
The Accessibility Act – Using the single market to promote fundamental rights

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BACKGROUND

Persons with disabilities and older people need access to goods and services that are adapted to their needs. They want safety, affordability, interoperability, user-friendliness and freedom of choice. Developing such products and services and ensuring that there is a functioning market for them is an opportunity for Europe.

As a result, the European Commission has decided to put forward a European Accessibility Act, expected to be published in summer of 2013, the purpose of which should be to improve the availability of accessible goods and services for persons with disabilities and older people. The proposed measures will likely aim to harmonise accessibility requirements across member states, promote freedom of movement of accessible goods and services, and increase the effectiveness of accessibility legislation. Such measures could help to improve daily life for millions of individuals who currently face numerous barriers to their well-being and integration.

Growing challenge

The Commission estimates that 80 million people in the EU have disabilities, representing about 15% of the population in Europe. This figure includes people who have long-term physical, mental, intellectual or sensory impairments, but does not cover individuals suffering from temporary disabling impediments.

Persons with disabilities face a number of challenges that hamper their daily activities, such as difficulties in accessing public transport and buildings, or in using household appliances or eCommerce services, because information is only visual. Regarding goods and services the challenge is two-fold: either there are not enough accessible products or, when solutions exist, different regulations, standards and technical requirements in 27 member states make

them inaccessible by hampering competition and keeping prices high. It is in the interests of both persons with disabilities and other consumers to have access to accessible goods and services that are affordable too.

Persons with disabilities face social exclusion and often have difficulty fully integrating themselves into society or finding work. In 2010, poverty was 70% more likely for persons with disabilities than for those with low education and employment levels. In 2008, the employment rate for people aged between 15-64 years who were severely limited in their activities was 26%, compared to 65% for non-disabled people.

This can no longer be ignored. The share of persons with disabilities is increasing fast. Eurostat predicts that the number of people aged 65 or over in the 27 EU member states will increase from 17% in 2010 to around 30% by 2060. As people are more prone to developing disabilities with age, the number of persons with disabilities will only continue to increase. Already, over 32% of those between 55 and 65 years of age report a disability, and the figure increases to over 40%, 60% and 70% respectively for each additional decade.

... and a growing market

It also makes sense to build on growing commercial interest in accessible goods and services. While persons with disabilities represent a sizeable and growing market with various needs to be met, it is worth remembering that greater accessibility also benefits non-disabled people and consumers. In 2010, the annual value of the EU market for assistive devices alone was an estimated €30 billion. In the same year, the British Healthcare Trades Association estimated that the sales value in the UK of mobility products, including wheelchairs and

scooters, was £200 million, and for community equipment £270 million.

A number of solutions already exist today. Smartphones can have LED Flashlight applications for deaf people and assistive touch for users with motor-control impairments; Radio Frequency Identification Devices can transmit the identity of an object; and voice command devices are useful for users with visual impairments. Technologies have turned many everyday products into multiple-use devices, and rather than having to develop new products,

personalising software and applications can provide greater accessibility. However, more should be done to ensure that the best and smartest solutions get to market and are put into use.

So far the EU's legal framework has promoted accessibility as a human right, but as shown below, this has not produced sufficient results. The European Accessibility Act must complement the legal framework with measures to support the creation of a market for accessible goods and services, which would be a positive development.

STATE OF PLAY

The EU has a strong legal framework for promoting accessibility. It concluded the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2010, which urges member states to “take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas” (Article 9). These measures include “the identification and elimination of obstacles and barriers to accessibility”. As a result, the EU pledged to set up a framework to comply with procedural obligations contained in the text, including the establishment of independent and coordinated mechanisms to improve the monitoring, evaluation and implementation of disability issues in European policymaking.

The EU's Disability Strategy for 2010-2020, which builds on the UNCRPD, aims to ensure a “continuous and sustainable improvement in the situation of persons with disabilities in economic, social and participatory terms”. It highlights accessibility as one of the priority areas for action.

The EU considers accessibility and societal inclusion of persons with disabilities as fundamental rights. In Article 26 of its Charter of Fundamental Rights, the EU “recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”. Article 21 prohibits any discrimination on the basis of disability.

