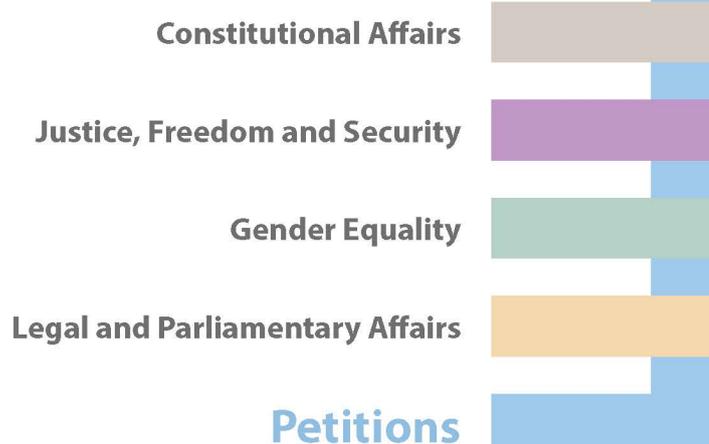


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT** **C**  
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



# The European Accessibility Act

In-depth analysis for the PETI Committee





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND**  
**CONSTITUTIONAL AFFAIRS**

**PETITIONS**

**The European Accessibility Act**

**IN-DEPTH ANALYSIS**

**Abstract**

This paper, produced by the Policy Department on Citizens' Rights and Constitutional Affairs, looks into the Commission proposal for a European Accessibility Act. It briefly describes its contents, the Council discussions on the proposal, its Impact Assessment and the main points of contention, as well as the views of disability advocacy groups, as well as of the business and industry organisations, both on the act and on its articles. A series of suggestions and recommendations are proposed with the objective of ensuring that the Act can effectively achieve its declared aims: implementing the UN Convention on the Rights of Persons with Disabilities by fostering the integration of disabled persons in society and guaranteeing equal access to goods and services.

## **ABOUT THE PUBLICATION**

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## LIST OF ABBREVIATIONS

<b>ANEC</b>	European Association for the Co-ordination of Consumer Representation in Standardisation
<b>BE</b>	Business Europe
<b>CULT</b>	Culture and Education Committee
<b>DE</b>	Digital Europe
<b>EAA</b>	European Disability Act
<b>EASPD</b>	European Association of Service Providers for Persons with Disabilities
<b>EDF</b>	European Disability Forum
<b>ENIL</b>	European Network on Independent Living
<b>EPP-ED</b>	Group of the European People's Party and European Democrats
<b>EUD</b>	European Union for the Deaf
<b>FEMM</b>	Committee on Women's Rights and Gender Equality
<b>Greens/EFA</b>	Greens/European Free Alliance
<b>GUE/NGL</b>	Confederal Group of the European United Left - Nordic Green Left
<b>IA</b>	Impact Assessment
<b>IE</b>	Inclusion Europe
<b>IMCO</b>	Committee on Internal Market and Consumer Protection
<b>LIBE</b>	Committee on Civil Liberties, Justice and Home Affairs
<b>MSAs</b>	Market Surveillance Authorities
<b>NLF</b>	New Approach and New Legislative Framework
<b>PETI</b>	Committee on Petitions
<b>TRAN</b>	Committee on Transport and Tourism
<b>UNCPRD</b>	United Nations Convention on the Rights of Persons with Disabilities
<b>SQWP</b>	Working Party on Social Questions

# 1. INTRODUCTION

Around **80 million people across the EU are disabled to some degree**. In order to ensure their equal social participation, the European Commission has produced the *proposal for a 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*, hereafter, the **European Accessibility Act** (EAA). The act has, as its principal aim, to "...improve the functioning of the internal market for accessible products and services by removing barriers created by divergent legislation".<sup>1</sup> In doing so, not only are economic goals being met but **citizens with disabilities will be able to access goods and services** which previously were inaccessible to them and, therefore, the EU will see an increase in participation and independent living.

The Act has been introduced largely as a result of the EU and most of its Member States having ratified the **UN Convention on the Rights of Persons with Disabilities** (UN CRPD, signed in 2010). This means that, "...as such they have committed to create a legislative framework for accessibility in line with Article 9 of the convention. Accessibility is considered as a wide concept that includes the prevention and elimination of obstacles that pose problems for persons with disabilities in using products, services and infrastructures."<sup>2</sup>

In addition, as the Explanatory Memorandum to the proposed Directive makes clear, the Act falls under the **European Disability Strategy 2010-2020**, "...that sets actions for the implementation of the UNCRPD at EU level".<sup>3</sup>

## 1.1. Why the need for EU-wide action?

The **fragmentation** of regulatory legislation regarding access to products and services has arisen as a result of the fact Member States have different accessibility requirements. As a consequence, we are now seeing incongruities and inconsistencies in the legislation (or lack thereof) of various Member States. By having an EU Act in place, **consistency** and European-wide functional requirements will be ensured. In reality, this will mean "...requirements establishing **accessibility principles** instead of prescribing the detailed technical solutions".<sup>4</sup>

The initial European Parliamentary Research Service appraisal of the Commission's impact assessment into the Accessibility requirements of the proposed Act underlined that "*the proposed harmonisation of rules would not only address the current legislative fragmentation and thus improve the functioning of the internal market but also contribute to the inclusion of disabled citizens and consumers in society (IA, p.11)*".<sup>5</sup> Additionally, this

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<sup>1</sup> *European Accessibility Act; improving the accessibility of products and services in the single market*, European Commission Employment, Social Affairs & Inclusion, available at [ec.europa.eu/social/BlobServlet?docId=14795&langId=en](http://ec.europa.eu/social/BlobServlet?docId=14795&langId=en)

<sup>2</sup> Ibid

<sup>3</sup> *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*- page 2, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015SC0266>

<sup>4</sup> *European Accessibility Act; improving the accessibility of products and services in the single market*", European Commission Employment, Social Affairs & Inclusion

<sup>5</sup> Maniaki-Griva, Alexia and Caruso, Giulia, *Accessibility requirements for products and services: the European Accessibility Act, Impact Assessment (SWD (2015) 265 (Summary) of a Commission proposal for a Directive of*

means that "...the proposed directive is consistent with the Europe 2020 Strategy, which aims to foster, among other things, social inclusion and which will be aligned with the New Legislative Framework (NFL), a common framework for EU product harmonisation legislation (IA, p.57)".<sup>6</sup>

## 1.2. Which aspects are covered by the Act?

The proposed act **does not cover every product and service conceivable**. In fact it focuses on products and services where the Commission has said there are pre-existing barriers or ones are likely to emerge in the future.

In addition, "...the proposal also provides that for those existing EU instruments which establish accessibility obligations without providing exact accessibility requirements or specifications, accessibility is to be defined by reference to the new directive. This applies for example to the Public Procurement Directives, which strongly encourage the purchase of accessible goods and services".<sup>7</sup>

The following **products and services** are covered by Article 1 of the proposed Act:

- General purpose computer hardware and operating systems;
- 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;
- Telephony services and related consumer terminal equipment with advanced computing capability;
- Audio-visual media services and related consumer equipment with advanced computing capability;
- Air, bus, rail and waterborne passenger transport services;
- Banking services;
- E-books;
- E-commerce;
- Services related to air, bus, rail and waterborne passenger transport.

## 1.3. How will it impact on citizens?

**According to the European Commission**, using the data gathered by the Eurobarometer on Accessibility conducted in 2012, the act will have a **positive impact for both EU citizens and businesses**. The Commission has stated that not only will persons with disabilities be able to have better access to goods and services but they will additionally benefit from "...better access to education and (be able) to enter more easily the open labour market". In addition, **older people** are also said to be potential beneficiaries as it will allow them "...to maintain an active role in society, including extending their working lives". Indeed, the benefits can be said to extend to **all EU citizens**; the Commission cites

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the European Parliament and the Council on the approximation of the law, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services (COM (2015 ) 615), p.2, April 2016, available at [http://www.europarl.europa.eu/ReqData/etudes/BRIE/2016/528833/EPRS\\_BRI\(2016\)528833\\_EN.pdf](http://www.europarl.europa.eu/ReqData/etudes/BRIE/2016/528833/EPRS_BRI(2016)528833_EN.pdf)

<sup>6</sup> Ibid

<sup>7</sup> Waddington, Lisa, *European Commission proposes European Accessibility Act*, Maastricht University Law News & Views, January 19<sup>th</sup> 2016, available at <http://law.maastrichtuniversity.nl/newsandviews/european-commission-proposes-european-accessibility-act/>

the examples of "...people trying to hear traveling information in noisy environments like train stations, or trying to get money from ATMs on a sunny day, or employees working with enlarged documents to avoid eye strain...".<sup>8</sup>

As the Eurobarometer on Accessibility (2012) data suggests, approximately 70% of EU citizens think that better access to goods and services would very much improve the quality of life of the elderly and disabled.

### 1.4. How will it impact on businesses (especially SMEs)?

According to the Commission, **businesses - and in particular SMEs - will see a benefit** in their cross-border trade by having a unified market for their goods and services, rather than having to deal with different requirements in each Member State. The Commission claims that, without the Act, by 2020 market costs due to divergent requirements would be estimated to be €20 billion for companies and Member States. Whilst it acknowledges that there are likely to be extra production costs, the potential economic benefits, "...are expected to be higher than the potential accessibility-related costs for **all** economic operators."<sup>9</sup>

An SME Panel conducted by the Enterprise Europe Network found that **nearly two-thirds of SMEs were generally in favour** of introducing EU-level accessibility requirements;



Source: SME Panel conducted by Enterprise Europe Network

<sup>8</sup> ibid  
<sup>9</sup> ibid

## 2. THE EUROPEAN ACCESSIBILITY ACT IN THE CONTEXT OF EU AND MEMBER STATES COMMITMENTS

### 2.1. The UNCRPD

The need for a European Accessibility Act arose from the **EU's signing of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in 2010**. The EU became a regional member of the UNCRPD that year and, as a result, **the Union must give full legal effect to the provisions of the Convention**. UNCRPD understands disability to be a combination of medical and contextual factors: people with disabilities, *"...include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others"*.<sup>10</sup>

In order to assess and demonstrate its compliance with the Convention, the EU submitted its first implementation report in June 2014. As a result of this, the UN adopted a List of Issues which had been raised in that report. The report stipulated the desire of the European Parliament for the Commission to put forward an *"ambitious"* European Accessibility Act.<sup>11</sup> In response, **the UN CRPD Committee "...urged the EU to adopt a European Accessibility Act that includes "effective and accessible enforcement and complaint mechanisms, in line with Article 9 of the Convention."**<sup>12</sup>

The **Parliament** established a **CRPD network** consisting of EMPL, LIBE and PETI Members and is designed to ensure the representation of the European Parliament in the EU CRPD Framework and to promote Parliament's views on the rights of persons with disabilities. Mr **Ádám Kósa** MEP of EMPL is the Chair of the Network, Ms **Helga Stevens** MEP (LIBE) is the rapporteur, while Ms **Rosa Estaràs Ferragut** and Ms **Soledad Cabezón Ruiz** represent the PETI committee.

