

EASPD POSITION ON THE EUROPEAN ACCESSIBILITY ACT

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1. Introduction

How to read this report

This report aims at giving EASPD's inputs on the Directive of the European Parliament and 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.

EASPD welcomes this initiative and hopes the EU decision making process will lead to a solid legislative instrument that could sensibly improve the life of persons with disabilities.

By means of this position EASPD would like to highlight a few technical requirements and mechanisms that would require careful implementation in order to avoid progress in technology becomes a barrier for persons that are often put in situation of disadvantage.

Who is EASPD

[EASPD](#) (European Association of Service providers for Persons with Disabilities) is a European NGO network representing over 11,000 social and health support provider organisations across Europe and across disabilities. Our objective is to promote equal opportunities for persons with disabilities through effective and high-quality service systems. We work towards ensuring the full implementation of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) and we are accredited to the Conference of States Parties to the Convention on the Rights of Persons with Disabilities.

Who are social and health support services represented by EASPD

Social and health support services for persons with disabilities represented in EASPD's membership include a range of support services such as rehabilitation services, Special Education Needs (SEN) providers, accessibility agencies, services providing support in the field of employment, education, day care facilities, community based living, sport and leisure activities, etc. These services are essential to persons with disabilities to participate in society, enjoy their human rights and be empowered to live as independent as possible.

The role of the European Union in the implementation of Article 9 of the UN CRPD

The role of the European Union in the implementation of the United Nations Convention on the Rights of Persons with Disabilities is made complex by the share of legislative competences with its Member States. The provision of support services is not specifically a competence of the European Union; however, the European Union, having committed to implement the UN CRPD, can fulfil its obligations from three angles:



- The regulatory frameworks (e.g. the European Semester, Fiscal consolidation measures, the European Structural and Investment Funds, the Research and Innovation Agenda, the State Aid Regulation, Public Procurement Directive, etc.)
- The funding streams made available to attain the objectives of the European Union.
- The European institutions internal functioning.

Social and health support services in the disability sector are often challenged in their facilitating role to promote the implementation of the Convention due to the multi-layered structure that governs their set up, development and funding, both at national and European level. Nonetheless support services represent also a wealth of resources, expertise and know-how in supporting persons with disabilities to enjoy their rights as all non-disabled citizens.

It is essential for the European Union to act as a clear guide in the implementation of the Convention so as to support its Member States and complement their efforts at national level with the tools and mechanisms listed above.

2. Analysis

EASPD welcomes the “Proposal of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Members States as regards the accessibility requirements for products and services”, hereby the “Proposal”.

A few considerations we would like to highlight for the adoption of the European Accessibility Act are:

- **The role of social and health support services** in working with persons with disabilities to overcome barriers should be stressed. They are the ones providing know-how and expertise on supporting persons with disabilities and often they act as innovators in assistive, information and communication technology (ICT).
- **The overall population should be considered as on a continuum** whereby accessibility requirements may vary depending on external and internal factors. Accessibility requirements may therefore support not only persons with disabilities, but also the general population at various stages of life.
- The European Accessibility Act should be seen as an unprecedented opportunity to improve the lives of millions of citizens. **Accessibility is a human right, but it is also both an investment and an opportunity.** The concept of accessibility should be holistic, covering all aspects of life – including human support – and not only access to goods and services. It must apply to all persons with disabilities, including persons with intellectual disabilities, mental health problems and persons with high support needs.
- Accessibility legislation should take into account the fact that **different types of disability can be related to different needs.** To this end all dispositions included in accessibility legislation should be detailed enough to avoid misinterpretation against any category of persons with disabilities.

Scope: products and services are covered by the Directive¹

- *computers and operating systems;*
- *ATMs; ticketing and check-in machines;*
- *smartphones;*
- *TV equipment related to digital television services;*
- *telephony services and related equipment;*
- *audiovisual media services (AVMS) and related equipment;*
- *air, bus, rail and waterborne passenger transport services;*
- *banking services;*
- *e-books;*
- *e-commerce.*

¹ European Commission Brochure on European Accessibility Act. <http://ec.europa.eu/social/main.jsp?catId=1202&langId=en&moreDocuments=yes>



The reference made in the Proposal to Article 9 (Accessibility) of the Convention on the Rights of Persons with Disabilities in the Proposal clearly recognises that accessibility is a human right. The European Union being a signatory to the Convention committed to adopt and implement legislation to this end. The legal basis of this Proposal is Article 114(1) of the Treaty of the Functioning of the European Union (TFEU) which means that the scope of this Proposal is determined by economic principles rather than by non-discrimination principles.

Although the above list of goods and services is comprehensive for what concerns ICT and mobile technology, additional actions need to be taken to widen the focus of implementation of Article 9 of the UN CRPD.

EASPD wishes with this Proposal to set the first of other important steps to be taken to fully implement Article 9 of the UN CRPD in its multiple aspects, so as to contribute to make Europe a place accessible to all its citizens, including those with multiple and complex support needs.

Given the scope of this Proposal is limited to goods and services in the ICT and mobile technology, we would propose to rename the Proposal as such: **“Proposal of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Members States as regards the accessibility requirements for products and services in the ICT and mobile technology field”**.

