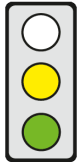


## KEY ISSUES

**Objective of the Directive:** The accessibility requirements of the United Nations Convention on the Rights of Persons with Disabilities will be implemented uniformly EU wide in order to strengthen the internal market.

**Affected parties:** Manufacturers, importers and distributors of products, particularly information and communication technology as well as service providers, particularly banking, audio-visual media and passenger transport services.



**Pro:** (1) The Directive is necessary because some Member States have already adopted diverging national regulations thereby restricting the free movement of goods and services.

(2) The scope of the Directive is appropriate because it only extends to goods where free movement has already been restricted.

**Contra:** (1) The accessibility requirements result in an increase in the cost of goods and services. Particularly problematic are the manufacturer's duties of information and demonstration because the burden involved may lead to significant additional costs.

(2) The Commission's power to adopt implementing acts should be more clearly worded.

## CONTENT

### Title

**Proposal COM(2015) 615** of 2 December 2015 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**

### Brief Summary

Unless otherwise indicated, references relate to the Communication COM(2015) 165.

#### ► Context and objectives

- According to the EU Commission, around 80 million EU citizens are prevented from fully taking part in society and the economy due to physical limitations, e.g. resulting from age or disability [COM(2010)636, p. 3]. This figure is due to rise to about 120 million EU citizens by 2020 (p. 2).
- Member States and the EU are signatories to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which came into effect in 2008 [cf. Decision of the Council (2010/48/EC)]. The CRPD obliges all parties to the Convention to ensure that persons with disabilities have "equal access" particularly to the "physical environment", e.g. buildings and roads, means of transport and information and communication services.
- In this regard, the parties will (p. 4)
  - ensure that all new goods and services which fall within the scope of the CRPD, are accessible to people with disabilities and
  - examine existing legislation on accessibility and adjust it where necessary; the CRPD does not contain technical specifications for achieving accessibility.
- Accessibility removes barriers to the use of mainstream products and services for people with functional limitations (p. 2).
- According to the Commission, the internal market for accessible goods and services is fragmented due to the differences in national or regional accessibility requirements (Recitals 4 and 5).
- Numerous EU laws contain requirements on accessibility [Annex to the Council Decision (2010/48/EC)]. There is however no uniform definition of accessibility under EU law.
- The Directive stipulates
  - how the CRPD is to be implemented by establishing general accessibility requirements for products and services with particular relevance for the internal market,
  - that Member States are not permitted to prohibit goods or services on the grounds of insufficient accessibility if they comply with the requirements of the Directive.

#### ► Scope

- The Directive applies to the following products and services:
  - Products (Art. 1 (1))
    - general purpose computer hardware and operating systems, e.g. PCs,
    - self-service terminals such as cash, ticketing and check-in machines and
    - consumer terminal equipment related to telephony and audio-visual media services, e.g. smart phones and televisions,

