



EUROPEAN  
DISABILITY  
FORUM



# The Council's position on the Accessibility Act – an EDF analysis

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### **About EDF**

The European Disability Forum is an independent NGO that represents the interests of 80 million Europeans with disabilities. EDF is a unique platform which brings together representative organisation of persons with disabilities from across Europe. EDF is run by persons with disabilities and their families. We are a strong, united voice of persons with disabilities in Europe.



# The Council's position on the Accessibility Act – an EDF analysis

## Introduction

In this analysis paper we will analyse the Council position on the European Accessibility Act, following its adoption in the EPSCO Council meeting on 7 December 2017. This paper follows our analysis of the European Parliament's position, which was adopted on 14 September 2017, and the Commission proposal of 2 December 2015 (COM (2015) 615/2).

EDF has campaigned intensely to improve both the position of the Council and the European Parliament as well as for a swift adoption of the respective positions in order to progress in the legislative procedure. Now we are pleased that the negotiations between the EU institutions, i.e. the trialogues, can finally start, taking us one step closer to making the Accessibility Act a reality.

However, the Council position also has a number of shortcomings that will effectively reduce the impact of the Act. Especially the scope has been reduced significantly, with the deletion several crucial provisions that risk the effectiveness of the Accessibility Act as a whole. In the following paper we will go into more detail to assess the Councils position, highlight weaknesses and propose solutions which would lead to a more coherent comprehensive and effective law.

## Executive summary

- **Public procurement:** One of the biggest shortcomings of the Council position is the deletion of the reference to “Other Union Acts”, i.e. the Public Procurement Directive, the EU Structural Funds, and the Trans-European Networks Regulations (TEN-T).
- **Built environment:** EDF deeply regrets that any provision related to the accessibility of the built environment has been deleted, even though this is a crucial prerequisite to access products and services. It is a vastly incoherent approach to demand on the one hand that e.g. an ATM has to be accessible, but the building in which the bank is situated can remain inaccessible.
- **Microenterprises:** EDF regrets that this blanket exemption for all companies with less than ten employees providing services has been granted so that they do not have to make their products or services accessible; neither do they have to notify the authorities if they use this exemption.
- **Transport services:** have been severely limited to only certain parts of the service (e.g. websites, mobile apps, electronic ticketing, etc. but not the



accessibility of the vehicles or stations); they have also been restricted qua definition since the definitions of the Passengers' Rights Regulations were used which means that urban transport (metros, trams, urban buses, light rail, etc.) as well as certain local and regional train services completely excluded from the Act.

- **Self-service terminals:** There are three major deteriorations in the Council text: 1. Limitation in the scope to only cover the self-service terminals related to the services included in the EAA. 2. The loophole in article 12, which allows the economic operator to keep placing inaccessible terminals if they include one or few accessible ones. 3 The very long transition phase of 20 years cannot be justified on economic or practical terms, and would slow down progress.
- **Audiovisual Media Services (AVMS):** It is equally regrettable that AVMS have been completely excluded from the scope of the Act which means that EU countries will not have a harmonised approach on how to make TV programmes and other audiovisual content accessible. This means that, depending on the country and the broadcaster, persons with disabilities will enjoy different access to movies, TV series, documentaries etc., because of the absence of accessibility requirements for services such as subtitles for the deaf and hard of hearing or audio description.
- **Electronic communications and emergency services:** Even though the Council position ensures accessible electronic communications and emergency communications, the latter will not be a reality without the necessary requirements for the designated emergency centres (the so-called PSAPs: public safety answering points).

**EDF urgently calls the EU co-legislators to remedy the points mentioned above during the upcoming dialogues.**

On a positive note, EDF also acknowledges the improvements made with regards to the accessibility requirements laid down in Annex I.

## **Recitals**

- All references to the wider defined term of “persons with functional limitations”, which also includes older persons, have been deleted e.g. in Recitals 2, 3, 16, and 17. This limits the target group for this Directive which is relevant for calculating the “disproportionate burden” under Art. 12 and the overall scope of the Act because accessibility is relevant not only to persons with disabilities, but also to persons with temporary impairments and particularly older people. EDF regrets this limitation.
- Several important provisions have been moved from the main text of the Directive into the Recitals, also weakening the text by not making those provisions legally binding.