### 2.2. European Disability Strategy 2010-2020

The EU had introduced the **European Disability Strategy 2010-2020** *"...as an overall framework to promote the rights of people with disabilities and to anticipate the Convention's effective implementation"*.<sup>13</sup> Within its priorities, "accessibility" and "equality" are particularly relevant for the EU, which as competences for non-discrimination and the regulation of the single market (e.g. in the accessibility of products, goods and services). **The Commission** originally announced a EAA proposal within the **2012 Work Programme (WP) but it was subsequently postponed** until the Commission reiterated its commitment to accessibility in the 2015 Work Programme Communication.<sup>14</sup>

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<sup>10</sup> Scholz, Nichole, *Assistive Technologies to support people with disabilities*, European Parliament Research Service Briefing, June 2015, available at [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2015\)559513](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2015)559513)

<sup>11</sup> EP Resolution of 20 May 2015 on the List of Issues adopted by the UN Committee on the Rights of Persons with Disabilities in relation to the initial report of the European Union, p.8\_TA-(2015) 0208. Quoted in Maniaki-Griva, Alexia and Caruso, Giulia, *Accessibility requirements for products and services: the European Accessibility Act, Impact Assessment (SWD (2015) 265 (Summary) of a Commission proposal for a Directive of the European Parliament and the Council on the approximation of the law, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services (COM (2015 ) 615), p.1, April 2016,* available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/528833/EPRS\\_BRI\(2016\)528833\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/528833/EPRS_BRI(2016)528833_EN.pdf)

<sup>12</sup> Anglmayer, Irmgard, *EU Implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD)- European Implementation Assessment : In-Depth Analysis*, EPRS, February 2016, p.26, available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/536347/EPRS\\_IDA\(2016\)536347\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/536347/EPRS_IDA(2016)536347_EN.pdf)

<sup>13</sup> Anglmayer, Irmgard, *EU Implementation of the UN CRPD European Implementation Assessment*, p.15, available at [http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/536347/EPRS\\_IDA\(2016\)536347\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/536347/EPRS_IDA(2016)536347_EN.pdf)

<sup>14</sup> COM (2011) 777 final, Annex to the Commission Work Programme 2012, vol. 2/2, p.19 Brussels, 15/11/2011 and COM (2014) 910 Commission Work Programmes 2015- A New Start, p.9, Strasbourg, 16/12/2014

### 3. OVERVIEW OF THE EUROPEAN ACCESSIBILITY ACT

**“Accessible products and services”** are defined as *“products and services that are perceptible, operable and understandable for persons with **functional limitations**, including persons with **disabilities**, on an equal basis with others.”* This is further elaborated upon, whereby *“persons with functional limitations”* are defined as *“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”*.

As Professor Lisa Waddington of Maastricht University points out, **accessibility is not defined in terms of detailed technical requirements and the proposed Act instead uses “functional accessibility requirements”**, which means that the relevant aspects of the good/service have to be accessible but the Act does not specify how this must be technically assured.<sup>15</sup>

**Economic operators concerned** at how financially onerous this is likely to be might be slightly assuaged by the **exceptions** which are provided for them within the Act; if providing accessibility to a product or service would result in a fundamental alteration to the product or service, or result in a **disproportionate burden** for the economic operator.

It will ultimately fall upon the economic operators to determine compliance with the accessibility requirements but there is a safeguard in place for consumers so as not to allow these operators to arbitrarily declare a disproportionate burden. **Market surveillance authorities can review the assessments of the operators and will have the authority to force the withdrawal of an inaccessible product/service from the market.** This safeguard is accompanied by a remedy for consumers; they are able to instigate court proceedings at the national level in the event that national transposition of the directive is inadequate.

An overview of the contents by article is provided in **Annex 2**.

### 4. THE INSTITUTIONS INVOLVED

The Act was proposed by the **EU Commissioner for Employment, Social Affairs and Inclusion Marianne Thyssen** and the Directorate General for Employment is responsible for its follow up and negotiations.

Concerning the **European Parliament**, its **Committee on the Internal Market and Consumer Protection (IMCO)** is the committee responsible for examination of the legislative file and for formulating a motion for a resolution on Accessibility requirements for products and services (procedure 2015/0278 (COD)), while other EP committees are responsible for drafting opinions for their respective field of competence.

**PETI requested to be involved** as committee for opinion as a result of petitions received from across the EU referring to difficulties encountered by people with disabilities in relation to access to goods and services (see **Annex 1 on Petitions related to the EAA**). PETI is currently in process of drafting its opinion for IMCO, so that its suggestions can be incorporated into IMCO’s report. In her letter of 02.02.16 to Mr Jerzy Buzek, the Chair of

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<sup>15</sup> Waddington, Lisa, *European Commission proposes European Accessibility Act*

the Conference of Committee Chairs, Cecilia Wikström, the Chair of the Committee on Petitions, stated that PETI was "...convinced that there is indeed a need to render products and services more accessible to allow for more inclusion and participation of citizens in society, to support independent living and contribute to the application of the principle of equal treatment in the access to goods and services by persons with disabilities."

PETI has received **several petitions** in recent years relating to areas covered by the proposed European Accessibility Act, which have acted as the inspiration for this study. The main themes covered were access to the built environment and the importance of clear communication and plain speech in official communications. Among these:

*Petition 1305/15-* relating to **clear communication and intellectual disability** (Subject matter: the importance of clear communication in government rulings).

*Petition 1056/15-* **access to transport and the built environment** (Brussels metro, plus advocating the use of braille signs all around city, better access to ticket machines)

*Petition 0963/15-* **access to transport and the built environment** (Advocating the use of lifting hoists on aeroplanes to grant disabled persons more dignity when travelling by air)

*Petition 0868/15-* **access to transport and the built environment-** (The petitioner refers to the existence of a parking card at an EU level and regrets the fact that there is no means, at EU level, to enable disabled people to benefit from concessionary travel available in each Member State using an identity card issued at a national level. The petitioner requests the creation of a system of this type).

*Petition 0170/2015-* **access to transport and the built environment-** (similar to above, the petitioner wants reduced fares for disabled persons on public transport).

These petitions and the subsequent responses to them are further detailed in **Annex 1**.

It was agreed in March 2016 that, following the request to the Conference of Committee Chairs of Rule 54 (Procedure with associated committees), that PETI could make "...important contributions in this area under Rule 53 (opinion) of the Rule of Procedures on issues related to PETI competence under Annex VI of the Rules of Procedures".<sup>16</sup>

The **Council** for Employment, Social Policy, Health and Consumer Affairs is responsible for the file, which is notably examined by its **Working Party on Social Questions** (SQWP).

### **Institutions involved**

<b>The European Commission</b>	Employment, Social Affairs and Inclusion THYSSEN, Marianne
<b>The European Parliament</b>	<u>Committee Responsible and Rapporteur:</u> <b>IMCO:</b> <a href="#">LØKKEGAARD Morten</a>  <u>Committees for Opinion</u> <sup>17</sup> : EMPL: KOSA, Adam TRAN: SKRLEC, Davor CULT: KAMMEREVERT, Petra FEMM: ESTARAS FERRAGUT, Rosa PETI: KUNEVA, Kostadinka
<b>The Council of the European Union</b>	Employment, Social Policy, Health and Consumer Affairs

<sup>16</sup> Letter to Jerzy Buzek by IMCO and PETI of 10.03.16.

<sup>17</sup> ECON, ITRE, REGI, JURI and LIBE decided not to give an opinion.

## 5. THE VIEWS OF THE MEMBER STATES DELEGATIONS IN THE COUNCIL

The Council is yet to adopt a position on the European Accessibility Act but was expected its preparatory bodies to begin drafting during the Netherlands Presidency once detailed discussions by the Working Party on Social Questions were conducted, which include Commission clarifications from its representatives.

**During the Dutch Presidency of the Council, there have been eight meetings of the SQWP** in order to discuss the proposed directive and the CION Impact Assessment (IA).

Whilst **many delegations have welcomed the aim of the proposal, there have been concerns raised over the scope of the Directive, its definitions, and implementation.**

### 5.1. The Commission Impact Assessment and the discussions in the Council

There were 21 replies out of a possible 28 Member States (MSs) to the questionnaire regarding the IA sent to them in April 2016 by the Council. **The IA came in for some criticism;** *"Many MSs were sceptical regarding the fact that the IA is based on the unverifiable assumption that EU countries were likely to over-regulate in order to comply with the UNCRPD".*<sup>18</sup>

With regard to **legal basis, subsidiarity and proportionality, and policy options** there were **concerns** from some MSs that: there is already pre-existing EU legislation on accessibility in certain areas like transport, that the reasoning behind prioritising certain areas was not always clear, and that they would have liked to have seen a consultative group set up by CION to address diverging national approaches to regulating accessibility. Indeed, some MSs preferred the 3rd option offered by the IA *"...which allows for more flexibility (for MSs) while respecting the subsidiarity principle".*<sup>19</sup>

When it came to the actual impact analysis, there was not uniform agreement among Member States that European-level regulation would lead to increased **competition**. Additionally, there are doubts regarding the impact on small and micro-enterprises (**SMEs**) and whether the costs of implementing the directive may be too **onerous** on them and limit their ability to enter, expand and innovate within the market. As a consequence, whilst welcoming the current exemptions provided for in the Directive, the MSs called for better safeguards for SMEs. It was also highlighted that the IA had not really consulted many SMEs as part of the process.