- Services (Art. 1 (2))
  - telephony services, including emergency call services,
  - audio-visual media services, e.g. television programmes,
  - air, bus, rail and water-borne passenger transport services,
  - banking services,
  - e-books and e-commerce, e.g. online shopping.
- Member States can extend the scope to include built infrastructure, e.g. bus-stops and train stations (Art. 3 (10)).
- **Accessibility requirements**
  - The products and services referred to in the Directive must each comply with varying accessibility requirements (Art. 3 (2) - (9), Annex 1). Thus, information on the use of a product or the operation of a service generally has to be provided via more than one "sensory route" e.g. acoustically and visually.
  - Accessibility requirements only apply to new products and services (p. 9) and only insofar as they
    - in no way lead to the alteration of the basic nature of the product or service (Art. 12 (1)) and
    - do not impose a disproportionate burden on the manufacturer, importer or distributor (Art. 12 (2)); in assessing the burden, the costs to the manufacturer, importer or distributor must be considered in relation to the benefits, e.g. the creation of a larger market, the benefit to people with functional limitations (Art. 12 (3)).
  - Insofar as products or services comply with voluntary European standards, their conformity with the accessibility requirements is presumed (Art. 13).
  - Where there are no voluntary European standards, the Commission can adopt implementing acts containing "technical specifications" (Art. 2 (18)) where harmonisation of the market "needs" it (Art. 14 (1)).
- **Obligations of manufacturers, importers and distributors of products and service providers**
  - Manufacturers (Art. 2 (10)) must
    - design products (Art. 5 (1)) in accordance with the accessibility requirements (Art. 3),
    - draw up technical documentation (Art. 5 (2), Annex II),
    - issue an EU declaration of conformity and affix the CE marking (Art. 5 (2)),
    - ensure their products or packaging bear markings to allow identification (Art. 5 (5)),
    - ensure that products or their packaging bear their name and address (Art. 5 (6)),
    - keep a register of complaints, non-conforming products and product recalls (Art. 5 (4)).
  - Manufacturers may appoint other persons to perform these obligations. This does not apply to the design of the products or the drawing up of technical documentation (Art. 6).
  - Importers (Art. 2 (12)) must
    - ensure that the manufacturers have complied with their obligations (Art. 7 (2)),
    - ensure that products or their packaging bear their name and address (Art. 7 (4)),
    - keep a register of complaints, non-conforming products and product recalls (Art. 7 (7)).
  - Before making a product available, distributors (Art. 2 (13)) must verify whether
    - it bears the CE marking, is accompanied by the required documents and by easily-understood instructions and
    - manufacturers and importers have attached identification and their contact details to the products or their packaging (Art. 8 (2)).
  - Service providers must
    - ensure that their services comply (Art. 11 (1)) with the accessibility requirements (Art. 3) and
    - declare in their general terms and conditions or similar documents how they comply with the accessibility requirements; this information must be provided in writing and in oral format, such as an audio file, for as long as they offer the service (Art. 11 (2)).
- **Market surveillance**
  - Products
    - Where market surveillance authorities find that a product does not comply with the accessibility requirements, the manufacturer, importer or distributor must take corrective action or withdraw the product from the market (Art. 19 (1)).
    - If this does not happen, market surveillance authorities must (Art. 19 (4))
      - prohibit sale of the product and
      - inform the Commission and the other Member States, without delay.
    - The Commission and other Member States may raise an objection within three months (Art. 19 (7)). If the Commission considers the national measure to be (Art. 20 (2))
      - justified, all other Member States must withdraw the product from the market,
      - unjustified, the Member State must withdraw the measure.
  - Services
    - Member States must
      - establish and implement market surveillance procedures and inform the public about the existence of the authorities responsible for market surveillance (Art. 18) and
      - lay down penalties for infringement (Art. 26).

### ► Application of the accessibility requirements to other EU legislation

- The accessibility requirements also apply to (Art. 21, Annex I)
  - public contracts [Directives 2014/23/EU, 2014/24/EU, see [cepPolicyBrief](#), and 2014/25/EU, see [cepPolicyBrief](#),
  - European funds [Regulations (EU) No. 1303/2013 and (EU) No. 1304/2013],
  - tender procedures for public passenger transport services [Regulation (EC) No.1370/2007, see [cepPolicyBrief](#)] and
  - transport infrastructure [Art. 37 of Regulation (EU) No. 1315/2013, see [cepPolicyBrief](#)].
- This applies only to the extent that the accessibility requirements do not impose a disproportionate burden on the competent authorities (Art. 22 (1)).

### Statement on Subsidiarity by the Commission

Accessibility requirements must be tackled by the EU in order to prevent a fragmentation of the internal market resulting from divergent national implementation of the CRPD.

### Policy Context

In the European Disability Strategy 2010-2020 [COM(2010) 636], the EU Commission has already called for people with a disability to have equal access to the built environment, transport, information and communication technology and to other facilities and services.

### Legislative Procedure

2 December 2015

Open

Adoption by the Commission

Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

### Options for Influencing the Political Process

Directorates General:	Employment, Social Affairs and Integration (leading)
Committees of the European Parliament:	Internal Market and Consumer Protection (leading); Rapporteur: Robert Rochefort (ALDE)
Federal Ministries:	Employment and Social Affairs (leading)
Committees of the German Bundestag:	Employment and Social Affairs (leading)
Decision-making mode in the Council:	Qualified majority (adoption by 55% of the Member States making up 65% of the EU population)

### Formalities

Legislative competence:	Art. 114 TFEU (Internal Market)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (Ordinary legislative procedure)

## ASSESSMENT

### Economic Impact Assessment

#### Ordoliberal Assessment

**The Directive** will stipulate how the general accessibility requirements for the affected products and services are to be implemented EU wide. This **is necessary because some Member States have already adopted divergent national provisions on the implementation of the CRPD** and require different national certification procedures **thereby restricting the free movement of goods and services** in the internal market.