Examples are Recital 20 k (new) on transport service information, a part of Recital 37 a (new) that specifies that “Lack of priority, time or knowledge should not be considered as legitimate reasons.” [to not apply the accessibility requirements], or Recital 47 a (new) on involving stakeholders in developing guidelines for the implementation. These provisions were included in the position of the European Parliament and should be moved into the main text of the Directive to make them legally binding.

- Recital 20b (new) concerning the relationship between the EAA and the European Electronic Communications Code (EECC), currently also under discussion by the EU co-legislators specifies that “in case of a conflict” the EECC should prevail. EDF disagrees with this statement, because this sectorial legislation on telecommunication cannot provide a detailed set of functional accessibility requirements (for both products and services) as the EAA actually does<sup>1</sup>.
- In Recital 37d (new), the Council shows its rationale to fully exclude microenterprises. In short, according to the Council, complying with accessibility requirements “is more likely to represent a disproportionate share of the costs”. EDF is certain this is a prejudice and would like to point at services such as e-commerce or e-books, in which the main accessibility requirement expected from these economic operators will be to follow the well-known accessibility standard for websites and e-books: [WCAG](#) and [ePub3](#) standards respectively.

## Art. 1 – Scope

- Article 1.3 relating to “**Other Union Acts**”, i.e. public procurement, the EU Structural Funds, and Trans-European Networks, has been completely deleted. This is a crucial shortcoming of the Council text because it means that public authorities – even though they are already obliged to buy accessible products and services – still do not get the correct tools, i.e. the concrete accessibility requirements, to implement the existing rules. This goes against our position, as well as the position of the European Parliament and the [industry who also support the inclusion of this provision in the Act](#)<sup>2</sup>.
- Even though the Council position now includes payment terminals, it is a mistake to limit **self-service terminals** to only those related to the services covered in the Directive. This will definitely create uncertainty among users and manufacturers (which will not benefit from economies of scale by providing the same level of accessibility regardless of the purpose of the machine). Additionally, by restricting the self-service terminals by their purpose related to the short list of services included, a greater number of these terminals will remain inaccessible, such as queue ticket dispensers in public administrations or

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<sup>1</sup> EDF will soon publish a paper focused on how to make these two pieces of legislation complementary.

<sup>2</sup> Joint statement of EDF and Digital Europe on public procurement and the Accessibility Act, <http://www.edf-feph.org/newsroom/news/accessibility-act-buying-accessible-must-public-authorities-digital-age>



companies, parking terminals, terminal in museums or cinemas, or terminals to order and pay in restaurants.

- **Transport services** have been severely limited to only certain parts of the service (e.g. websites, mobile apps, electronic ticketing, etc. but not the accessibility of the vehicles or stations); they have also been restricted qua definition since the definitions of the Passengers' Rights Regulations were used which means that urban transport (metros, trams, urban buses, light rail, etc.) is completely excluded and even certain local and regional train services are outside the scope. It also excludes self-service terminals that are an integrated part of a transport vehicle.
- Like the European Parliament's position, the Council misses a great opportunity on media accessibility. Instead of adopting accessibility requirements for audiovisual services (and thus ensuring a harmonised and correct implementation of the **Audiovisual Media Services Directive**), it only covers "services providing access to audiovisual media services". This approach goes beyond the Parliament's text which just included websites and mobile apps, and according to the Council recital 20d (new), it would also cover key aspects such as set-top boxes, Connected TV services or Electronic Programming Guides. These are positive additions, although EDF regrets the lack of ambition in including requirements for the audiovisual content itself (i.e. subtitles for the deaf and hard of hearing, audio description, sign language interpretation or spoken subtitles).
- As for paragraph 2b (new) concerning prevalence of the **Electronic Communications Code** over the Accessibility Act, as explained above, EDF disagrees with this statement - which is also contrary to the Parliament position on the EECR because these two pieces of legislation must be complementary. Whereas the sectorial legislation must set out the general legal framework for electronic communication, including the obligation of equal access and choice for end-users with disabilities, the Act must lay down how to achieve this "equal access", meaning which accessibility features should have and support electronic communication mainstream devices and services respectively.
- The inclusion of e-readers as one of the products covered by the scope of this Directive is a very positive addition to the Act.