Regarding consumers, it was regretted by some MSs that the neither qualitative nor quantitative data was provided about the impact on them, such as potential price changes. There was also said to be a lack of consideration of the potential **regulatory costs**: several delegations asserted that there was a lack of study of the differences between MSs, and that assumptions regarding the provision of accessibility information were provided without evidence. There were concerns over the costs and technical demands for companies and public authorities in complying with the Directive. Almost all MSs agreed that the potential

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<sup>18</sup> *Presidency Note* to Working Party on Social Questions 25.02.16, Council of the European Union 6515/16 Interinstitutional File: 2015/0278 (COD), available at <http://data.consilium.europa.eu/doc/document/ST-6219-2016-INIT/en/pdf>

<sup>19</sup> *ibid*; the 3rd option discussed a "EU Directive defining common accessibility requirements for the selected goods and services - applicable to the Member States when they regulate on/require accessibility".

impact on **fundamental rights** had received sufficient coverage but one delegation wanted to see stronger requirements to protect persons with intellectual disabilities. Monitoring, transposition and compliance were deemed to have been fully considered in most questionnaire replies.

The **scope** of the IA caused some concern for certain delegations as some regretted that *"...not all MS were taken into account (in particular not the smaller countries), and others wished that businesses and organisations of disabled persons had been consulted more widely."*<sup>20</sup>

In addition, some MS felt that the IA lacked in consideration for *"the social and environmental impact, the impact on public finances and the impact of the transition period on businesses."*<sup>21</sup>

Lastly, *"many MSs"* felt that there were problems with the **methodology** used as the IA had used an analysis and studies which were outdated.

## 5.2. Council views on the contents of the EAA

The European Council Working Party on Social Questions has been responsible for the file on the proposed Directive on the European Accessibility Act and, at its meeting of 1st April of this year, **legal aspects** of the proposed Directive were discussed by the Council Legal Service, focussing mainly on the **internal market legal basis** of the proposal (TFEU Article 114). The meeting report makes clear that there were *"specific doubts" aired as to the inclusion of particular sectors within the scope of the directive: "construction, transport, audio-visual media services, and e-commerce"*. Additionally, they examined the proposal's impact on accessibility in these sectors.<sup>22</sup>

There have been **concerns** raised over the **definitions** used as two additional categories have been created by the use of *"people with functional limitations"* and referring to older people, which has widened the personal scope of the Act more so than that contained within the UNCPRD. Some delegations considered that the scope should instead be the same as in the Convention. Furthermore, in order to provide better clarity some delegations suggested that it would be prudent to **add the definitions** for the following terms: *"consumer terminal equipment with advanced computing, capability related to telephony services", "passenger transport services", "new product", "new service", "website", "banking services", and "service provider"*.<sup>23</sup>

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<sup>20</sup> *Presidency Note* to Working Party on Social Questions 25.02.16, Council of the European Union 6515/16 Interinstitutional File: 2015/0278 (COD), available at <http://data.consilium.europa.eu/doc/document/ST-6219-2016-INIT/en/pdf>

<sup>21</sup> *ibid*

<sup>22</sup> *Outcome of Proceedings*, Working Party on Social Questions 01.04.16, Council of the European Union 7468/16. Interinstitutional File: 2015/0278 (COD)

<sup>23</sup> *Presidency Note* to Permanent Representatives Committee (Part 1), 03.06.16 Council of the European Union 9627/16, available at <http://data.consilium.europa.eu/doc/document/ST-9627-2016-INIT/en/pdf>

The **main points raised by Member States' Delegations** in the Council focused on:

- The Commission's **Impact Assessment**: the IA was completed prior to a number of EU legislative acts included in Article 1(3) being adopted, and several MSs were still transposing some directives referred to in the EAA. This meant that delegations have not yet had the chance to evaluate the impact of the EAA on the implementation of these directives.
- The **built environment**: whilst the Council has noted that MSs have the option to include the built environment into their transposition of the Directive, there are still questions by delegations over this.
- **Rules for Services**: delegations still have doubts over the use of a product-directive model ("the New Legislative Framework") for services alongside goods, despite the rules for services being simplified and adapted as necessary. Additionally, there have been queries over what the links are between a service provided and the products needed for that provision, and where a product(s) and service(s)/service provider(s) are linked then who is ultimately responsible for the ensuring compliance with the accessibility requirements.
- Definitions of **persons covered**: delegations wondered if it is desirable to include people with functional limitations and elderly persons as separate categories.
- **Material scope**: questions were raised on the difference between accessible products and services and on what should be the material scope (including the question as to which sectors should fall under the Directive). In this context, further assessment of the internal market justification of the sectors included is needed. The preamble should reflect the inclusion of these products, services and sectors.
- **Links to other Union acts**: the links between the EAA and other Union legal acts shall be clearly defined and overlap with other Union Acts should be ruled out? It was suggested to clarify these issues in the preamble of the Directive (in particular regarding the audio-visual sector, passenger transport and e-commerce and radio equipment). Some other delegations have stated that it would perhaps be more appropriate to use specific directives to cover the accessibility requirements of different services (Article 1 (2)) (b) e.g. audio-visual media services could be included.
- **Functional accessibility requirements**: it should be clarified if these provide guarantees on accessibility and at the same time leave room for innovation.
- **Disproportionate burden**: delegations raised the question of how to offer the possibility to exempt products or services from the accessibility requirements without creating an excessive administrative burden on companies and other actors seeking to justify such an exemption. They also requested more information from the Commission regarding how to tell if something is a disproportionate burden, how to prove it and how to compensate for it. Furthermore, some delegations consider the notification procedure detailed in article 12(6) to be an administrative burden. There have been questions on whether partial fulfilment (i.e. not providing accessibility in remote parts of a domestic transport network) would still be in line with the EAA's requirements and on what would happen in the event different economic operators getting very different results in their assessments on what constitutes a disproportionate burden.
- **Administrative Burden**: Lastly, delegations have also queried how national authorities would be expected to co-operate in cases of cross-border services (such as banking services) as there was already a banking supervision system in place. The Commission explained that the proposal is flexible and that it is down to the MSs as to how to organise this co-operation.<sup>24</sup>

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<sup>24</sup> *ibid*

## 6. CIVIL SOCIETY AND BUSINESS VIEWS ON THE EAA

In the Public hearing of 13 April 2016 organised by the European Economic and Social Committee a broad discussion on the EEA proposal took place. Ms Inmaculada Placencia Porrera of the **EU Commission** (DG EMPL) explained that the EAA will help implement Article 9 of the UN Convention on the Rights of Persons with Disabilities, which is in line with the Commission European Disability Strategy. The Commission wants the disabled to be able to participate fully in the Single Market and would like to see a free circulation of accessibility products and services. She also cited the problem of current divergences in national legislations and the fragmentation of the EU market. She gave the example of worldwide measures being taken to improve ICT for disabled people and, in her view, the EU needs to compete. NGOs representing disabled persons and business and industry also intervened and produced positions papers with suggestions for legislators, which are mentioned below and in Annex 2.<sup>25</sup>

### 6.1. The views of civil society groups on the EAA proposal

There is **widespread positivity** at the EU's clear desire to honour its responsibilities under the UNCRPD; Catherine Naughton of the European Disability Forum (**EDF**) has said that whilst she does not feel that Act itself constitutes a "*silver bullet*" she was delighted that the EU was the first regional organisation to implement the UN Convention.<sup>26</sup> EDF has cautiously welcomed its publication and have said that it "*...reflects one of many steps which the EU should take to ensure that persons with disabilities have equal rights as Europeans.*"<sup>27</sup> Chiara Giovannini of **ANEC**, the European Association for the Co-ordination of Consumer Representation in Standardisation<sup>28</sup>, has said that her organisation supports the directive because it supports the elaboration of a legal basis and standardisation as these help to avoid cross-border implementation problems.<sup>29</sup> Anne-Sophie Parent of **AGE Platform** makes the point that the EU has an ageing population and this "*silver economy*" makes the harmonisation elements of the Directive economically viable. She argues that the less accessibility we have in the EU will lead to increased dependency, which will ultimately end up costing Member States more money in supporting their elderly residents.<sup>30</sup> Magdi Birthi of **Inclusion Europe (IE)**, which is the principal European advocacy group for intellectual disability, has said that her organisation is encouraged by the proposals for translation of information into "easy-to-read" (plain, short words and sentences, and pictograms) to cover areas from roads to health. Her organisation is also fairly happy with the directive's list of goods and services but wants to see a broader scope.

The vast majority of **disability advocacy groups** are appreciative of the Act's aims, there is a **clear desire to see an expanded scope and a tightening of its wording and definitions so as not to allow for "loopholes" for economic operators to avoid their obligations.**

The views of **business groups and industry** are perhaps predictably somewhat different; **Digital Europe**, the principal network for European Digital business, have stated that

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<sup>25</sup> As regards civil society, there is such diversity in the range of advocacy groups who have voiced their opinion over the proposed Act that lead to a necessary selection of the most representative views in terms of size and membership of their organisations, their public profile, and if they have participated in public consultations on the proposed Act. The same applies to my use of the views of Business Europe and Digital Europe to express the industry views on the propose Act.