**The scope of the Directive is appropriate because it only extends to goods where free movement has already been restricted** in the internal market as a result of national accessibility requirements. This applies in particular to the digital single market.

#### Impact on Efficiency and Individual Freedom of Choice

**The accessibility requirements** proposed by the Commission **result in an increase in the cost of** production and provision for **products and services** which were not previously accessible. Consumers of products and services which were not previously accessible will have to pay higher prices in future even if they do not need the additional functions. The cost increase will however be limited, firstly by the fact that the Commission does not impose detailed technical provisions but only functional requirements for the individual product groups. The manufacturers remain free to decide how to implement the requirements. Consequently, there is sufficient scope for innovation and cost-reducing competition between manufacturers. Secondly, the cost increase will be limited by the fact that the Directive, on the one hand, only applies to new products and services and, on the other, that manufacturers will not be subject to any disproportionate costs. Thirdly, the manufacturers are no longer subject to the additional cost of certification in other EU countries.

In addition, as a result of uniform EU regulation, barriers to market entry for accessible products and services are removed thereby increasing the level of competition. The range of accessible products and services will therefore grow and prices will tend to fall.

As accessible products and services become increasingly widespread, the autonomy of EU citizens with functional limitations will increase thus allowing them to shape their own lives. This will have a cost-reducing effect on government budgets.

**Particularly problematic are the manufacturer's duties of information and demonstration because the bureaucratic burden involved may lead to significant additional costs.**

#### Impact on Growth and Employment

Increased production costs caused by regulation initially tend to impede growth. The number of people who rely on accessible products and services will, however, increase - partly also as a result of the ageing society. This is true not only of the European market but also of all industrial nations. If EU accessibility requirements establish themselves as global standards for accessible products and services, sales markets will open up for European companies in other countries. This may lead to more growth in the EU.

#### Impact on Europe as a Business Location

The Directive has a neutral impact on Europe as a business location. It applies to all affected products and services supplied within the EU irrespective of whether they come from the EU or from other countries.

## Legal Assessment

#### Legislative Competency

The Directive not only sets out accessibility requirements for products and services but also consolidates provisions in other EU legislation aimed at ensuring that due consideration is given to the needs of older or disabled people, e.g. when awarding public contracts or European funding. The Directive can nevertheless be based on the EU's power to adopt measures for the approximation of laws in the internal market (Art. 114 TFEU) as this is the main purpose of the Directive.

#### Subsidiarity

Unproblematic. It makes sense to establish uniform EU accessibility requirements for products and services at EU level.

#### Proportionality with respect to Member States

The Directive is necessary in order to establish criteria on how the objective of accessibility set out in the CRPD is to be achieved. The Directive only contains general accessibility requirements for the affected products and services. It is left up to the Member States to decide how to transpose the rules into national law, e.g. the obligation to ensure that information must be provided via more than one sensory route. Detailed accessibility requirements in the form of common technical specifications can only be adopted by the Commission if this is necessary for market harmonisation. The Directive is therefore proportionate.

#### Compatibility with EU Law in other respects

The Commission's power to adopt implementing acts is too vague. The Directive does not indicate the conditions which would make it "necessary" to adopt common technical specifications. The reference to provisions on "common technical specifications" also fails to provide a sufficiently clear indication of their possible content. **The Commission's power to adopt implementing acts should therefore be more clearly worded.**

#### Impact on German Law

The Equal Opportunities for Disabled People Act, the Civil Aviation Act and the Passenger Transport Act as well as the equal opportunities' legislation of the *Länder*, must be brought into line with the accessibility requirements.

## Conclusion

The Directive is necessary because some Member States have already adopted diverging national regulations thereby restricting the free movement of goods and services. The scope of the Directive is appropriate because it only extends to goods where free movement has already been restricted. Accessibility requirements result in an increase in the cost of goods and services. Particularly problematic are the manufacturer's duties of information and demonstration because the bureaucratic burden involved may lead to significant additional costs. The Commission's power to adopt implementing acts should be more clearly worded.