



Raising standards for consumers



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)

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1. Introduction

ANEC welcomes the European Commission's proposal for a Directive on the approximation of laws, regulations and administrative provisions of Member States as regards the accessibility requirements for products and services (COM(2015)615/2)¹. For many years, we have been pressing for regulatory action to increase access to everyday products and services for consumers of all ages and abilities².

Since our beginning, safety and accessibility for consumers with disabilities and older consumers have been key among our priorities because we believe standards can be suitable in making products and services safe and accessible to all consumers, whatever their impairment, age and characteristics. This is because standards determine the manner in which a product or a service is designed or provided before it is placed on the market.

European Standards, if based on the principles of Design for all and used, can play an essential role in making Europe accessible. Design for All means designing products and services for as many consumers as possible as a very large number of people have requirements which can be easily addressed by relatively small changes in product design and service provision.

Based on our long-standing experience in the safety of products field where standards are used to implement European legislation, and our equally long-standing experience in the field of services, we do support the elaboration of legal basis on accessibility of products and services to be underpinned by standardisation³.

We suggested that EU harmonisation legislation ensuring the free movement of products be extended to cover the accessibility of products in order to provide a high level of consumer protection and remove barriers both for consumers (e.g.: obstacles to mobility) and for traders (as already done in the case of lifts, escalators, ramps⁴). The apparent complexities of drafting accessibility legislation, taking account the diversity of impairments and the range of products it would need to cover, can be addressed by the analogy with safety legislation. There is a general requirement for products to be safe in the Single Market. How this is

¹ <http://goo.gl/OXXIsu>

² <http://goo.gl/a5dHrF>

³ [ANEC contribution to the European Commission public consultation with a view to a European Accessibility Act](#)

⁴ Directive 95/16/EC on lifts

achieved is vastly different for lifts and kettles, so general obligations are implemented by product-specific standards and regulation.

Since February 2012 when we first commented on the future European Accessibility Act, we recognise that the inclusiveness of the European Standardisation System has improved due to the implementation of the provisions of the Standardisation Regulation (1025/2012). Nevertheless, ANEC believes the freedom allowed to industry to self and co-regulate through standards needs to be accompanied by an obligation to provide the highest level of protection and accessibility to consumers that is economically and reasonably possible.

We are pleased to provide our preliminary comments on the European Commission proposal for a directive on accessibility requirements for certain products and services (also called European Accessibility Act or EAA) with the aim to seek clarification on some aspects and contribute to the improvement of other aspects. We have coordinated our position with the European Blind Union (EBU) and the European Disability Forum (EDF).

2. Preliminary Comments

Article 1 Scope

We suggest that an introductory sentence is added at the beginning of Article 1 in order to state the scope of the draft act, along the lines of "This Directive establishes a framework for the setting of Union accessibility requirements for products and services referred to in paragraph 2 and subsequent, with the aim of ensuring the free movement of such products within the internal market while at the same time increasing the accessibility of such products and services for persons with functional limitations including persons with disabilities and older persons".

As a consumer organisation, we believe that consumers should be able to use products and services for their everyday activities such as shopping, travelling and administrative duties (social security, passports, etc.), irrespective of their ages and abilities. Therefore, any list of goods and services is likely to omit some, and will exclude future goods and services.

It is also difficult to prioritise because the accessibility of a particular good or service is likely to be dependent on the accessibility of another service. For example, in order to access 'X goods or service' a disabled consumer may need to access information about the goods/service while at home; be able to leave their home; access the pedestrian environment to a transport stop, access the transport vehicle, pedestrian environment to the destination; (or access a car and

park the car close to the destination); access a premises, then within the premises to the goods/service; communicate with service providers; obtain the specific goods or services; access information on how to use it; access the functions, controls etc. of the specific goods; and the specific goods be accessible and meet the requirements of the disabled person to enable them to use it etc....

Access to goods and services requires a seamless chain of accessibility.

We note the products and services selected by the draft Directive and the priority setting criteria used (cross-border problems). However, we believe that some additional products and services are the object of divergent and often contradictory national current or potential accessibility requirements and should thus be included in the scope of the Directive.

This is the case of payment terminals (also known as Point-of-Sale terminals or POS terminals) which do not seem to be included in the scope of the EAA. A payment terminal is a device allowing the use of payment cards at a physical (not virtual) point of sale.⁵ Payment terminals are widely used self-service terminals and are currently more frequently used by European consumers than ATMs.⁶ This is in line with the gradual change to a cash-less society that we are currently experiencing in Europe. ANEC proposes to include payment terminals in the scope of the EAA. This will eventually lead to a level playing field for the industry and will stimulate manufacturers to produce more accessible terminals all over the EU.