The Lisbon Treaty gives legal status to the EU's Charter of Fundamental Rights and provides the legal basis for mainstreaming disability issues into other policies. Thus the European Commission is obliged to ensure that the needs of people with disabilities are taken into account during the development and implementation of all EU policies and legislation.

So far the EU has passed 18 legal acts which promote accessibility, including regulations on the rights of persons with reduced mobility in the area of transport and built environments, as well as general provisions related to public procurement and structural funds. Work is underway to promote 'eAccessibility', or helping people with disabilities and older people to access and use ICT products, services and applications. For example, in December 2012 the Commission's Directorate-General for Communications Networks, Content and Technology issued a proposal to make government websites across the EU accessible for all users.

While the EU's legal framework has promoted accessibility as a human right and provided the basis for action, the work itself has only started. Implementation has not been easy. Member states differ in their approaches to promoting accessibility and it has often proven difficult to turn legal objectives into concrete actions due to a lack of buy-in or funding. One example of this is the Equal Treatment in Employment and Occupation Directive adopted in 2000, which has suffered from weak implementation. Unfortunately, legal duty has not always been enough to promote fundamental rights.

The European Accessibility Act was announced in January 2011, initially scheduled for the end of 2012, and has now been postponed until the summer of 2013. It can be expected to build on the UNCRPD articles and the Charter of Fundamental Rights. The Commission has been rather silent on the text and thus it is difficult to predict the content of the proposal. However, it will presumably aim to complement existing national legislation by providing a clearer meaning and a legal framework for regulation of accessible goods and services. It is expected to aim to address the lack of accessible goods and services, and use the single market as a legal basis for action. The Act will likely aim to harmonise accessibility requirements, stimulate innovation through the use of European standards, increase market incentives and public procurement, and improve the inclusion and participation of persons with disabilities in society and the economy. While these objectives may be

ambitious, this market-oriented approach is a welcome addition to the traditional legal framework.

The single market has become a significant part of the European project and provides an attractive framework for action. Removing barriers and moving from 27 separate markets to a functioning single market in which it is easier to develop and deploy more accessible goods and services could bring great

economic and societal benefits for Europe. It would increase the availability and quality of products while reducing their prices. The European Accessibility Act has the potential to play an important role in providing persons with disabilities access to goods and services that are crucial for their well-being. However, the Act will only succeed if its scope is sufficiently broad and if the below recommendations are met.

PROSPECTS

The European Accessibility Act must promote as broad a **definition of accessibility** as possible in order to incorporate all disabilities and specific needs, whether they are related to physical, communicative or cognitive impairments. More discussion is also needed on what makes the digital environment more accessible. This proposal should not just target persons with specific disabilities, but also aim to mainstream accessibility in order to incorporate a broader spectrum of the population, including older people, who would also benefit from accessible solutions. More accessible goods and services, whether phones, lifts or transport, benefit society at large and targeting a wider section of the population would greatly improve the chances of success.

It is important to ensure that the Accessibility Act promotes a 'user-centric' definition of accessibility, which takes into account the views of both developers and end-users. Involving them in defining basic accessibility criteria for goods and services that are central to people's well-being would help to ensure that they adequately benefit people with various disabilities. It would also guarantee the compliance of the definition with existing international legislation such as Article 9 of the UNCPRD. Disabilities affect individuals worldwide – therefore the definition of accessibility should be global too.

The single market can play an important role in supporting accessibility but this requires recognising and removing barriers to the development and deployment of accessible goods and services. Market liberalisation and increased competition in Europe would offer the private sector more business opportunities, increase entrepreneurship and employment in this sector, and reduce prices for consumers. However, this can only be done within the framework of a fully functioning single market. It is essential to remove basic barriers to the EU single market and to ensure that the market is made for and with all consumers. For example, there are still a number of obstacles to developing a functioning digital single market, including a lack of standards for e-payments, e-invoicing, e-signatures and e-identities. When building that market, it is important to consider accessibility from the start.

The EU must continue to work with its external partners to remove trade barriers in a **global context**. Just as

disabilities are not unique to Europe or Asia, nor is there a European or Asian solution to accessibility. This is a global market, and it is in the interest of business to develop solutions that can be used globally. Doing so would significantly benefit all stakeholders. Many goods are developed and manufactured outside the EU, and European consumers would naturally benefit from access to these solutions. In a similar manner, for European businesses, expanding markets beyond the EU could help to achieve economies of scale and allow them to produce goods at more competitive prices while increasing their revenue. Where global standards exist, it makes sense for European businesses to adapt their products accordingly and thus benefit from access to these expanding markets. Boosting competition in this manner would stimulate innovation and increase the number of adapted products and services on the market.