<sup>26</sup> Public hearing for a Proposal on the directive on the EAA, Brussels, 13.04.16

<sup>27</sup> *EDF initial position on the proposal for a European Accessibility Act*, p.15, February 2016, available at [http://www.edf-feph.org/Page\\_Generale.asp?DocID=13855&thebloc=34403](http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=34403)

<sup>28</sup> ANEC website, available at <http://www.anec.eu/anec.asp>

<sup>29</sup> Public hearing for a Proposal on the directive on the EAA

<sup>30</sup> *ibid*

whilst they "...share with the European Commission the view that innovation on accessible products and agree with the Commission that...innovation on accessible products and services is key to social and economic inclusion"<sup>31</sup>, there are **large divergences in opinion between the two main groups, Digital Europe and Business Europe on one side, and the disability advocacy groups on the other, on how to go about doing this.**

#### 6.1.1. The views of disability advocacy groups

As stated above, there is a real consensus among disability advocacy groups that the Act itself is a positive step but one which needs to be taken further and developed. They want their views to be better represented and there are clear calls for further inclusion of disabled stakeholders into any subsequent negotiations on the content of the Act. Among the key changes suggested are the following:

**Additional products and services should be added to the directive: ANEC** wants to see additional products and services included within the directive to ensure a seamless chain of access, bearing in mind the different national legislations at play. Mark Wheatley of **European Union for the Deaf** goes further and he feels that all services should be included within the scope of the directive as he asserts that services are currently much more lightly regulated than goods in terms of their accessibility.<sup>32</sup> **Inclusion Europe** have stated that their organisation is unhappy that the directive will only apply to new products and that there is no guarantee people will be well-informed about new products available on the market. They make the point that if you improve access then more disabled people would use certain goods and services, and it would mean that manufacturers could not then make the argument that they represent only a minority of users.<sup>33</sup>

**The built environment needs to be included in the chain of accessibility:** Chiara Giovannini of **ANEC** wants to see the definition of "access" extended to also cover the built environment (e.g. the buildings housing ATM machines).<sup>34</sup> This view is echoed by **EDF** and **ENIL**.<sup>35</sup> ENIL in fact took issue with built environment accessibility being down to the Member State to decide upon; "*this should be redefined as an obligation to make all new public infrastructure fully accessible...including accessible transport services.*"<sup>36</sup>

**CE marking is ineffective when it comes to consumers being able to make an informed choice and an alternative should be proposed: ANEC** feels that this should be replaced by a different mark to inform the consumer rather than the authorities. Anne-Sophie Parent of **AGE Platform** stresses the importance of an informative, clear and reliable labelling system to cover both goods and services<sup>37</sup>. **EDF** argue that labelling needs to be clear enough so that persons with disabilities can easily and clearly recognise accessible products. CE marking is limited in this respect as it reflects many different criteria, CE marking also covers products not covered by the Act so the consumer may not know that they were really buying an accessible product.<sup>38</sup>

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<sup>31</sup> *DigitalEurope's Comments on the Proposal for a European Accessibility Act*, 2<sup>nd</sup> February 2016, available at [http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=1099&PortalId=0&TabId=353](http://www.digitaleurope.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=1099&PortalId=0&TabId=353)

<sup>32</sup> Public hearing for a Proposal on the EAA

<sup>33</sup> *ibid*

<sup>34</sup> Giovannini, Chiara, *ANEC Position Paper, Response to the European Commission consultation on the proposal for a Directive on accessibility requirements of products and services COM (2015) 615/2*, February 2016, available at <http://www.anec.eu/attachments/ANEC-ACCESS-2016-G-002final.pdf>

<sup>35</sup> *ENIL position on the proposal for a European Accessibility Act*, available at <http://www.enil.eu/news/enils-position-on-the-european-accessibility-act/>

<sup>36</sup> *ibid*

<sup>37</sup> Public hearing for a Proposal on the EAA

<sup>38</sup> *EDF initial position on the proposal for a European Accessibility Act*, p. 15

**There should be a strengthening of surveillance and enforcement against potentially non-compliant products and services:** **ANEC** would like to see the setting-up of a Standing Expert Group (comprising the relevant EU stakeholders; the economic operators and the social stakeholders) to assist the Commission in implementing the EAA. Additionally, **Inclusion Europe** wants to see certain requirements regarding the role and resources of the relevant Marketing Surveillance Authority in the assessment of "disproportionate burden". They feel national authorities should take a more active role in monitoring compliance. **ENIL**, whilst welcoming that consumers can take legal action, does not want the focus to be on the consumer to do this. They feel there needs to be a "comprehensive enforcement system" in place with the "necessary human resources...to ensure effective enforcement".<sup>39</sup>

**The timeframe of 5-6 years for implementation of the Directive is too long:** Catherine Naughton of **EDF** has stated that the disabled pay more for products and services, which are often unsuitable or unavailable to them<sup>40</sup>. EDF argue that, if new products and services are covered for 5-6 years then companies won't build anything new in that time and it will harm both their own innovation and the consumer.<sup>41</sup> **ENIL** feels that "...the transition period should be determined depending on the nature of the products and services". As most are related to ICT then they feel the transposition period of six years is too long as ICT evolves quickly and products have a short lifespan. "If the scope of the EAA is extended to include the built environment and public infrastructure, the transition period could be increased".<sup>42</sup>

**The "exceptions" of Article 12 for economic operators require further elaboration and the definitions generally need tightening up :** **EDF** feels that the "exceptions" allowed for under article 12 need more work in terms of definitions as it does not want manufacturers and service providers to have an easy opt-out. Mark Wheatley, of **European Union for the Deaf**, takes issue with the wording of some of the proposed terms: with regard to "disproportionate burden", he asserts some services will find loopholes to get around this, and he feels "fundamental requirements" requires a much clearer definition.<sup>43</sup>

### 6.1.2. The views of business

As previously stated, there are considerable differences in opinion between the two main European business groups who have been involved in the consultation for the proposed Act and the various disability advocacy groups. **Business Europe (BE) and Digital Europe (DE), whilst cautiously welcoming the aims of the Act, are very concerned at some facets of its content and fear that it will seriously hinder the efforts of manufacturers, and SMEs in particular.**

Patrick Grant (Internal Market Department for **Business Europe**) has said that, whilst understanding the need for the disabled to have better access to goods and services, his organisation fundamentally disagrees with the proposed directive as they believe it will hinder business in their efforts to assist the disabled, which they are already doing. He says he does not see any current internal market barriers for the disabled but the proposed act could well create new ones. Businesses should be allowed to make the decisions as to who their products should benefit. The "design for all" approach of the directive is too demanding on manufacturers as the needs and requirements for the disabled vary. The blanket requirements are the main sticking point and BE insists that the current legislative

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<sup>39</sup> *ENIL position on the proposal for a European Accessibility Act*

<sup>40</sup> *EDF initial position on the proposal for a European Accessibility Act, p.2*

<sup>41</sup> *ibid*

<sup>42</sup> *ENIL position on the proposal for a European Accessibility Act*

<sup>43</sup> Public hearing for a Proposal on the EAA

framework for goods and services must remain and they want to see further discussion on compatibility. There are also issues over proportionality; there is potential for conflict between Market Surveillance Authorities (MSAs) and manufacturers when products are sold between Member States. There are also concerns that the act will lead to a change in the meaning of "CE" marking.<sup>44</sup>

His views are echoed and reinforced by Olga Corrigan of **Digital Europe** (DE), representing the digital industry. Her organisation was surprised at the directive's move towards full alignment of the legislative framework because in the last 20 years the ICT industry has been able to transform access for disabled people on its own by working with different governments and customers. They would prefer to see only a partial alignment of the EAA with the new legislative framework. DE is concerned at how onerous the proposed changes would be to digital industry. They argue that manufacturers know their products best and want to see a more flexible approach instead of "the one size fits all" one. However, they do support harmonised standards provided that these are predicated on recognised, generally accepted industry views and are objectively tested. They argue that the industry should be allowed to target specific products at specific disabilities and that not all products should be treated the same as not every consumer uses every feature of websites or digital products. Ms Corrigan highlights concerns over the testing standard; accessibility standards are not objectively able to be tested in the same way as safety standards and Member States would have to create their own MSAs to ensure enforcement at great expense. MSAs would find it difficult to verify and test all goods and services, and it would require *"substantial investments in a new area of activity for national enforcement authorities"*<sup>45</sup>

There is also the risk that these new MSAs would cut corners and merely look for technical breaches. DE would prefer to see the "essential requirement" wording changed to "functional requirement" to afford greater flexibility (particularly as there is a need to future-proof the requirements for 5 years). Each functional requirement should be backed up by a harmonised standard with industry involvement in that process.<sup>46</sup>

DE is also particularly concerned about the proposed alignment to the New Legislative Framework; *"...the Commission's decision to base the entire proposal on the principles of the New Approach and New Legislative Framework (NLF) whose primary function is to regulate the safety and environmental compliance of products...and the use of CE marking (is) inappropriate to achieve the aim of the Directive"*. They are concerned at the "administrative burden" which, in their view, will lead to elevated prices for both economic operators and consumers which could lead to the exclusion of the very *"consumer groups whose cause this legislation wants to champion"*. There are fears that the NLF and CE marking would not be appropriate for services, software and websites, the last of which are particularly prone to continuous change and thus the *"...corresponding Declaration of Conformity, representing compliance at a particular point in time, is impractical"*. Also they cite the risk that *"...certain products could not be introduced at all into the European Market, such as...big data visualisation and specific assistive technologies, if there are no known ways to make them accessible to all users"*.

With regard to the scope of the Act, they think the various products and services identified in Article 1 are often *"too generic"* and are lacking in clarity. e.g "e-commerce" and "e-books" are both potentially very broad in terms of definitions. However, although clarity is required it is also important to keep the definitions *"flexible enough to accommodate technological evolution...The scope...might struggle to be fit for the future."* They cite the example of check-in machines which are already being supplanted by mobile phone apps.

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<sup>44</sup> ibid

<sup>45</sup> DigitalEurope's comments on the Proposal for a European Accessibility Act, 02.02.16

Furthermore, they stress that; *"In Article 2, several definitions may become outdated as they use references to EU legislation that are about to be reviewed, in particular those for telephony services (Directive 2002/21) or audio-visual media services (Directive 2010/13/EU)"*.