We think that household appliances should also be included in the scope of the Directive because accessible household appliances increase independent daily living for older people and people with disabilities⁷. Based on our work on increasing the safety of household appliances for vulnerable consumers⁸, we know that it is possible and feasible to increase the accessibility of such products, bearing in mind that a clear categorization of products is more and more difficult in our increasingly technologically “converged” world.

The Directive appears not to cover “apps”, despite access via apps accounting for a large part of modern internet use. This should be included.

In terms of the terminology used in Article 1, we would welcome clarification of the meaning of “consumer terminal equipment with advanced computing

⁵ <https://goo.gl/UzWqLJ>, p. 84

⁶ Self-service terminals are computerised telecommunications devices or electronic outlets that provide the user with access to various operations in public spaces without personal assistance. Commission Staff Working Document, Impact Assessment accompanying the document 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, SWD(2015)264, part 2/3, p. 83.

⁷ <http://ec.europa.eu/growth/tools-databases/mandates/index.cfm?fuseaction=search.detail&id=461>

⁸ <http://www.anec.eu/anec.asp?p=accessibility&ref=01-01.02-01&ID=8>

capability related to audio-visual media services". We wonder whether radios, which do not have "advanced computing capability", would be excluded.

In February 2012 when we first commented on the future European Accessibility Act, we identified the built environment and accommodation services as one of the main areas of divergent national accessibility requirements. Several Member States already have accessibility legislation or standards on the built environment⁹. It is therefore essential to prevent further fragmentation by making accessibility of the built environment a mandatory provision of the proposed Directive and not only a possibility left to Member States (as in the proposed Article 3).

We therefore think that recital 1 should be amended to read: "[...] free movement of ~~certain~~ accessible products and services [...]" in line with the draft Directive title.

Concerning the distribution channels, the draft Directive should state that it shall apply to all products sold in the internal market, irrespective of the selling technique, in order to expressly cover distance selling (or e-commerce). Dedicated requirements on the surveillance of internet sales are needed. We therefore propose introducing new specific provisions in Article 1 and 17 that will explicitly require Member States to control the accessibility of products sold through the internet.

Article 2 Definitions

It seems that the draft Directive replicates the wording 'perceivable, operable and understandable' from WCAG 2.0. However, WCAG 2.0 also includes another important factor: 'robust'. The relevant WCAG standard text is:

"Perceivable - Information and user interface components must be presentable to users in ways they can perceive.

This means that users must be able to perceive the information being presented (it can't be invisible to all of their senses).

Operable - User interface components and navigation must be operable.

This means that users must be able to operate the interface (the interface cannot require interaction that a user cannot perform).

Understandable - Information and the operation of user interface must be understandable.

⁹ Academic Network of European Disability Experts (ANED), Dotcom database, <http://www.disability-europe.net/dotcom>

This means that users must be able to understand the information as well as the operation of the user interface (the content or operation cannot be beyond their understanding).

Robust - Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies.”

This means that users must be able to access the content as technologies advance (as technologies and user agents evolve, the content should remain accessible). We would welcome the inclusion of the concept of “robust” in the Directive.

Alternately and with our preference, we suggest that the following definition of accessibility, which does not focus only on products and services but also the built environment is included: “the extent to which products, systems, services, environments and facilities can be used by people from a population with the widest range of characteristics and capabilities to achieve a specified goal in a specified context of use”¹⁰. “Accessibility” and “usability” overlap as accessibility involves both ease of use (which can affect task efficiency and user satisfaction) and success of use (i.e. system effectiveness).

We have also noted that some definitions could be added such as that of “website” and “service providers” for completeness. This could be done by referring to existing legal texts.

And linked to our comments under Article 1 about payments services, a definition of the term “banking services” would be necessary in Article 2 to cover payment services.

Article 3 Accessibility Requirements

ANEC welcomes that the accessibility requirements harmonising the conditions for the marketing of products in Article 3 and Annexes I-III are clearly and precisely defined in order to avoid misinterpretation on the part of the economic operators and standardisers with regard to the objectives set by the legislation.

We reiterate the comment made under Article 1 concerning the built environment. It is essential to prevent further fragmentation in this area by making accessibility of the built environment a mandatory provision of the proposed Directive and not only a possibility left to Member States.

¹⁰ CEN/CENELEC Guide 6 Guide for addressing accessibility in Standards (2014), ISO 26800, ISO/TR 9241-100 and ISO/TR 22411.