## **Art. 2 – Definitions**

- The definition of "Universal Design" was deleted. This means that there is still not clarity over what is meant by the specific concept of "Universal Design", especially in relation to accessibility. (Art. 2.1.2)
- The definition of "Persons with functional limitations" was deleted. As mentioned in our comments on the Recitals, this means that the target group for this Directive which is



relevant e.g. for calculating the “disproportionate burden” under Art. 12, is very much limited to “only” persons with disabilities. However, accessibility is of course relevant and beneficial not only to persons with disabilities, but also to persons with temporary impairments and particularly older people so the wider definition should have remained. (Art. 2.3)

- EDF regrets the limitations imposed by the approach of the Council which considers persons with disabilities being “only” consumers, and not equally as employers or employees of an economic operator. This is particularly limiting in the new definition of “consumer banking services”, which explicitly restricts the types of services that persons with disabilities will be able to use. Thus, discrimination beyond those “consumers practices” will remain in place, preventing persons with disabilities to access the labour market.
- The definitions for transport services (Art. 2.7 (a) – (d)) introduced by the Council are not suitable for the Accessibility Act because they are based on existing Passengers’ Rights legislation. However, Passengers’ Rights do not deal with accessibility at all but rather with the assistance to persons with disabilities – these two concepts are completely different. Furthermore, limiting the definitions to existing legislation means that those transport modes currently not covered by passengers’ rights legislation are also excluded from the definitions in the Act. This means for example that that urban transport such as metros, buses, and trams do not fall under those definitions and are still excluded. Additionally, some of the Passengers’ Rights Regulations such as the one on rail (Reg. 1371/2007)<sup>3</sup> have very broad exemptions and e.g. regional and suburban rail services are currently excluded from its scope. That means that those services would also not be covered by the Accessibility Act.
- EDF welcomes new definitions regarding real time text, services to access audiovisual media services, e-book and dedicated software, and e-readers,

### **Art. 3 – Accessibility Requirements**

- The **built environment** has been completely excluded from the scope of the Act. Article 3 (10) was deleted, removing a crucial aspect of the Accessibility Act that EDF successfully campaigned for to be widened in the Parliament’s position. By removing this provision, situations are likely to arise where you can have an accessible service e.g. a cash machine to withdraw money, in an inaccessible bank building. Or you can theoretically purchase an accessible product, e.g. a smartphone, but you may not be able to access the shop.
- **Microenterprises** have been partly excluded from the scope of the Act. The exemption introduced in Article 3 (4) means that microenterprises providing services, but not those

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<sup>3</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:en:PDF>



providing products, do not have to apply the accessibility requirements of the Act. This means that many small companies of less than ten employees do not have to make their services accessible, which concerns e.g. many online shops and other service providers. This will also create unfair competition on the Internal Market by treating economic providers differently and thus also impeding the harmonization that was intended with this Directive.

- The Council also added a new Article 3 (a) on “**Existing Union law in the field of passenger transport**” which states that existing laws in the field of transport that already have provisions on the accessibility of information will be enough to show compliance with the requirements in the Act. However, this is totally insufficient and should not be used as a reference because e.g. the cited Regulation on Rail Passengers’ Rights (1371/2007)<sup>4</sup> only demands travel information to “*be provided in the most appropriate format. Particular attention shall be paid in this regard to the needs of people with auditory and/or visual impairment.*”. This excludes other accessibility requirements that are mentioned in the Act and therefore the Act should be the only adequate reference to guarantee the accessibility of information.

Furthermore, Regulation 454/2011 (TAP-TSI)<sup>5</sup> mentioned in Art. 3 (a) 2 does have some provisions on web accessibility but those are by no means sufficient and far too limited compared to the requirements set out in the Act. The TAP-TSI state for example that “*The official website referred to in this basic parameter shall be machine readable and compliant with web content accessibility guidelines.*” but it does not state to what level it should be accessible (recommended is WCAG 2.0 level AA) and again, it only focuses on “*people with auditory and/or visual impairment*”, and excludes new means of access such as mobile applications. Finally, the provisions in the TAP-TSI only apply to the official website of the Railway Undertaking but not to possible other subsidiary websites that might also be used to provide services and sell tickets and are thus relevant to passengers.

