDF will at a later stage explore in collaboration with its members, experts and other relevant stakeholders how to improve Annex I in more detail. It has to be determined 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, sign language and audio subtitles, and an audio output when navigating in the TV set.

As a general comment, the language should be understandable to economic operators and consumers. It is positive to note that the requirements listed in Annex I 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). Using this familiar wording can facilitate their understanding to those manufacturers and service providers familiar with accessibility. However, the language can still be simplified so that the economic operators can easily implement them in practice.

Similarly, in the same section, it would help to explain that the following requirement means- closed captions: “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”. One suggestion would be to include a glossary or list of concepts used to clarify the technical terms so that they can be used without losing any of the details.

Furthermore, the accessibility requirements in relation to transport services mentioned under Section V are too narrowly focused on the accessibility of information. CERMI believes that in order to make transport services available for persons with disabilities on an equal basis with others it is essential to also include the accessibility of transport vehicles and infrastructure in Annex I.

5. OTHER CONSIDERATIONS TO THE PROPOSAL

The concept of ‘universal accessibility’ is worth particular mention. In the draft directive it appears under ‘universal design’ or ‘design for all’, although we feel it is of vital importance for persons with disabilities and, therefore, deserves greater focus in the draft legislation.

Bearing in mind the definition set out in Article 2, it is paramount to include in the text of the Directive some explicit reference to those specific measures that can make accessibility truly universal, as well as to the needs which stem from different types of disability. Things such as easy-to-read texts, pictogrammes, sign language, induction systems which facilitate interaction with hearing aids subtitles or braille, support products, assistive technologies, and any other devices and tools that facilitate accessibility, among others, can be a great help in achieving the aim that products, environments, programmes and services be “usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.”

6. CONCLUSIONS

6.1. -CERMI welcomes the proposal for a European Directive on accessibility requirement for products and services. We would like to specially thank the Commissioner, Marianne Thyssen, for being very much involved in this initiative that responds to a historical demand of persons with disability and their families. In our view, this proposal shows that the European Commission is committed to improve accessibility for persons with disabilities in the EU as a result of the implementation of the UN Convention on the Rights of Persons with Disabilities, CRPD.

Besides, it is very positive that the draft directive follows the recommendation of the UN CRPD Committee, put forward in the Concluding Observations (Paragraph 90).

6.2.- We welcome that the proposal takes the form of a Directive, since this will ensure that the obligations are sufficiently strong and have to be transposed into national law by the Member States. Also, being a Directive will guarantee a harmonization on the EU level consistent with the UN CRPD provisions and therefore with an inclusive approach. Additionally, transposition obligation will help us to have a Spanish national legislation on this important issue, until now missing in our law.

6.3.- We would like to reiterate that the definition "*Persons with functional limitations*" should be deleted, since it does not comply with the human rights paradigm established in the CRPD. We suggest, therefore, using a terminology according to an inclusive approach, and replace "*persons with functional limitations*" by "*all persons, including persons with disabilities and persons with age related or any other impairment*".

6.4.- In line with Article 9 of CRPD, we would like to highlight the three following issues:

- The scope of the proposal should be broader, including a more comprehensive range of products and services, and referring also to the areas of health safety, environmental protection and consumer protection.
- Accessibility needs of persons with disabilities should be ensured taking into account the diversity of this population and the principle of design for all. This means using easy –to read and alternative texts, pictograms, braille, sign language, induction systems which facilitate interaction with hearing aids, support products, assistive technologies, and any other devices and tools that facilitate accessibility.
- Also, it is important to guarantee user involvement in testing the accessibility of products and training on the accessibility requirements.

6.5. - Effective surveillance and enforcement mechanisms should be guaranteed in the proposal, in order to make sure that Member States apply the rules in their national legislation in line with the provisions of the CRPD. These surveillance mechanisms have significant importance when talking about the market surveillance authority responsible for the assessment of disproportionate burden or the enforcement procedure as far as accessibility requirements concerns.

Additionally, this Directive must be complemented by strong and binding anti-discrimination legislation.

6.6. - According to the principle of civil dialogue, involvement and active participation of persons with disabilities, including children with disabilities, through their representative organizations, should be guaranteed during the implementation, monitoring and surveillance process.

6.7. - The transition phase of six years is too long. We demand that the implementation period should be shortened. In this respect, we remember the disability movement demand on a free barrier European Union in 2020.



Further information

For further information or clarification on this paper, please contact:

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Madrid 1st February 2016

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