Article 5 Obligations of manufacturers

ANEC thinks that the safe use of products and services is an essential element of accessibility. The provision of instructions and safety information to consumers should be done in accessible and multiple formats (Article 5.7).

Article 8 Obligations of distributors

It is our understanding that retailers are the “distributors” as they “supply for consumption [...] in the course of a commercial activity” accessible products and services. Should this not be the case, we think they should be considered as distributors.

Because distributors/retailers will be advising consumers on the accessibility of products and services, we suggest that a special provision is added on the need to ensure proper and continuous training of personnel to be knowledgeable in how to use accessible products and services. Training should cover issues such as information provision, advice and advertising.

Article 11 Obligations of service providers

As services are different from products due to the intangible nature of services and the fact that services are often performed at the interface between the supplier and the customer, the overlap between the ‘design aspect’ and the ‘service’ aspect should always be taken into account as far as the obligations of service providers towards accessibility are concerned.

Subcontracting should not affect accessibility of a service. A provision should be added to ensure that even if a service, or part of a service, is subcontracted to a third party, the accessibility of that service is not compromised.

Because service providers will be advising consumers on the accessibility of services, we suggest that a special provision is added on the need to ensure proper and continuous training of personnel to be knowledgeable in how to use accessible products and services. Training should cover issues such as information provision, advice and advertising.

Article 12 Fundamental alteration and disproportionate burden

Whilst ANEC considers that all economic operators should be subject to the same legal obligations about accessibility and they should not be allowed to decide themselves whether they have to comply with the terms of the draft Directive, we understand that particular situations might happen where to make a product fully accessible would require changing it beyond its usual specification, or the changes

needed would be so significant that it would place a real “disproportionate burden” on the manufacturer.

However, we are concerned by the definition of a fundamental alteration (Article 12.1) and the criteria used to assess whether a burden is disproportionate (Article 12.3). We wonder how a “significant change in an aspect or feature of a product or service” would be identified in practice as a number of minor changes in a number of aspects or features might result in “the alteration of the basic nature of the product or service”. We believe the wording should be strengthened by removing the reference to an aspect or feature and defining a fundamental alteration as “a significant change in the basic nature of the product or service”.

As far as the issue of disproportionate burden is concerned, we are of the opinion that the proposed provisions are de facto exonerating small and medium-sized enterprises (SMEs) and microenterprises from the obligations imposed by the draft Directive, although this option was expressly discarded in the Impact Assessment. We would prefer for paragraphs 2 to 5 to be deleted and replaced by the following provisions which would embody the principle of “think small first”:

“In the context of programmes from which small and medium-sized enterprises (SMEs) and very small firms can benefit, the Commission shall take into account initiatives which help SMEs and very small firms to integrate accessibility aspects when designing their products or providing their services.

Guidelines covering specificities of SMEs active in the product and service sector affected may be developed. If necessary, and in accordance with paragraph 1, further specialised material may be produced by the Commission for facilitating the application of this Directive by SMEs.

Member States shall ensure, in particular by strengthening support networks and structures, that they encourage SMEs and very small firms to adopt an accessibility sound approach as early as at the product design stage and service provision.”

ANEC thinks that mandatory accessibility requirements might represent a “niche market” for specialised small companies who could reap the benefits of new business opportunities¹¹. SMEs could in the beginning be a driver to trigger the “niche” products and services thereby stimulating the market. However, measures to facilitate SME innovation in this field are needed. It is worth noting that the European countries which have achieved the highest levels of

¹¹ Public consultation on revision of the Public Procurement Directive, ANEC response (ANEC-DFA-2011-G-016)

accessibility to Information Communications Technologies (ICT) products and services, so called e-Accessibility, are also qualified as "Innovation leaders"¹².

Not only market surveillance authorities but also consumers should be informed about the lack of accessibility requirements of a product or service because the economic operator assessed compliance with accessibility requirements would result in a fundamental alteration. We suggest that a mark is developed to inform consumers (e.g.: "No or partial access") and is affixed on products which are not accessible. This new mark should replace the proposed CE mark (see our comments on Article 16) in order to avoid further confusing consumers about the real meaning of CE marking.

Article 16 General principles of the CE marking of products

Consumer organisations in Europe have long criticised CE marking, as for most consumer products, it is only a self-declared claim from the manufacturer that the product complies with EU safety legislation¹³.

Consumers are misled about the meaning of the CE marking as they believe it refers to a geographical origin (such as "Made in the EU") or they confuse it with an authorisation or independent safety testing¹⁴.