One important step in this direction would be to boost transatlantic cooperation. The US has done a lot of work on accessibility and already has a large market for accessible products and services. The EU and the US should work to ensure that a future free-trade agreement helps to remove trade barriers to accessible goods and services. There are great possibilities for cooperation especially with regard to eAccessibility.

It is important for developers, designers and manufacturers to understand the benefits of inclusive design and create products with a 'design for all' approach. **Standards** can play an important role in this and technical criteria can help to ensure that accessibility is taken into account in product design. This is cheaper than adapting products later. For example, a report by the World Health Organization and the World Bank showed that building new infrastructure in accordance with basic accessibility standards is only 1% of the total cost.

Work on standards is ongoing. The EU has given European standards organisations mandates to develop and adopt accessibility requirements for public procurement in specific sectors such as ICT (Mandate 376) and the built environment (Mandate 420). Standards such as process standards for manufacturers and service providers help to ensure that accessibility features in the product development cycle and service provision (Mandate 473).

When developing and using standards, however, it is important to ensure that they do not become barriers to innovation: one solution does not always fit all. While standards provide a favourable framework and a solid base for emerging technologies, helping companies to translate technological advancements into business practices, they must be flexible if they are to encourage innovation. Strict standards – while easier to enforce – can, in the worst-case scenario, reduce or even kill businesses' interest to develop new products and services. The aim should always be to agree on a general goal and outcome, rather than to define specific criteria for how to get there. This is why standards for ICT products and services, for example, should be performance-based. Regulation should not be a barrier, but it should ensure that the whole population can choose from the widest possible range of products and services.

In this context, the EU's effort to identify a set of functional accessibility requirements, in accordance with Mandate 376 for public procurement of ICT goods and services, is a positive development. Public procurement is an important market instrument, providing businesses with an incentive to develop accessible goods while stimulating innovation. It should be developed further.

To support the objectives of the European Accessibility Act, the EU should aim to utilise **other resources and instruments, such as EU research policy, the Structural Funds and other funding streams**. For example, ageing populations and increasing chronic health conditions contribute to increased disability rates. The EU's research programmes should be used to thoroughly analyse these trends and identify potential solutions, and to encourage innovation in accessible goods and services. There are still a number of disabilities which could benefit enormously from new assistive technologies and other solutions.

It is important to remember that accessibility is an ongoing process: people's expectations change and enabling technologies evolve. Private stakeholders should be encouraged to invest in research and development while regularly consulting people with disabilities and their representative organisations. Their input is crucial in order to ensure that the devices developed are adapted, user-friendly and fit for widespread use. Considering accessibility at the beginning of the creative process is the best option.

Furthermore, the Accessibility Act should recognise that solutions related to eAccessibility do not solely rely on ICT. The legal framework will have a significant impact on the way these technologies are deployed and developed. This framework must be broad enough to incorporate other factors such as end-user training and help-desk support.

In addition, the effects of the European Accessibility Act, no matter how ambitious, will be limited if the EU fails to **raise awareness** of disability issues among member states and businesses and incite them to be proactive. Promoting accessibility requires the involvement of all stakeholders. Information, coordination, political commitment and strategic planning involving both the public and private sectors are crucial elements in providing optimal access to gateway services such as transport. At EU level, coordination of national policies and practices must be sought.

It should be remembered that while the Accessibility Act can undoubtedly represent a useful instrument to complement the existing legal framework by encouraging commercial interest in accessible goods and services, it is only part of the story, albeit a critical one. In a number of areas, such as access to education and employment, the market approach will not be sufficient to fight discrimination and in such instances, legal obligations and support mechanisms, such as subsidies, are needed.

Meeting these conditions would allow the European Accessibility Act to improve the inclusion and participation of persons with disabilities in society and the economy. With the Act, the EU has the opportunity to promote access to products and services that are central to ensuring the wellbeing of persons with disabilities and to enabling them to enjoy their fundamental rights. The Act has the potential to become an important additional tool in implementing the UNCRPD. The EU must not miss this opportunity.

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