DE has proposed a solution to these industry concerns that they want the Commission to take on board: investigate other regulatory solutions, including only a partial alignment with the NLF. *"Such a framework should take into account that complete conformity of products, services, and software products with accessibility requirements cannot be guaranteed all of the time. Known accessibility exceptions in a product should be tolerated using a "best meets" approach".*<sup>47</sup>

### 6.1.3. Advocacy Groups' response to the fears of European business

Certainly, Business Europe and Digital Europe seem concerned that the Act's content and wording is not overly business-friendly. However, Luk Zelderloo, the Secretary General of the **European Association of Service Providers for Persons with Disabilities (EASPD)** a Network of over 12,000 service providers for persons with disabilities, writes that whilst the proposed Act is *"...an important step in the right direction for the rights of persons of disabilities and society as a whole...it also remains limited in scope and more initiatives in this area are needed in the future. In its current format, the impact on businesses is rather reduced; which justifies my surprise at the approach taken by Business Europe"*.

He argues that whilst businesses may know what their clients want, they won't know more than the clients themselves. He also says that Business Europe's argument is *"off-topic because accessibility goes far beyond what clients/consumers want, it is about making essential products and services accessible to all, and it is about not creating additional barriers for persons with disabilities. For instance, many online banking services are not always accessible for people with visibility impairments. The Act aims to change this."*<sup>48</sup>

He makes three key arguments regarding accessibility that he feels should be given more credence by the business world:

- 1) Accessibility to essential products and services is a **human right**. Therefore, socially-responsible businesses should make this a reality;
- 2) Accessibility is an **important business opportunity** and makes products and services available to all people and thus is thus clearly a sizeable market opportunity for mainstream businesses;
- 3) **Specialised businesses could assist mainstream business operators**; get a new clientele- the mainstream businesses themselves. These specialised businesses would then expand their business models.

Regarding the argument that this would incur costs for businesses, he argues that it is **cheaper to develop already accessible products and services**.<sup>49</sup>

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<sup>46</sup> Public hearing for a Proposal on the EAA

<sup>47</sup> DigitalEurope's comments on the Proposal for a European Accessibility Act, 02.02.16

<sup>48</sup> Zelderloo, Luk, Open letter to the Business World: why you should support the Accessibility Act, New Europe. April 25 2016, available at <https://www.neweurope.eu/author/luk-zelderloo/>

<sup>49</sup> ibid

## 7. RECOMMENDATIONS

The following suggestions and recommendations are proposed in order to ensure that the Act can effectively achieve its declared aims: implementing the UN Convention on the Rights of Persons with Disabilities by fostering their integration in society and guaranteeing equal access to goods and services:

- **Include payment terminals (including card payment terminals) within the goods and services covered by the Act.** These should feature as there is a widespread consensus amongst disability focus groups and stakeholders that these represent a considerable barrier to persons with disabilities. They require their own categorisation (in line with EDF views) as they are not covered by other banking services/self- service terminals. Obviously if persons with disabilities are unable to make payments then they are less likely to purchase goods and services.
- **Include household electronic appliances, including the packaging of these items within the goods and services covered by the Act.** AGE has suggested following active consultation from its members that a key area of interest for them are household appliances as these are amongst the most frequently used goods by their stakeholders. Not only would it make life considerably easier for AGE's stakeholders but it would also *"create a level playing field for manufacturers"*.
- **The European Parliament should definitively establish whether "audiovisual media services and related consumer equipment with advanced computing capability" will feature in the goods and services covered by the Act.** On 13.07.16 the Culture Committee of the European Parliament voted to remove Audiovisual Media Services, including TV programmes and e-books, from the EAA. This has caused considerable disquiet amongst disability advocacy groups and EDF has said that this act constitutes a violation of the UN CRPD. Petition 0592/15 concerning the subtitling of radio broadcasts suggests that there is clear European citizen interest in ensuring the access to digital radio services for persons with disabilities (see Annex 1).
- **A mandatory provision shall be foreseen to guarantee that the built environment related to the provision of products and services complies with the accessibility requirements of the directive.** This is in keeping with the views of EDF, and ANEC, Autism Europe, ENIL and AGE. There is a strong case to be made for its inclusion as it featured on p.5 of the Impact Assessment by the Commission. Without appropriate access to the built environment, products and services will be beyond the use of many persons with disabilities. Petition 1056/15 regarding access to ticket machines and braille signage on the Brussels metro touched on this issue (see Annex 1). A lack of access to the built environment containing an accessible product or service is arguably in breach of article 9 UN CRPD (EDF view). The issue of the built environment is one of the most pressing within the EAA. Multiple stakeholder groups have expressed their concern at its treatment within the proposed Directive. ENIL feel *"this should be redefined as an obligation to make all new public infrastructure fully accessible...including accessible transport services."*

This position is supported by Petition 1056/15, which details the struggles faced by a disabled commuter trying to access the Brussels metro and find directions. Additionally, the petitioner asks for the European Parliament to ensure better access to ticket machines for the disabled. Furthermore, Petitions 0170/2015, 0452/15-

access to transport (buses not able to accommodate segway wheelchairs), 0963/15, (lifting hoists on aeroplanes), 0418/15 (wheelchairs on buses- also 0312/2013) all dealt with the issue of access to transport for persons with disabilities/reduced mobility (see Annex 1). Whilst it is clear that this may well be onerous on transport companies and service providers, it is difficult to see how it is possible to justify leaving accessibility of the built environment to the MSs to decide upon, as persons with disabilities will not be able to use the accessible product or service when they have no access to it. EDF cites the example of having an accessible ATM within an inaccessible bank.

- **With regard to accessibility requirements, the user interface of the Automatic Teller machines shall provide signals in plain language and pictograms.** Petition 1305/15 dealt with the issue of a petitioner who was unable to access accurate government information on a particular website owing to his disability rendering him unable to understand the wording (see Annex 1). This demonstrates the need to use plain text wherever possible as an option to assist those with intellectual disabilities. This position is supported by Autism Europe, who would like to see signals provided in plain language and pictograms used. For example, on the user interface of self-service terminals like at cash points and ticket machines.
- **All economic operators shall ensure that they are in a position to provide at any moment information on the accessibility features of the products developed, rather than “further to a reasoned request from a competent national authority”.** This reflects the viewpoint of both EASPD and EDF. It seems justifiable on the grounds that the manufacturers should be doing this anyway. It is also unclear from the original wording how long economic operators would have had to respond to a “reasoned request” from the national authority. This way it removes ambiguity and warns economic operators against the temptations of sharp practices and avoiding their obligations.
- **With regard to Article 12 on fundamental alteration and disproportionate burden, the Parliament should carefully consider the wording. Particularly the line “...apply to the extent that they do not introduce a significant change in an aspect or feature of a product or service that results in the alteration of the basic nature of the product or service”.** According to EDF, the principals of “fundamental alteration” and “disproportionate burden” need to be carefully examined. They cannot be allowed to become a loophole. *“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, or what parameters would be used to measure the disproportionate burden”.* Furthermore, and very significantly, EDF point out: *“...the UN Committee’s general comment no.2 (2014) on accessibility absolutely disagreed with the notion of disproportionate burden. It states that “obligation to implement accessibility is unconditional, i.e. the obliged entity may not excuse the omission referring to the burdens of provision the access for persons with disabilities”.*<sup>50</sup>
- **Article 16 on the general principles of the CE marking in products: this article should be made more detailed and specific.** This is in line with the views of stakeholders like ANEC and EDF: Perhaps compulsory standardised consumer information could be used to include specific information on the product/service’s

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<sup>50</sup> EDF initial position on the proposal for a European Accessibility Act, p.10

accessibility features, as per the suggestion of AGE. AGE believes CE marking does not guarantee an independent check that the product meets EU accessibility standards. It is a self-declared label where the manufacturer confirms the product meets EC requirements. It is also used by manufacturers on products which do not fall under the Accessibility Act so disabled consumers may unwittingly buy a product which is unsuitable for their use to products. Equally, the CE label does not cover services. Other Organisations such as Autism Europe have called for an entirely new system of labelling, which is "clear and easily identifiable". A balance should be struck between an entirely new system and retaining the CE marking as things stand; this could be achieved by making it very clear what the marking stands for.

- **In Article 22 referring to "disproportionate burden", in the event that an economic operator's product/service is unable to comply with the accessibility requirements of the Act due to it being a disproportionate burden, then a label or marking system indicating no or partial access of a product should be affixed to that product to inform consumers.** This would assist consumers in making informed choices and reflects the views of ANEC<sup>51</sup>. It strikes a balance between the needs of SMEs to be able to declare a disproportionate burden when there truly would be one imposed on them in having to comply with their accessibility obligations, and the need for consumers to have the best possible range of information available to them to avoid confusion. ANEC propose that this label should come to replace the original CE mark and this would certainly be worth debating as this view is also echoed by other stakeholder groups including AGE.
- **As regards the transposition period, this shall be adjusted to the life-cycle of the product or service which should be advised upon by the manufacturer/service provider.** This view is supported by both ENIL and EDF. There is considerable unrest among stakeholder groups at the length of time for transposition: 6 years is deemed to be too long and groups such as AGE think that, considering the majority of products and services concerned in the Directive are ICT-related, it makes sense to shorten the transposition time, as this is a very fast-moving industry. For ENIL: *"If the scope of the EAA is extended to include the built environment and public infrastructure, the transition period could be increased"*. A balance needs to be struck between allowing the manufacturers/business operators time to implement the changes and not creating a situation which stifles innovation and creativity and ultimately benefits neither the provider nor consumer.

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<sup>51</sup> see page 13 of their Position Paper on the EAA.

## **ANNEX 1: PETITIONS RELEVANT TO THE EUROPEAN ACCESSIBILITY ACT**

### **Petition No 1394/2015 by Pia Matihaldi (Finnish) on behalf of Service Foundation for People with an Intellectual Disability and approximately 10 signatures, on the European Union's Procurement Directive and its national implementation which causes discrimination based on disability**

The petitioner states that the EU's Procurement Directive (2014/24/EU) allows for erroneous interpretations at national level regarding the organisation of housing services for the disabled and that the current Public Procurement Act (30.3.2007/348) in force in Finland enforces the discriminatory practice regarding the disabled on a local and regional scale. This discrimination is centered on the organisation and realisation of social services for individuals, such as housing services and help provided by another person.