It is the symbol of the manufacturer's declaration about compliance, not of (guaranteed) compliance. CE marking was never intended to provide information to the consumer and is certainly not the appropriate means to provide meaningful consumer information about accessibility. In fact, it provides no information on the quality of the product. Being based on a complex modular system of conformity assessment, the real value of the CE marking is impossible for the consumer to assess.

CE marking is misleading for consumers. It is not at all obvious in which instances it has to be fixed on a product. For instance, a child's soother is not allowed to bear CE marking as there is no sectoral directive for childcare articles and so the General Product Safety Directive applies¹⁵. But if the soother is attached to a doll,

¹² European Innovation Scoreboard (EIS) 2009, <http://www.proinno-europe.eu/page/1-executive-summary>

¹³ ANEC Position Paper on CE Marking "Caveat Emptor - Buyer Beware" (ANEC-SC-2012-G-026final)

¹⁴ CEOC, the International Confederation of Inspection and Certification Organisations, carried out a study in 2012 that also clearly shows the weaknesses of self-declaration. In the context of the study, CEOC gathered data from products that were sent in for testing by manufacturers to ask for a voluntary certification mark and from products that were purchased in shops subject to CE marking based on self-declaration. For the products with a self-declared CE marking about 82% of the samples were non-compliant.

¹⁵ Directive 2001/95/EC on general product safety (GPSD)

it is considered a toy, and hence falls under the Toy Safety Directive and so must bear CE marking. For a consumer products need to be safe regardless of which directive applies and whether the product carries CE marking or not.

Moreover, how would consumers make the distinction between products bearing the CE marking because of supposed compliance with accessibility requirements, and products bearing the CE marking because of supposed compliance with safety requirements? And what about the products which already carry the CE marking? Are they already accessible? Or the products which fall out of the scope of the draft Directive but which would need to have the CE marking for other requirements (e.g.: safety, eco-design)?

We propose removing CE marking from the products that require it and including it in the related technical documentation (declaration of conformity for market surveillance authorities to check). CE marking should not be visible to consumers as it is not intended for them and is often misunderstood.

Not only market surveillance authorities but also consumers should be informed about the lack of accessibility requirements of a products or service because the economic operator assessed compliance with accessibility requirements would result in a fundamental alteration. We suggest that a mark is developed to inform consumers (e.g.: "No or partial access") and is affixed on products which are not accessible. This new mark should replace the proposed CE mark (see our comments on Article 12) in order to avoid further confusing consumers about the real meaning of CE marking.

Article 17 Market surveillance of products

Experience with the implementation of the EU harmonisation legislation has shown - on a cross-sector scale - certain weaknesses and inconsistencies in the implementation of this legislation, leading to competitive disadvantages for economic operators complying with the legislation, not to mention non-compliant products. New rules have been put in place establishing a common framework for the marketing of products¹⁶. We therefore welcome that such rules would also apply to the accessibility of products, where relevant.

Nevertheless we express some concerns about the provision on confidentiality. EU legislation should not be drafted in a way that protects non-compliant economic operators. Those who violate their obligations about accessibility, either by accident or deliberately, through putting inaccessible products and services on the market, should not be able to keep crucial information confidential when it is needed by consumers to identify such products. Such an approach would also

¹⁶ Regulation 765/2008 and Decision 768/2008

prove a disadvantage to reliable economic operators who invest in accessibility and respect the law. We call for a balance between the consumer's right to be informed and the business interest to keep certain information confidential.

The collection of complaints and accidents statistics about the lack of accessibility of products and services should be established and financed at the European level. Such statistics are needed to provide data for elaboration of standards and drive inspections and market surveillance actions about accessibility. Data is also needed to evaluate the effectiveness of measures and the impact of the introduction of a new/revised regulation or standard.

The efficiency of any legal framework on products and services depends on the ability to the European Commission and Member States to identify and recognise problems associated with inaccessible products or services. Member States should be required to contribute to the establishment of the database and its regular updating. Relevant stakeholders - such as consumer organisations - should also have access to the database.

Market surveillance authorities should provide consumers and other interested parties with the opportunity to submit information about potentially non-compliant products and services. Effective complaints handling procedures, including the foreseen obligation for market surveillance authorities to follow up with economic operators on these complaints, should be introduced as they will lead to more effective market surveillance.

Statistics and general information about market surveillance activities on accessibility of products and services by the authorities should be made public.

Article 18 Compliance of services

We believe that the draft Directive should include more than a requirement to 'periodically update'. A specifically stated timeline and clear method for testing and noting compliance is needed in order to be clearly enforceable.

