

Inclusion Europe's Position about the proposed European Accessibility Act

Brussels, 25 January 2016

1. Introduction

Inclusion Europe represents the voice of persons with intellectual disabilities and their families throughout Europe. The rights of persons with intellectual disabilities are often violated and their voice is neglected in policy and decision-making processes both at national and European level. Therefore, Inclusion Europe advocates for the full participation of children and adults with intellectual disabilities and their families in all spheres of life on an equal basis with others.

Inclusion Europe welcomes that the European Commission published the draft text of the European Accessibility Act¹ (hereinafter, EAA or Directive) on 3 December 2015. We would like to express our gratitude to Commissioner Thyssen for the publication of the Act. We understand that the European Commission is committed to improve the lives of persons with disabilities and provide them with access to goods and services as part of the implementation of the UN Convention on the Rights of Persons with Disabilities (hereinafter, CRPD).

We understand that the proposed Accessibility Act is an essential piece of legislation with the potential to improve the inclusion of persons with disabilities in society by ensuring their access to important goods and services across the EU. The adoption of the EAA follows the recommendation of the UN CRPD Committee, put forward in the Concluding Observations last year, within the framework of the EU's first periodic review with the Committee. Paragraph 90 of the Concluding Observations calls for the EU to adopt the European Accessibility Act within 12 months after the publication of the Concluding Observations and write the Committee on the measures that were taken.

The aim of this paper is to highlight the strengths and weaknesses of the proposed EAA and formulate some of the necessary changes that Inclusion Europe and its members would appreciate to see in the final text, and in order to bring the draft legislation in line with the requirements of the CRPD. While we understand the complexity and limitations of potential EU actions, due to the shared competencies with its Member States, we call the EU to adopt an ambitious legislation that fulfils the requirements outlined in the UN CRPD and is ensuring an effective and adequate protection of the rights of all persons with disabilities.

Accessibility requirements for persons with intellectual disabilities go beyond solely translating information to easy-to-read or using pictograms, and would require a transition to more simplified structures and processes when developing new goods and services as part of Universal Design.

¹ 2015/0278 (COD).

2. Background

Article 9 of the CRPD requires States Parties to:

'take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.'

Article 9 of the CRPD further indicates that barriers to accessibility must be eliminated in the areas of buildings, roads, transportation and other facilities, including schools, housing, medical facilities and workplaces, as well as information and communication, including electronic and emergency services. The CRPD Committee has developed a General Comment on Article 9 CRPD² to provide a detailed explanation of the provisions on accessibility. States Parties to the UN CRPD must ensure that they implement Article 9 CRPD fully and take the General Comment as the basis for interpreting its provisions.

Persons with intellectual disabilities face significant challenges in accessing public goods and services as well as information in the EU. The lack of easy-to-read information and usability standards for persons with intellectual disabilities presents one of the greatest barriers to their full participation as European citizens. Inclusion Europe is well aware that the EU has several competencies to act directly or indirectly on issues relating to accessibility. In line with these competencies and towards the full implementation of the CRPD, it is necessary to make concrete steps that will provide genuine and consistent access to goods and services to adults and children with intellectual disabilities.

Inclusion Europe has been advocating for the adoption of the European Accessibility Act in the past years, and answered the Commission's online public consultation in 2012. During the year-long review of the EU in front of the CRPD Committee, Inclusion Europe's advocacy campaign has persistently called for the adoption of the European Accessibility Act, therefore we welcome the publication of the proposed legislation.

Towards developing better accessibility, Inclusion Europe developed the 'European standards for making information easy-to-read and understand'.³ The standards introduce the easy-to-read logo, the accessibility cards, and other structural and functional measures that would make information, goods and services accessible for persons with intellectual disabilities. Furthermore, Inclusion Europe published recommendations for policy-makers, event organisers, conference speakers and other stakeholders about how to improve accessibility for this particularly marginalised group. These measures guarantee that people with intellectual impairment and complex needs can understand the content and the context of given matters, can use the services or goods with minimum support, and are able to engage in consultative and decision-making processes.

² <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/033/13/PDF/G1403313.pdf?OpenElement>

³ http://easy-to-read.eu/wp-content/uploads/2014/12/EN_Information_for_all.pdf

3. General remarks

Form

Inclusion Europe welcomes that the proposed European Accessibility Act has taken the form of a Directive⁴, thus eventually becoming a binding legislative act for all EU Member States. However, it should be ensured through effective surveillance and enforcement mechanisms that Member States indeed apply the rules in their national legislation in line with the provisions of the CRPD.