According to the Public Procurement Act in force in Finland, if the municipality does not organise the services itself, it must organise a call for tenders for the organisation of the services in certain situations exceeding a threshold. For social and health care services, the procurement threshold is EUR 100 000. In Finland, all social and health care services are covered by the Public Procurement Act, even though this is not required by EU legislation. This has led to a situation where services for the disabled are organised in a way that does not take into account their individual needs or basic human rights. The disabled and their close relatives have no part or influence on the matters concerning them. The petitioner wishes that the EU would influence the revising of Finland's current procurement act so that the disabled people's right to be heard can be considered, and when these special services are procured via tendering, the disabled and the organisations for the disabled need to be guaranteed efficient ways to impact their cause.

#### **Information**

- *The European Association of Service providers for Persons with Disabilities (EASPD)* has stated that it supports the petition.
- The petition is submitted by a non-governmental organisation and should not therefore be considered confidential.

#### **Recommendations**

- declare admissible;
- ask the Commission for information, especially regarding the procurement of services for the disabled and regarding the hearing of their opinion in the procurement process.

### **Petition No 1305/2015 by N. D. (Irish) on problems for persons with disabilities to receive accessible information from the state authority in Ireland**

The petitioner is a farmer. He has a disability not allowing him to properly understand and interpret information until presentation of this information is modified to meet the needs of persons with such disabilities. Due to his disability the petitioner was not able to properly understand information on farming regulations and received a fine for violation of these regulations from the Irish Department of Agriculture.

The petitioner claims that the Department of Agriculture put in place information which is not adequate to ensure ease of access and understanding of complex requirements for persons with learning disabilities. The petitioner has exhausted the possibilities on national level to get accessible information from the Department of Agriculture to meet needs of farmers with learning disabilities. He considers that his rights to equal treatment, access to information and non-discrimination are violated.

#### **Information**

- The petitioner addresses Mr. Brian Crowley, MEP, to support submission of his petition as part of PETI's work in the Framework on the implementation of the UN Convention of the Rights of Persons with Disabilities.
- The petitioner has addressed the Department of Agriculture, which rejected his complaint on the grounds that the information systems were adequate. The petitioner also brought his claim to the Irish Ombudsman who rejected his claim because the matter was more than a year old.

- All the EU countries have signed the UN Convention; Finland, Ireland and the Netherlands have signed, but not yet ratified it. Therefore, a monitoring framework including one or more independent mechanisms has not yet been established: <http://ec.europa.eu/social/main.jsp?catId=1138>

The National Disability Authority (NDA) in Ireland, is the independent statutory body which provides information and advice to the Government on policy and practice relevant to the lives of persons with disabilities. <http://nda.ie/About-Us/>

#### **Recommendations**

- declare admissible;
- ask Irish National Disability Authority for an opinion.

#### **Petition No 1056/2015 by Arianna Colonello (Italian) on access to the metro in Brussels for disabled people**

The petitioner asserts that the provisions for disabled people in the Brussels metro system are not sufficient. She states that some metro stations, for example, Botanique and Trône, do not have lift access, and that visually impaired people encounter problems. Her suggestions for improvement in this area include braille and large-print indications of stations and a braille map of the city, as well as arrangements to ensure that ticket machines are easy to use for visually impaired people and to ensure that voice announcements are reliable.

#### **Information**

- On 2 December 2015, the European Commission proposed a European Accessibility Act to improve accessibility to services for disabled people. The proposal identified services including transport and ticket and check-in machines as those considered most relevant by the public ([http://europa.eu/rapid/press-release\\_MEMO-15-6148\\_en.htm](http://europa.eu/rapid/press-release_MEMO-15-6148_en.htm)).

#### **Recommendations**

- declare admissible;
- ask the Commission for information;
- recommend that the petitioner contacts the Complaints Service of the Brussels Regional Public Service (<http://be.brussels/about-the-region/ministry-of-the-brussels-capital-region/secretariat-general/complaints-service>);
- inform the petitioner of the above Commission proposal;
- inform the petitioner of a site which informs the public of work done to the Brussels metro to make the system more accessible, according to which Botanique has a new point of access for people with reduced mobility, and work is currently in progress at Trône to increase access for people with reduced mobility (<http://www.bruxellesespacespublics.irisnet.be/metro-et-tunnels/>);

#### **Petition No 1003/2015 by I. H. (Polish) on the non-fulfilment by Poland of the obligations arising out of the Convention on the Rights of Persons with Disabilities**

The petitioner alleges that Poland insufficiently implements the provisions of the Convention on the Rights of Persons with Disabilities. Poland implements mostly those provisions of the Convention that have a relatively small impact on the national budget and avoids addressing issues that require significant budget expenditure. Deficiencies are particularly evident with respect to the implementation of the Convention in the fields of social protection, non-discrimination, rehabilitation and equal opportunities, i.e. in fields that require considerable financial investment.

The petitioner provides numerous examples and refers to a report on this issue by the Polish Commissioner for Human Rights, which strongly criticises Polish administration bodies.

#### **Recommendations**

- declare admissible;
- request information from Polish authorities;

#### **Petition No 0963/2015 by L. M. (British) on prohibiting the lifting of disabled passengers on aircraft and introducing the mandatory use of hoists**

The petitioner emphasises the dangers of manually handling passengers with reduced mobility in order for them to reach their seats on aeroplanes. According to the petitioner, those doing the lifting are put at risk as the narrowness of the corridors on aeroplanes mean that they need to twist their bodies. Disabled passengers are also put at risk as it is impossible to train airport staff as to the specific requirements needed for lifting each individual, and due to problems regarding lacking

communication due to language barriers or time pressure. Moreover, the petitioner claims that being lifted can cause disabled people to suffer humiliation in front of other passengers. The petitioner also asserts that there is often a lack of assistance provided for disabled passengers at airports, and that the assistance provided differs significantly between airports. She asserts that hoists should be used in all airports to transfer disabled passengers to their seats in order for such passengers to enjoy a safer, more comfortable and less humiliating flying experience, and wants this to be made into international law.

#### **Information**

- The petitioner has attached to her petition a report by Trailblazers (a group of disabled campaigners tackling social issues affecting young disabled people) and a consultation from the Civil Aviation Authority (CAA), which highlight some of the issues which she raises, as well as several accounts of personal experiences and a list of comments provided by numerous passengers to British Airways and Easyjet requesting the provision of onboard hoists for passengers at London Gatwick Airport.
- Regulation (EC) no 1107/2006 concerns the rights of disabled persons and persons with reduced mobility when travelling by air and prohibits operators from refusing reservation or boarding to persons because of their reduced mobility (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32006R1107>).
- Report from the Commission to the European Parliament and the Council on the functioning and effects of Regulation (EC) No 1107/2006 found some restrictions in applying the regulation, including a sometimes insufficient quality of service provided and inadequate adaption to PRM's individual needs, and disparities in the implementation of the regulation between EU countries (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52011DC0166>).
- Similar petition is 2544/2013, in which the petitioner, a frequent air traveller of reduced mobility, indicates that special arrangements for transfer to and from aircraft vary from airport to airport in Germany, and argues that the best solution is the use of vehicles with lifting platforms, since devices for negotiating the stairs are, for a number of reasons given, unsatisfactory. He therefore calls for the introduction of such vehicles at a German airport.
- Petitioner does not consent to the inclusion of her name in a public register.

#### **Recommendations**

- declare admissible;
- forward to the Committee on Transport and Tourism;
- forward to the European Parliament's Disability Intergroup;
- inform the petitioner about the above EC report on the functioning and effects of Regulation (EC) 1107/2006;
- close.

#### **Petition No 0868/2015 by K.P. (British) on travel conditions for disabled people within the European Union**

The petitioner states that he is a disabled person who lives in London and frequently travels within the European Union for professional reasons. He submits that he should have equal rights with citizens of other Member States in terms of access to the labour market, working conditions and other social and tax advantages. The petitioner refers to the existence of a parking card at an EU level and regrets the fact that there is no means, at EU level, to enable disabled people to benefit from concessionary travel available in each Member State using an identity card issued at a national level. The petitioner requests the creation of a system of this type.

#### **Recommendations**

- declare admissible;
- ask the Commission for information.

#### **Petition No 0592/2015 by U. N. (German) on subtitling radio programmes**

The petitioner advocates the subtitling of radio programmes, so that they can also be followed by deaf or hearing-impaired people. According to the petitioner, radio programmes are already being subtitled in America. The subtitling service could be introduced quickly and inexpensively since it is not necessary to buy a new device. The petitioner thinks that this service should also be introduced in Europe.

#### **Recommendations**

- declare admissible;
- thank the petitioner for his proposal and inform him that the European Commission does support

- programmes and campaigns for deaf and hearing-impaired people, but is unable to prescribe the introduction of systems such as the one he has proposed;
- send for information to Committee on Culture and to Committee on Employment and Social Affairs;
  - inform the petitioner that the drafting and implementation of legislation in the field of specific provisions for deaf and hearing-impaired people come under the competences of the governments of the Member States;
  - close.

**Petition 0452/2015 by D.E. (German) concerning the rights of disabled passengers in public transport**

The petitioner complains that in German public transport companies are refusing to carry disabled people using Segway wheelchairs, which are, according to the petitioner, becoming increasingly common, since they make boarding and disembarking considerably easier. He argues that transport companies are simply quoting the letter of EU technical standards, while being more concerned with the increasing number of those requiring more space than able-bodied passengers. He argues that problems regarding the transport of Segway wheelchairs could be solved easily by fitting special attachment devices and safety belts.

**Information**

- The petitioner submitted an earlier petition (0949/2007) on discrimination against wheelchair users in Germany.

**Recommendations**

- declare admissible;
- ask the Commission for information.