Article 19 Procedure for dealing with products presenting a risk related to accessibility at national level and Article 20 Union safeguard procedure

While we understand that these provisions are taken from Regulation 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products, we are of the opinion that the wording "products presenting a risk related to accessibility" is not appropriate unless the issue concerned entails a safety risk. We think that "products presenting a lack/non-

compliance related to accessibility” is more appropriate and would avoid confusion with safety provisions.

The success of any recall is dependent upon the communication of information to consumers. Hence we call for the early and widest possible dissemination of information to consumers. The results of a notification should be made publicly available in order to protect consumers and to increase consumers’ confidence in the Internal Market.

Currently the Commission publishes a weekly summary of RAPEX safety notifications, which is available to the general public, and which contains measures that have been ordered by authorities as well as voluntary action by economic operators. A similar system should be developed for accessibility of products and services.

We consider the weekly RAPEX reports an important instrument to inform the general public as well as consumer organisations about the level of non-compliance, the relevant product groups and which market surveillance authorities have notified the product and what follow up has been done in other countries.

Furthermore, consumer organisations should receive information beyond that made publicly available, e.g. in order to contribute the findings to standardisation.

Finally, requirements related to the content of recall notices should be defined so as to avoid recall notices being perceived by consumers as advertisements for the products notified.

Article 21 Applicability of accessibility requirements to other Union acts

We would like to see clarification as to how far other legislation and legislative proposals, such as the Web Accessibility Directive, the Audiovisual Media Services Directive, the Universal Service Directive, or existing legislation, such as the TSI-PRM, are affected. It is important that the relationship is clear so that the provisions for accessibility are not lowered or watered down due to interaction or overlap with another piece of legislation.

Article 22 Disproportionate burden

Whilst ANEC considers that all competent authorities should be subject to the same legal obligations on accessibility, we understand that particular situations might happen where to make a product or service fully accessible would create a disproportionate burden.

Not only the Commission but also consumers should be informed about the lack of accessibility requirements of a products or service because the competent authority assessed compliance with accessibility requirements would result in a disproportionate burden. We suggest that a mark is developed to inform consumers (e.g.: "No or partial access") and is affixed on products which are not accesible. This new mark should replace the proposed CE mark (see our comments on Article 16) in order to avoid further confusing consumers about the real meaning of CE marking.

Article 24 Committee procedure

In addition to the Committee proposed, we suggest setting up a standing Expert Group composed of relevant EU stakeholders (including economic operators and societal stakeholders) to provide input and feedback.

Such a group would enable a coherent and regular dialogue between European stakeholders, the Commission, and market surveillance authorities, with a view to:

- provide input about accessibility assessment methods and priority settings for both market surveillance and import controls;
- detect problems and needs, collect expertise and views on areas of concern (implementation at national level) as well as concrete suggestions for the elaboration of a general methodology of compliance and assessment.
- provide feedback on guidance documents for the market surveillance authorities and economic operators.

Article 25 Enforcement

Adequate funding is central to unleashing this proposal's potential to meet the objectives of removing barriers to the accessibility in the Internal Market. Member States should provide market surveillance authorities with the necessary resources to carry out their tasks. Sharing resources and the deployment of best practices of market surveillance are to be considered.

Article 26 Penalties

We emphasise that such penalties must take into account several criteria such as being proportionate and dissuasive, the level of infringement, illegal profits and potential damage to consumers. Member States should be encouraged to earmark infringement fines to fund at least part of market surveillance authorities' activities.

Article 27 Transposition

Since most products and services under the proposed Directive are related to ICT – a fast-evolving market with a relatively short lifespan – the suggested transition phase of six years is too long. ANEC believes that the implementation period should be significantly shortened to two years.

Article 28 Report and review

We think that the first report about the functioning of the draft Directive should be done after three years, and not five as proposed, because most of the products and services under the scope are related to ICT – a fast-evolving market with a relatively short lifespan.

The Commission should assess and report about the inclusion of additional products and services in the scope of the Directive as well as the functioning of Article 12 and 22 (disproportionate burden).

Annex I-III

The Annexes of the Directive give details about the functional accessibility requirements mentioned in Article 3 of the Directive (Annex I), and the process and documentation on how the manufacturer (Annex II) and the service provider (Annex III) can assess and prove compliance with the accessibility requirements. We reserve our comments on the Annexes for once the scope of the Directive will be clarified.

ENDS.

About ANEC

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment, as well as related legislation and public policies.

ANEC was established in 1995 as an international non-profit association under Belgian law and is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.



Raising standards for consumers

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