It is important to note that the EAA only defines accessibility requirements at a functional level, which means that it doesn't provide Member States with guidance or details on how to achieve accessibility. Inclusion Europe would like to highlight that people with intellectual disabilities are a heterogeneous group composed of people with very different accessibility needs and the Directive should guarantee that persons with the most complex needs are not left out when individual Member States plan the implementation of the EAA.

Scope

The legal basis of the proposed legislation is Article 114(1) of the Treaty of the Functioning of the European Union (TFEU). This means that the act has an internal market basis, instead of a non-discrimination approach. The purpose of the act is therefore to 'contribute to the proper functioning of the internal market and remove and prevent barriers for the free movement of accessible products and services'.⁵ The EEA aims to harmonise currently existing accessibility legislation and policies in the EU Member States to ensure the free movement of goods and services. The Directive discusses in detail the obligations on different economic actors: manufacturers, importers, distributors and service providers.

The following selected products and services are covered in the EAA:

Products:

- General purpose computer hardware and operating systems;
- Self-service terminals (Automatic Teller Machines, ticketing machines, check-in machines);
- Consumer terminal equipment with advanced computing capability related to telephony services;
- Consumer terminal equipment with advanced computing capability related to audio-visual media services;

Services:

- Telephony services and related consumer terminal equipment with advanced computing capability;

⁴ http://europa.eu/eu-law/decision-making/legal-acts/index_en.htm

⁵ Explanatory memorandum to the proposed European Accessibility Act (2015/0278 (COD)).

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- Audiovisual media services and related consumer equipment with advanced computing capability;
- Air, bus, rail and waterborne passenger transport services;
- Banking services;
- E-books;
- E-commerce;
- Certain EU Public contracts and concessions⁶;
- The Preparation and implementation of Programmes under Regulation (EU) No 1303/2013 including the European social and Cohesion Fund.

Inclusion Europe welcomes that ICT products are extensively covered by the draft text, as persons with intellectual disabilities often face significant barriers in accessing information and communication. We find that the list of products and services is quite comprehensive and relevant for the everyday life of persons with intellectual disabilities. In our interpretation, all the above listed products and services must be accessible for persons with intellectual disabilities and manufacturers and providers are to be held responsible for the design and operation of these products and services. In order to fulfil the accessibility needs of persons with intellectual disabilities, the following principles should apply when creating new products for the market: **reducing complexity, accessible information (Easy-to-read), and access to help.**

However, the scope of Article 114 TFEU would allow covering a broader range of products and services, including the areas of health, safety, environmental protection and consumer protection. We believe that the EAA should also cover these areas and contribute to ensuring the full participation of persons with disabilities in society, in line with Article 9 of the CRPD. For example, it is very positive that emergency service telephone lines fall under the Directive. However, if medical products, services, and facilities are not accessible, or the staff employed in these services is not trained to understand and communicate with persons with intellectual disabilities, the Directive will not bring a real positive change to the lives of hundreds of thousands of Europeans. We call the European Commission to recognise the need to further work on accessibility standards across products and services in relation to cognitive and intellectual impairment, with special regards to the growing demand and market due to age related cognitive impairment.

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.

Terminology

The proposed legislation applies the term 'persons with functional limitations' throughout the text, instead of persons with disabilities. Article 2 of the proposed legislation defines it as:

⁶ Directive 2014/23/EU, Directive 2014/24/EU, Directive 2014/25/EU.

'persons who have any physical, mental, intellectual or sensory impairment, age related impairment, or other human body performance related causes, permanent or temporary, which in interaction with various barriers result in their reduced access to products and services, leading to a situation that requires adaptation to their particular needs of those products and services'.⁷

The text often refers to 'persons with functional limitations, including persons with disabilities' when it describes the beneficial group for the proposed Directive to cover a broader range of people, including older people, or people with temporary impairments. However, Inclusion Europe finds this terminology problematic, as it is not in line with the principles of the 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. Nonetheless, the terminology used in the draft EAA implies that disability falls under the category of 'functional limitations' of the person, and not the functional limitations of the persons' environment. Moreover, the difference between 'impairment' and 'limitation' is not clearly defined. 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 following terminology throughout the Directive:

'All persons, including persons with disabilities and persons with age related or any other impairment'

Positive aspects

Annex I of the draft EAA includes the detailed explanation on the accessibility requirements that shall apply to the products and services covered by the Directive. In our understanding, two of the listed requirements can be directly applicable to fulfilling the accessibility needs of persons with intellectual disabilities:

- 'must be understandable';
- 'shall have an adequate size of fonts in foreseeable conditions of use'.