**Petition No 0418/2015 by R. F. (British) on discrimination against wheelchair users on British public transport**

The petitioner raises the same issue as a German petitioner in petition 0949/2007. He asks the committee to reaffirm and clarify its position regarding the restrictive interpretation of EU and UK regulations by bus companies, which all too often deny access to wheelchair users if the wheelchair space is occupied (for example by other persons with reduced mobility). The petitioner argues that wheelchair users should be allowed to fold their chairs once on the bus (and not before) and occupy a normal seat. He asks the committee call ensure that the UK makes this clear to bus companies, transport authorities and the Confederation of Passenger Transport.

**Information**

- Petition 0949/07 regarding a similar matter was declared admissible. In its reply, the Commission indicated that, under Directive 2001/85/EC at least one wheelchair space must be provided on urban buses, together with at least four seats offering more space and designed especially for passengers with reduced mobility, including wheelchair users, who may occupy them once their wheelchair has been folded, where insufficient space is available. [...] Any discrimination against persons with disabilities should also disappear with the implementation of the Directive 2007/46/EC establishing a framework for the approval of motor vehicles (May 2009).
- Petition 0312/2013 concerning a similar matter was declared admissible. In its reply, the Commission pointed out that, under Article 9 of the UNCRPD, States Parties to the Convention were required to ensure that persons with disabilities had access to transportation and other facilities on an equal basis with others and that measures must be taken to identify and eliminate any obstacles or barriers in this respect. No specific measures or deadlines were stipulated regarding the accessibility of vehicles and infrastructure in connection with bus and coach transport.

**Recommendations**

- Declare admissible.
- Request information from the Commission regarding the situation in the UK.
- Forward to the petitioner the CM document relating to Petition 0312/2013, the video link for the public hearing of 15 October 2015 on the protection of persons with disabilities (<http://www.europarl.europa.eu/ep-live/en/committees/video?event=20151015-0900-COMMITTEE-PETI>), and the link for the survey entitled « The protection role of the Committee on Petitions in the context of the implementation of the UN Convention on the Rights of Persons

with Disabilities » (<https://polcms.secure.europarl.europa.eu/cmsdata/upload/493ded5c-c1b9-49c0-8dee-9b3ac9fc3b0f/pe536%20465.pdf>).

- Forward to the Committee on Employment and Social Affairs for information.

**Petition No 0170/2015 by Bernd Fritz (German) on public transport fares for disabled people in other countries**

According to the petitioner, international transport fares and conditions are set down in the Special Conditions of International Carriage (SCIC NRT). Point 17 of these conditions stipulates reduced fares for the holders of disability cards and any accompanying persons. The petitioner wonders why these conditions do not apply to all EU Member States.

**Recommendations**

- declare admissible;
- ask the Commission for information.

**3. Commission reply**, received on 27 January 2016

The Commission understands the petitioner's concerns that under the Special Conditions of International Carriage (SCIC NRT)<sup>52</sup>, passengers with disabilities cannot benefit from special fare reductions on all services by all railway undertakings in the EU as not all undertakings participate in the SCIC. The SCIC NRT complement the CIT<sup>53</sup> General Conditions of Carriage for Rail Passengers (GCC-CIV/PRR). Carriers can decide on whether they apply the SCIC NRT or not. Names and logos of participating railway undertakings are shown in Annex 1 to the SCIC NRT.

As participation to the SCIC NRT takes place on a voluntary basis, railway undertakings cannot be obliged to comply with their provisions which are not legally binding within the EU, but only on those carriers who have agreed to apply them. Moreover, provisions are only applicable to international transport and solely refer to blind persons and wheelchair users.

Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations<sup>54</sup> does not oblige railway undertakings in the EU to offer reduced fares to persons with reduced mobility (PRM) and their accompanying persons. It however requires railway undertakings to provide free of charge assistance services to persons with disabilities or reduced mobility.

To contribute to the facilitation of the right to free movement of persons with disabilities, the Commission launched in 2013 a Project Working Group with representatives of interested Member States (17 at present) and civil society (European Disability Forum). This Project Working Group aims at creating a system of mutual recognition of the disability status between the Member States based on a single European model disability card. In 2015 the Commission launched a call for proposals, for which 8 Member States applied and were awarded EU support.<sup>55</sup> The projects will start in February 2016.

At this stage, the EU Disability Card will be applicable only in these 8 participating Member States (other Member States can join the system whenever they wish). It will not only grant people with disabilities recognition of status as they travel between participating Member States, it will also allow access to certain benefits to be identified by each Member State. Such access, on the same conditions as country nationals with disabilities, is an essential element of equal treatment. The benefits concerned will not be limited to transport and will include culture, leisure and sport. The Card will not change national eligibility criteria or the nature of benefits offered at national level. It will be issued and managed by each Member State. The Card will have a common format - agreed at EU level.

**Conclusion**

The Commission emphasises that the SCIC NRT supplement the CIT General Conditions of Carriage for Rail Passengers (GCC-CIV/PRR) and are only binding on those railway undertakings which have agreed to apply them. They only apply to international transport and to certain kinds of disabilities (blind persons and wheelchair users). Railway undertakings which are not participating cannot be obliged to comply with the SCIC NRT.

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<sup>52</sup> [http://www.cit-rail.org/media/files/public/CIT-Info\\_EN/2013/SCIC-NRT\\_09.12.2012\\_en.pdf](http://www.cit-rail.org/media/files/public/CIT-Info_EN/2013/SCIC-NRT_09.12.2012_en.pdf)

<sup>53</sup> The International Rail Transport Committee (CIT) is an association of about 216 railway undertakings and shipping companies which provide international rail passenger and/or freight transport services. (<http://www.cit-rail.org/en/>)

<sup>54</sup> OJ L 315, 3.12.2007, p.14

<sup>55</sup> Belgium, Cyprus, Italy, Finland, Greece, Malta, Romania, Slovenia:  
<http://ec.europa.eu/social/BlobServlet?docId=14948&langId=en>

## ANNEX 2: BRIEF OVERVIEW OF THE ACT AND POSITIONS OF CIVIL SOCIETY NGOs

Chapter, Article	Content	
<b>Chapter I: General Provisions</b>		
Article 1 - The Scope of the Act	Lists the products and services the Act will apply to.	<p><b>The built environment</b></p> <ul style="list-style-type: none"> <li>- AGE would like to see the <i>built environment</i>, including outdoor spaces considered for inclusion within the Act, particularly within the transport area, as the issue of seamless travel for the whole journey for the elderly is very important.<sup>56</sup> Autism Europe supports this point.<sup>57</sup></li> <li>- ENIL wants to see a fully accessible built environment incorporated into the Act “<i>and infrastructure with accessible public services</i>”. This is so as to enable disabled people to live independently and be able to participate in society on an equal basis.<sup>58</sup></li> <li>- EDF would like to see the scope widened to include all areas where “<i>market fragmentation is happening or possible</i>” and want the inclusion of areas like the built environment as without it then parts of a service may be accessible but others not.<sup>59</sup></li> </ul> <p><b>Retail payment terminals and household items</b></p> <p>AGE believes that <i>all retail payment terminals</i> (POS) should be included as it is equally important to be able to pay for now more accessible goods. The lack of rural ATMs makes it harder for older people living in those areas to pay for goods in local shops. <i>Household appliances</i>, including packaging, should also be included. Not just for ease for their members but also because it would create a level playing field for manufacturers.</p> <p><b>Freedom of movement</b></p> <p>ENIL considers also essential to extend the scope to include the free movement of persons which is in line with the UN CRPD Committee’s General Comment on Accessibility and the Committee’s recommendations to the EU.</p>
Article 2 - Definitions	Key terminology used in the Act.	<p><b>Disability definition</b></p> <p>AGE welcome the wide approach taken with the two complimentary definitions “persons with functional limitations” and “persons with</p>

<sup>56</sup> *Response to the consultation of the European Commission on the 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-* COM (2015) 615, 02.02.16, available at [http://www.age-platform.eu/images/stories/Publications/papers/AccessibilityAct\\_consultation\\_AGEresponse\\_Feb2016.pdf](http://www.age-platform.eu/images/stories/Publications/papers/AccessibilityAct_consultation_AGEresponse_Feb2016.pdf)

<sup>57</sup> Autism Europe’s response to the proposal for a European Accessibility Act, available at <http://www.autismeurope.org/eu-advocacy/autism-europe-welcomes-the-proposed-european-accessibility-act-and-issues-its-recommendations/autism-europe-s-response-to-the-proposal-for-a-european-accessibility-act.html>

<sup>58</sup> *ENIL position on the proposal for a European Accessibility Act*, available at <http://www.enil.eu/news/enils-position-on-the-european-accessibility-act/>

<sup>59</sup> *EDF initial position on the proposal for a European Accessibility Act*, February 2016, available at [http://www.edf-feph.org/Page\\_Generale.asp?DocID=13855&thebloc=34403](http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=34403)

		<p>disabilities" as it allows for a broader coverage of the population, including the elderly. This is echoed by ENIL.</p> <p><b>Equipment and services</b> AGE would like to see a definition of equipment/services with advanced computing capability.</p> <p><b>Accessibility itself</b> Autism Europe would like to see a definition of "accessibility" included. Additionally, they want to see "a comprehensive and complete definition of "universal accessibility" covering all aspects of accessibility, including cognitive, psychical and sensorial accessibility, in conformity with article 9 of the UN Convention on the rights of persons with disabilities."</p>
<b>Chapter II: Accessibility Requirements and Free Movement</b>		
Article 3 - Accessibility requirements	(the specific requirements are laid out in the Annex).	<p><b>Use of plain language</b> Autism Europe would like to see signals provided in plain language and pictograms used. For example on the user interface of self-service terminals like at cash points and ticket machines. Furthermore, they want to a requirement that there should be the possibility for persons with disabilities to seek assistance from the staff of the service provider.</p> <p><b>Built environment</b> - ENIL took issue with the fact that built environment accessibility is down to the Member State to decide upon: "this should be redefined as an obligation to make all new public infrastructure fully accessible...including accessible transport services." Also it is essential to include "the physical accessibility of transport infrastructure in Annex 1" as at the moment the focus is too narrow. - EDF: "the related built environment must be accessible as persons with disabilities will not be able to use the accessible product or service when they have no access to it". They cite the example of having an accessible ATM within an inaccessible bank.</p>
Article 4 - Free Movement	Member States should not impede the freedom of movement of goods and services	- "ENIL calls on the European Commission to include a reference to the right of disabled people to move freely across the EU in this article".
<b>Chapter III: Obligations of Economic Operators</b>		
Article 5 - The obligations of manufacturers	Sets out their obligations before and after placing their products and services on the market.	<p><b>Instructions and safety information</b> AGE think instructions and safety information should be available in different formats, such as an adequate size of the font and use of plain language to aid those with visual impairments.</p> <p><b>Information on accessibility features</b> EASPD believe "manufacturers should be in the position to be able to provide at any moment information on the accessibility features of</p>