## **Art. 12 – Fundamental Alterations and Disproportionate Burden**

Besides the fact that EDF in general disagrees with the concept of “disproportionate burden” related to accessibility for the economic operators, the Council has not modified this Article significantly compared to the Commission proposal. Some aspects on the assessment have been clarified to facilitate implementation by the Market Surveillance Authorities. One of the biggest negative changes from EDF’s point of view is again related to microenterprises: an addition to Art. 12 (6), the Council states that **microenterprises will be exempt from the notification procedure and assessment**, unless the Market Surveillance Authorities specifically request it. This means that

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<sup>4</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:315:0014:0041:en:PDF>

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:123:0011:0067:EN:PDF>



microenterprises do not have to make their services accessible as stated in Art. 3 (4), but they do not even have to explain why they cannot do it or make a proper assessment. The derogation in Art. 12 also applies to ALL microenterprises and not only to the ones providing services.

It is unacceptable the exemption provided in paragraph 7 (new) that allows to provide “a limited number of accessible self-service terminals”. In addition to the fact that this proposal goes completely against the spirit and obligations of the UN CRPD (as it will allow products creating new barriers for persons with disabilities), it will confuse and discriminate against users with disabilities who will need to “learn” beforehand to locate the accessible machine they can use, which means they cannot use the service on an equal basis with others. Another consequence will be that manufacturers of self-service terminals will not benefit from economies of scale by providing the same level of accessibility in all their products because they will still have to provide “special” solutions and thereby creating unnecessary costs.

Last but not least, in paragraph 4 concerning funding from other sources, EDF supports the original Commission proposal establishing that the exemption in Art. 12 cannot be claimed when additional funding sources are available. Therefore, EDF disagrees with the Council addition of “specifically assigned for ensuring accessibility” because here, for instance, public money is made available to an economic operator it should not be acceptable that the outcomes are not accessible, regardless of the specific purpose this public money was designated for.

### **Art. 16 – General principles of the CE marking of products**

On a positive note, the Council has retained the Commission’s proposal to use CE-marking as a means of ensuring compliance with EU rules. While EDF is aware of the pitfalls of the CE-marking as a label informing consumers, it is nevertheless useful in the enforcement of the Regulation. By maintaining the CE marking in the Directive, we will make sure that (in accordance with the [Regulation 765/2008](#)), Member States will be obliged to “take appropriate action in the event of improper use of the marking”, including penalties for infringements.

### **Art. 21-23 – Accessibility Requirements in other Union Legislation**

In accordance with EDF’s comments on the deletion of Art. 1 (3), the deletion of Article 21 – 23 will have negative consequences. As mentioned above, this is a crucial shortcoming of the Council text because it means that public authorities – even though they are already obliged to buy accessible products and services – still do not get the correct tools, i.e. the concrete accessibility requirements, to implement the existing rules. This goes against our position, as well as the position of the European Parliament and the industry who also support the inclusion of this provision in the Act.



## **Art. 25 – Enforcement**

The Council text is lacking a provision on the direct involvement of persons with disabilities and their representative organisations in the Committee procedure and the enforcement of the Act. This provision was moved to the Recitals but should be clearly included in the text of the Directive to ensure that users will get the opportunity to participate actively in the monitoring of this Directive.

## **Art. 26 – Penalties**

The Council text does not go far enough compared to the position of the European Parliament and should also include a provision stating that penalties shall be re-invested in the accessibility-related work of the authorities. Furthermore, the penalty should not be measured based on the number of people affected because an infringement of the Directive should be penalized as a matter of principle.

## **Art. 27 – Transposition**

- According to the Council position, the transposition of the Directive will only have to be finalized three years after adoptions, instead of the two years proposed by the Commission. EDF is not in favour of prolonging the transposition time as there are already additional delays to be expected and products and services should be made accessible as a matter of priority, as quickly as possible.
- The application of the measures will only have to be done six years after entry into force of the Directive, which is far too long. The Parliament position should be followed in this respect which shortened the transposition time to five years.

## **Art. 27 (a) new – Transitional measures**

- An additional five years of transitional measures for service providers during which they can continue provide services using inaccessible products; and for already concluded service contracts to run without alteration until they expire are not acceptable for EDF. The general transitional measures are already generous enough and no special exemptions should be made.
- Self-service terminals such as ticketing machines or ATMs can still be used “until the end of their economic lives” and do not have to be exchanged with accessible ones. This means that even if the Accessibility Act were to be adopted in 2018, we could still have inaccessible ticketing machines in 2030, assuming that the machine has a life span of 5 – 10 years which is probably still a conservative estimate. These special rules should not be allowed.