We very much welcome that the draft EAA clearly refers to the accessibility needs of persons with intellectual disability by mentioning that products should be understandable and that any printed or digital text must ensure to use large font sizes. Yet, these requirements are not included in every section of the text, therefore we think it is necessary to add them to every item of the list where it is currently missing (See Section 5 – Specific recommendations of the present paper).

Furthermore, these two requirements are not described clearly in the text and we are concerned that economic operators may not have the correct interpretation of what 'understandable' means and what is an adequate font size. For persons with intellectual disability text should be displayed in at least font size 14 and in fonts that are easy-to-read, for instance Arial or Tahoma. Understandable text should closely follow the requirements of easy-to-read⁸ developed by Inclusion Europe, to make information easily accessible to people with intellectual disabilities.

⁷ 2015/0278 (COD).

⁸ http://easy-to-read.eu/wp-content/uploads/2014/12/EN_Information_for_all.pdf

Negative aspects

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

In Article 12 of the proposed Directive, the issue of disproportionate burden is discussed, outlining that accessibility requirements only apply to the extent that

*‘they do not introduce a significant change in aspect or feature of a product or service that results in the alteration of the basic nature of the product or service’.*⁹

The draft text describes that for the assessment of disproportionate burden, economic operators should take into account several circumstances, including the size, resources and nature of their own business, and the estimated cost and benefit of the changes in production compared to the estimated benefit for persons with disabilities with regard to the frequency and duration of the use of specific products.

Inclusion Europe finds this provision problematic, as it is based on the self-assessment of the operators, instead of a formal process where economic actors may seek for being exempted from their obligation under the EAA. When it comes to the assessment of the frequency and duration of the using of product, it is of a great concern that operators might make their assessments based on the current situation and market behaviour. Persons with intellectual disability are largely excluded from the market and it is not likely that market operators would realise the extent to which this group would use and benefit from a product or service if full accessibility was put in place. For example, persons with intellectual disabilities are often denied to open bank accounts or arrange their own financial matters, including taking out their own money from cash machines. However, if banking services were made accessible and Member States implemented the provisions of the CRPD effectively, a large number of people with intellectual disability would start using these services. This, however, can only happen if necessary alterations were carried out in the display, the operational system and in the approach to providing these services in general.

We call the Commission to include requirements about the **role and resources of the market surveillance authority** in the assessment of the disproportionate burden for any market operators. In order to be able to provide an assessment in line with the EAA, employees of these authorities must receive training on the provisions of the Directive.

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

Annex II of the draft EAA provides detailed information on the conformity assessment procedure of products. The European Commission chose to apply the ‘CE-marking’ to signal compliance with accessibility standard. The CE-marking is an already existing system under Regulation (EC) No 765/2008¹⁰ that is applied on products that are placed in the EU internal market. This decision implies that persons with disabilities will not know which particular products are accessible and will be unable to make an informed decision when choosing which product to buy or use. The other problem with the CE-marking system is that the market surveillance authority can

⁹ Article 12, draft EAA, 2015/0278 (COD).

¹⁰ [Regulation \(EC\) No 765/2008](#).

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only evaluate the compliance of the product after it is already circulating in the market. Furthermore, already existing products that are marked with CE might be assumed to be compliant with the EAA, which would be a false pretence for consumers with disabilities.

Therefore we will have to insist that the European Commission introduces a separate marking system that would make clear for all consumers, including persons with intellectual disabilities and persons with complex needs, that a product complies with the provisions of the EAA.

- **Enforcement (Article 25)**

The enforcement procedure is an extremely important part of a legislative act, especially in such cases where the compliance of products and services are subject to self-assessment of economic actors. It is positive that the draft EAA 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. **Competent authorities** should be required at the **national level to monitor regularly the products and services** that were introduced to the market and their compliance with the accessibility requirements of the EAA, as well as to sanction any failure to comply therewith.

4. Specific recommendations

This section includes suggestions to specific changes in the draft Directive that are necessary in our view to ensure that persons with intellectual disabilities can access goods and services across the EU in line with the provisions of the UN CRPD.