		<i>the products developed and should not be available only further to a "reasoned request from a competent national authority"<sup>60</sup>. This view is echoed by EDF.</i>
Article 6 - The obligations of authorised representatives	Sets out their obligations before and after products and services for which they are responsible are placed on the market.	
Article 7 - Obligations of importers	sets out their obligations before and after products and services for which they are responsible are placed on the market	EASPD thinks <i>"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"</i> . For ENIL <i>"retailers...should be covered by the Directive"</i> .
Article 8 - The obligations of distributors	Sets out their obligations before and after products and services for which they are responsible are placed on the market.	EASPD say <i>"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"</i> .
Article 9 - Cases in which obligations of manufacturers apply to importers and distributors		
Article 10 - Identification of economic operators	Sets out the requirement for economic operators to identify to the market surveillance authorities any economic operator who has supplied them with/to whom they supplied a product.	
Article 11 - Obligations of service providers	Service providers shall ensure they design and provide services in accordance with Article 3.	EASPD think <i>"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"</i> .
Article 12 - Fundamental alteration and disproportionate burden	The accessibility requirements referred to in Article 3 apply to the extent that they do not introduce a significant change in an aspect or feature of a product or service that results in the alteration of the basic nature of the product or service. The same accessibility requirements also apply only the extent that that they do not impose a disproportionate burden on the economic operators concerned.	- EASPD: <i>"...the economic logic and cost-benefit analysis could act as a barrier"</i> re assessing the fundamental alteration or disproportionate burden when complying with access. Requirements done by economic operator". Requirements of compliance with the Directive are too limited and not clear enough for microenterprises. Exempting them from having to notify the MSA re fundamental burden and disproportionate burden means to exempt from even having to attempt to comply with rules of Directive. They should instead be incentivised to do so. Autism Europe want to see clearer definitions of both terms to avoid abuses or misunderstandings - EDF: the principles of "fundamental alteration" and "disproportionate burden" need to be carefully examined. They cannot be allowed to become a loophole. <i>"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, or what parameters would be used to measure the disproportionate burden"</i> . Furthermore, <i>"...the UN Committee's general comment no.2 (2014) on</i>

<sup>60</sup> EASPD position on the European Accessibility Act, available at [http://www.easpd.eu/sites/default/files/sites/default/files/easpd\\_position\\_on\\_european\\_accessibility\\_act.pdf](http://www.easpd.eu/sites/default/files/sites/default/files/easpd_position_on_european_accessibility_act.pdf)

		<i>accessibility absolutely disagreed with the notion of disproportionate burden. It states that "obligation to implement accessibility is unconditional, i.e. the obliged entity may not excuse the omission referring to the burdens of provision of the access for persons with disabilities". Finally, re art. 12 (3) (b), it is questionable as to how the economic operators will calculate the benefit to persons with disabilities.</i>
<b>Chapter IV: Harmonised Standards, Common Technical Specifications and Conformity of Products and Services</b>		
Article 13 - Presumption of conformity	Products and services in conformity with harmonised standards or parts thereof which have been published in the <i>Official Journal of the European Union</i> are presumed to meet the accessibility requirements of article 3.	Autism Europe wants a clearer explanation of which situations this presumption can take place in.
Article 14 - Common technical specifications	Where further detail for the accessibility requirements of certain products and services would be needed for harmonisation of the market, the Commission may adopt implementing acts establishing common technical specifications ('CTS') for the accessibility requirements set out in Annex I to this Directive.	
Article 15 - EU declaration of conformity of products	The EU declaration of conformity shall state that the fulfilment of the relevant accessibility requirements referred to in Article 3 has been demonstrated, unless an exception has been used, as provided for in Article 12.	
Article 16 - General Principles of the CE marking of products	CE marking shall be subject to the general principles set out in Article 30 of Regulation (EC) No 765/2008	<ul style="list-style-type: none"> <li>- AGE believes CE marking does not guarantee an independent check that the product meets EU accessibility standards. It is a self-declared label where the manufacturer confirms the product meets EC requirements. Equally, the CE label does not cover services and <i>"the EU should consider options such as compulsory standardised consumer information to include specific information on the product/service's accessibility features"</i>.</li> <li>- Autism Europe feels the CE marking is insufficient to guide consumers on which products are accessible to persons with disabilities. They want to see a new marking system, which is clear and easily identifiable.</li> <li>- EDF feel that labelling needs to be clear enough so that persons with disabilities can easily and clearly recognise accessible products. CE marking is limited in this respect as it reflects many different criteria, CE marking also covers products not covered by the Act so the consumer may not know that they were really buying an accessible product: <i>"If CE marking is used in order to certify the compliance with the accessibility requirements contained in the proposed accessibility act, it has to be very clear what the marking stands for"</i>.</li> </ul>
<b>Chapter V: Market Surveillance, Compliance and Union Safeguard Procedure</b>		
Article 17 - Market Surveillance of Products	When carrying out market surveillance of products market surveillance authorities shall review the assessment referred to in Article 12. That assessment of exceptions should be made available to consumers upon request and in an accessible format.	- EASPD state re 17 (2) that <i>"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"</i> .

		- Autism Europe suggests including "end users" for the sake of coherence (they suggest the same for article 3(5) and 17 too).
Article 18 - Compliance of Services	Member states shall designate authorities responsible for establishing and updating adequate procedures to check on the compliance of services and the assessment of any exceptions	
Article 19 - Procedure for dealing with products presenting a risk related to accessibility at national level	in the course of their evaluation, if the relevant market surveillance authorities discover that a product does not comply with the requirements of this Directive, they shall without delay require the relevant economic operator to take all appropriate corrective action to bring the product into compliance/withdraw it from the market/recall it.	
Article 20 - Union Safeguard Procedure	When objections are raised against a Member State/the Commission considers a national measure to be contrary to Union legislation, the Commission shall without delay enter into consultation with the Member States and the relevant economic operator(s) and shall evaluate that national measure.	
<b>Chapter VI: Accessibility Requirements in other Union Legislation</b>		
Article 21 - Applicability of accessibility requirements to other Union acts	The accessibility requirements set out in Section IX of Annex I shall apply when establishing technical specifications and accessibility requirements of programmes and public contracts/concessions which are subject to certain other EU Directives and Regulations.	
Article 22 - Disproportionate Burden	In order to assess whether adhering to the accessibility requirements imposes a disproportionate burden on the competent authorities, they should consider: the size, resources and nature of the competent authorities concerned, the estimated costs and benefits for the competent authorities in relation to the estimated benefit for persons with disabilities.	
Article 23 - Common technical specifications for other Union acts	Conformity with CTS adopted in accordance with Article 14(1) or parts thereof shall provide compliance with Article 21.	
<b>Chapter VII: Implementing Powers and Final Provisions</b>		
Article 24 - Committee Procedure	The Commission shall be assisted by a committee within the meaning of Regulation (EU) No 182/2011.	
Article 25 - Enforcement	Member states shall ensure that adequate and effective means exist to ensure compliance with this Directive and thus ensure that both consumers and public bodies, organisations constituting legal entities etc may take action under national law before the courts to ensure national transpositions of this Directive are complied with.	- Autism Europe wants to see emphasis put on the need for monitoring by the competent authorities of the Member States on a regular basis and to systematically sanction non-compliance. - ENIL welcomes that consumers can take legal action but they don't want the focus to be on the consumer to do this-there needs to be a "comprehensive enforcement system" in place with the "necessary human resources...to ensure effective enforcement" (4)
Article 26 - Penalties	Member States shall decide on penalties and they shall be effective, proportionate and dissuasive.	ENIL: "...the funds raised by monetary penalties should be reinvested in accessibility measures" (4)
Article 27 - Transposition	Member States will transpose into national law the relevant laws, regulations and administrative provisions necessary to comply with the Directive <b>two years</b> after the entry into force of this Directive. They shall apply those provisions <b>six years</b> after the entry into force of this Directive.	- AGE think that considering the majority of products and services concerned in the Directive are ICT-related, it makes sense to shorten the transposition time, as this is a very fast-moving industry. This is supported by Autism Europe, that feels 6 years is too long for ICT products.

		ENIL: <i>"the transition period should be determined depending on the nature of the products and services"</i> . As most are related to ICT then they feel the transposition period of six years is too long as ICT evolves quickly and products have a short lifespan. <i>"If the scope of the EAA is extended to include the built environment and public infrastructure, the transition period could be increased"</i>
Article 28 - Report and Review	Five years after the application of this directive, and every five years after that, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a report on the application of this Directive.	
Article 29 - Entry into force	The Directive shall enter into force on the 20 <sup>th</sup> day following its publication in the Official Journal of the European Union.	
Article 30 - Member States	This Directive is addressed to the Member States.	
Annex 1 - Accessibility requirements		<ul style="list-style-type: none"> <li>- EASPD think the requirement "understandable" should be applied to all products and services and it should be clarified with <i>"reference tools and methods such as Easy to Read"</i> to benefit those with intellectual disabilities.</li> <li>- ENIL says it is essential to include <i>"the physical accessibility of transport infrastructure in Annex 1"</i>- at the moment the focus is too narrow.</li> </ul>



## DIRECTORATE-GENERAL FOR INTERNAL POLICIES

# POLICY DEPARTMENT CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS **C**

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