## Annex I

One of the worst deteriorations in the Council position is without doubt the deletion of the requirements to respond and handle accessible emergency communication. We strongly call on Member States to reconsider their position in this regard, as it would make absolutely no sense to require electronic communication network operators to support accessibility features such as real time text and transmit them to the emergency centres (the so-called PSAPs) and impose no requirement on them to have the technology to handle the emergency calls.

Therefore, we propose to use the wording already discussed at the Council to ensure end-to-end accessibility when comes to emergency communications. This text could be the following:

“For services for responding to and handling emergency communications, by ensuring that emergency communication using voice, text including real time text and video are appropriately received, answered and handled, at a PSAP that has been previously designated. Thus, one or more PSAP(s) shall be designated to be responsible for, and capable of responding, emergency communication using the accessibility features necessary to comply with this requirement.”

Having said so, apart from this, there are many improvements in the text of the Annex, in particular with regards to accessibility requirements that recognise the peculiarities of different products and services. Thus, specific references to accessibility features such as real time text, quality aspects, personalisation and users' control over the accessibility features, etc. will improve the legislation by providing more clarity to economic operators.

The Annex is clearer in its structure and with the examples provided for each requirement. In addition to these positive notes, there are shortcomings which we list here, and we propose recommendations to address them:

Section I on general accessibility requirements related to all products covered by this Directive:

- The requirements proposed for the user interface and functionality design are comprehensive with the exemption of a requirement for persons with intellectual disabilities. EDF therefore proposes to add: “the product shall maximise understandability and ease in use”.
- Requirements for products support services (help desks, call centres, technical support, relay services and training services) must also be added as in the Parliament position.
- On the requirement for consumer terminal equipment with interactive computing capability used for accessing audio-visual media services (i.e. TVs), EDF suggests the inclusion of an explicit reference of the four main access services as follows:



“shall make available to persons with disabilities the accessibility services (including, but not limited to, subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation) provided by the audio-visual media service provider, for user access, selection, control, and personalisation and for transmission to assistive devices”.

Additionally, concerning TVs, two key requirements are missing. Firstly, user controls to activate access services shall be provided to the user at the same level of prominence as the primary media controls. And secondly, the product shall provide a means for effective wireless coupling with state of the art hearing technologies, such as hearing aids, telecoils, cochlear implants, and assistive listening devices.

Section IV on additional accessibility requirements related to specific services:

- On audiovisual services, the Council text reads “ensuring that the accessibility features of the audiovisual media services as referred in Article 7 of Directive 2010/13/EU...”. This is completely incorrect because article 7 of the Audiovisual Media Services Directive (both the current one in place and the positions of the co-legislators in the ongoing revision) do not include or refer to any particular accessibility feature whatsoever. To solve this, EDF proposes to directly mention the four main access services as in the requirements for TVs, namely subtitles for the deaf and hard of hearing, audio description, spoken subtitles and sign language interpretation.
- On banking services, EDF would like to stress the importance of adding a requirement to facilitate the understandability of these services, often very complex not only for persons with disabilities and particularly with intellectual disabilities, but for everybody else. Thus, EDF suggests requiring a language which complexity does not exceed primary education level.

EDF regrets the exclusion of specific requirements for transport services (Commission proposal Section V), which had been significantly improved in the Parliament’s position. This will make it even more difficult for the provisions on transport services to be implemented and monitored by the Market Surveillance Authorities.

EDF notes the inclusion of the new Annex IV on the assessment of disproportionate burden, and hopes that this clarification would help to avoid any misuse of the exemptions provided in Article 12.

## Related documents

- [EDF's analysis of the European Parliament's position on the Accessibility Act \(October 2017\)](#)
- [EDF's initial position on the proposal for a European Accessibility Act \(February 2016\)](#)
- [EDF report: European Accessibility Act – State of play \(2014\)](#)
- [EDF Position on the European Accessibility Act \(2013\)](#)
- [EDF reply to the Commission consultation on the European Accessibility Act \(2012\)](#)

More information, publications, and documents are available on the [EDF website](#).

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