- We call the European Commission to include a specific mention of **easy-to-read** as a tool to comply with the requirement of **'understandable'** for products and services covered by the EAA.
- It is necessary to **include the requirement 'understandable'** under the sections of Annex I, where it is currently missing:
 - under all sections on 'user interface and functionality design';
 - under 'the sections of 'services' referring to 'telephony services, including emergency services and the related consumer terminal equipment with advanced computing capability' (Section III);
 - 'Air, bus, rail and waterborne passenger transport services; websites used for provision of passenger transport services; mobile device-based services, smart ticketing and real time information; self-service terminals, ticketing machines and check-in machines used for provision of passenger transport services' (Section V, including the Websites used for provision of passenger transport services);
 - Banking services, websites used for provision of banking services, Mobile device-based banking services (Section VI);

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- 'E-Books' under 'Services' (Section VII);
 - 'E-commerce (Section VIII).
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- Direct reference to the WCAG, compliance with web accessibility standards and their further development for persons with intellectual disabilities.
 - '**Pictograms**' are important requirements to fulfil the accessibility needs of persons with intellectual disabilities, therefore we suggest adding under:
 - Section 1 'User interface and functionality design': 'provide pictograms and other alternatives to text, including voice and easy-to-read';
 - Section 3 'Services' and 'Related terminal equipment with advance computing capability used by consumers': 'provide signals in pictograms and other alternatives to text, including voice and easy-to-read';
 - Section 5 'Websites used for the provision of passenger transport services'.
 - Under Section V on 'Air, bus, rail and waterborne passenger transport services; websites used for provision of passenger transport services; mobile device-based services, smart ticketing and real time information; self-service terminals, ticketing machines and check-in machines used for provision of passenger transport services', and under Banking services, Mobile device-based banking services (Section VI), especially to Mobile device-based banking services and user interface and functionality design, we suggest adding: '**alternatives to text content, that include text to pictogram, text to voice or text to easy-to-read**'.¹¹
 - Under Section IX on 'Accessibility requirements for other union acts in Chapter VI' to be added: to point 2. 'provide for plain text explanation by the use of easy-to-read language and pictograms'; to Part C on Built environment 'information and signals provided in plain format in the whole building or facilities'.
 - It is unfortunate that the accessibility of the **built environment** is left for Member States to decide whether parts of the built environment are to comply with the accessibility requirements. Built environment should be included in the scope of the act with special regard to **signals in plain language and the use of pictograms**.
 - Concerning user interface (for instance user interface of self-service terminals) and the built environment, there should be a requirement to

¹¹ See more about the specific software at: <http://able-to-include.com/>.

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provide persons with disabilities with the **possibility to seek assistance** from the staff of the service provider. Assistance should be considered as a measure to improve the accessibility of the product and services for persons with disabilities.

- As a general requirement we would like to add that users should be involved in testing the accessibility level of products and services. **User involvement in testing** would ensure that the accessibility needs of all persons is fulfilled and considered when placing products on the market.
- Regarding services, **training on the accessibility requirements** must be given to the personnel involved in providing services, as well as to public authorities tasked with monitoring of compliance. In the absence of that, it is unlikely that the quality of services could improve towards becoming more accessible.

5. Conclusion

Inclusion Europe and its membership welcome the proposed European Accessibility Act, as it will help advocating for the rights of persons with disabilities at national level. However, after careful reading and analysis of the proposed Directive, Inclusion Europe is not convinced that in its current state, the act will ensure compliance with Article 9 of the CRPD, as interpreted with the General Comment, or that it will effectively protect the rights of persons with intellectual disabilities when they are accessing products and services that are covered in the draft legislation. We are concerned that manufacturers, importers and distributors will disregard the accessibility needs of persons with intellectual disabilities, unless strong requirements are defined in the text of the legislation. Since the proposed text does not include adequate enforcement provisions, there is no guarantee that necessary measures will be taken, or that products and services failing to comply with the accessibility standards will be withdrawn or recalled.

Therefore, Inclusion Europe calls the European Commission to make the suggested improvements of the text of the Directive, which will include strengthening the language and referring explicitly to measures that are indispensable to fulfil the accessibility needs of persons with intellectual disabilities, with special regard to easy-to-read language. This will ensure better compliance with the CRPD requirements and certainly significantly contribute towards better inclusion of persons with intellectual disabilities into society.

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