What will the Directive do and what will the Directive not do²

The Directive will tell “What” needs to be accessible in terms of functional requirements but will not impose detailed technical solutions telling “How” to make it accessible, allowing for innovation.

In particular:

- *uses a set of common accessibility requirements at EU level for a number of products and services*
- *creates an obligation for Member States to ensure that the selected products and services placed in the market comply with accessibility requirements*
- *uses the same accessibility requirements to define the accessibility obligation laid down in existing EU law, in particular in the areas of public procurement, Structural & Investment Funds and transport*
- *supports Member States implementation of the UN Convention on the Rights of Persons with Disabilities*
- *ensures that all products and services complying with accessibility requirements will circulate freely in the internal market*
- *does not prescribe to the level of technical details how to render a product or service accessible. However, it provides for the development of standards or technical implementing measures wherever more detail is needed*
- *does not set obligations for all manufacturers and service providers, but only for those working on a selected list of products and services*
- *does not impose burdensome requirements by providing safeguards on disproportionate burden and fundamental alteration*
- *does not amend existing EU sectorial legislation on accessibility.*

3. Recommendations to EU institutions

Chapter III: Obligations of economic operators

- **Article 5 (9)**. Manufacturers should be in the position to be able to provide at any moment information on the accessibility features of the products developed and should not be available only further to a *“reasoned request from a competent national authority”*.
- **Article 7 (9)**. As per the comments above related to Article 5 (9), importers should be in the position to be able to provide at any moment information on the accessibility features of the products that is being put on the market.

² European Commission Brochure on European Accessibility Act. <http://ec.europa.eu/social/main.jsp?catId=1202&langId=en&moreDocuments=yes>



- **Article 8 (6).** As per the comments above related to Article 5 (9), distributors should be in the position to be able to provide at any moment information on the accessibility features of the products that is being put on the market.
- **Article 11 (4).** As per the comments above related to Article 5 (9), service providers should be in the position to be able to provide at any moment information on the accessibility features of the products that is being put on the market.
- **Article 12 (5).** The assessment of fundamental alteration or disproportionate burden when complying with accessibility requirements done by economic operator could jeopardize the design, development and implementation of the product as the economic logic and the cost-benefit analysis could act as a barrier.
- **Article 12 (6).** The requirements of compliance with the Directive are too limited and not clear enough for Microenterprises. Indeed their exemption from notifying the market surveillance authority on fundamental alteration and disproportionate burdens automatically puts them in a “safety net” whereby they would be exempt from even attempting to comply with the accessibility requirements of the Directive. Microenterprises should be incentivised to introduce accessibility requirements which in the long term could be beneficial for persons with disabilities having access to a wider range of products, both for SMEs who could expand their market.

Chapter V: Market surveillance, compliance and union safeguard procedure

- **Article 17 (2).** Market surveillance should be carried out in cooperation with persons with disabilities; moreover, the directive should contain clear requirements about the role and resources of the market surveillance authority.

Annex I

- The accessibility requirements for persons with intellectual disabilities are referred to by introducing the requirement “understandable” of the product. This requirement is of key relevance especially for persons with intellectual disabilities and should be extended to all products and services covered by this Directive as currently these requirements are not prescribed everywhere in the Directive. Moreover this specific requirement should be clarified with references tools and methods such as Easy To Read.

Other general recommendations

- **Users’ involvement.** It is essential that users be included in all stages of the design, development and implementation of the products. Designers and manufacturers should test the accessibility of their products with persons with disabilities. Service providers in the disability sector can provide know-how and expertise in all phases of product development.
- **Universal design**³. Industrial designers should become familiar with the concepts and principles of “universal design” by means of an ad hoc training, so as persons working in front offices and in contact with potential customers and users.
- **Safety and security.** Safety and security of the products should be tested in strict cooperation with users’ organisations
- **Empowerment of individuals with disabilities.** The measures that will be taken to introduce accessibility requirements in the design, development and production of a product should have an empowerment approach towards users with disabilities who should not only benefit from increased accessibility of a product, but should ultimately also become more empowered in their daily lives.
- **Ombudsman for users.** Users should have the possibility to file any potential complain to an ombudsman set up at national level.

³ UN CRPD Article 2: “Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.



- **Social and health support services for persons with disabilities** represented by EASPD's membership include a range of support services such as rehabilitation services, Special Education Needs (SEN) providers, accessibility agencies, services providing support in the field of employment, education, day care facilities, community based living, etc. These services are acting as the vehicle linking the market operator to the end user. Their involvement in defining accessibility criteria and providing expertise on the usability of products should be recognised.

References

- United Nations Convention on the Rights of Persons with Disabilities (UN CRPD)
- General Comment Article 9 UN CRPD
- Treaty on the Functioning of the European Union (TFEU)

Note to editors

The European Association of Service providers for Persons with Disabilities is a non-profit European umbrella organization, established in 1996, and currently representing over 11.000 social and health services for persons with disabilities. EASPD advocates effective and high-quality disability-related services in the field of education, employment and individualised support, in line with the UN CRPD principles, which could bring benefits not only to persons with disabilities, but to society as a whole. EASPD is accredited to the Conference of States Parties to the CRPD.

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