European Accessibility Act – Common arguments and possible responses

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Purpose

This document has been prepared by the EDF secretariat in order to support EDF's members in their lobbying efforts vis-à-vis their national governments on the European Accessibility Act. Since certain questions and arguments have come up repeatedly, this document will help to prepare counter-arguments and give information to explain why the Accessibility Act is needed and how it can be done.

This document is evolving and can still be extended – if you have other issues that are not covered yet, feel free to get back to us so we can make it as helpful as possible for your purposes.

Common arguments used by decision makers

1) Making everything accessible would cost a lot of money and is not feasible.

The Accessibility Act is based on the principle of free movement of goods and services in the Internal Market so we can also expect these economically-based arguments against the Act.

It is difficult to counter-argue as we don't have the necessary data and statistics to disprove this claim. However, we can say for example that by making products and services more accessible, more people will also buy those products and services which will increase profits for the manufacturers. Talking about the cost of exclusion is also part of this.[1]

You can use the web accessibility case as a business case if needed: https://www.w3.org/WAI/bcase/

Instead of focusing on the cost as a burden, you can also highlight that the Accessibility Act will foster innovation and make the EU more competitive on the world market. At the moment, the US produces a lot of accessible products (e.g. the iPhone with mainstream accessibility features) which means that many EU companies have to compete with this.

And of course, above all these market-based arguments is the principle that accessibility is a human right and that the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) requires accessibility to me mainstreamed in all EU legislation so that the Act is actually helping Member States to fulfil this requirement that they have anyways.

The Act can also be used as a tool to implement existing national legislation about accessibility of the built environment (for example the Belgian law of 1975). Furthermore, mainstream accessible products and services will also enable persons with disabilities to actively participate in the labour market, which is good for the economy.

[1] A classic – although quite old - approach of the present theme is developed in this text: http://www.independentliving.org/cib/cibrio94access.html

In addition to the above, there are several Member States which have already set timelines for the implementation of accessibility, especially in infrastructure, such as Greece (the New Building Code imposes the implementation of accessibility to existing buildings open to the public till 2020) or France (according to the law of 11 February 2005), while the EU Funds 2014-2020 impose also the implementation of accessibility to every action funded by them (see article 7 of the Regulation 1303/2013), a fact that constitutes a great challenge not to be missed. EU Funds could also be used as a source to cover accessibility's costs.

2) We already have national legislation that covers accessibility.

This is indeed tricky because of course we do not want the Act to water down existing national legislation that might be more ambitious. For this, EDF will lobby to include a clause that will make it possible to go beyond the provisions of the Act. It is important to remember that this will be a **minimum** requirement.

But beyond this issue, as mentioned above, the harmonisation on EU level has the advantage that products and services can then be sold and bought everywhere in the EU. This also increases choice for the consumers and expands the potential market of the providers and manufacturers as well as their export potential.

3) The scope of the Directive cannot be broadened because there is no legal base to include the built environment or transport in the Act.

In the Commission's own Impact Assessment (a very detailed study which was done before drafting the proposal which explores all the different products and services that could possibility be included in the Act), it is shown that including "accommodation services" and transport in the proposal.

In the proposal for the Act, those aspects have been removed, seemingly at the last moment. Therefore it was probably a purely political decision to remove them and there is no legal argument against to putting them back in the text.

Instead, it is important to point out that having a very weak requirement on the built environment – the Commission calls it "enabling clause" because it is completely voluntary and does not create any obligations for Member States or manufacturers – also jeopardizes the effectiveness of the other accessibility requirements.

For example, what is the point of having an accessible ATM or ticketing machine if the bank or the station have steps at the entrance? Therefore, EDF believes that this is a fundamental aspect of accessibility which has to be included.

4) The accessibility requirements are too strict and it will not be possible to transform all products that already exist.

This is mainly used by the industry to weaken the accessibility requirements in the Annex of the Act. However, there are some very good and easy counter-arguments you can use.

First of all, not all products and services that exist are covered by the Act. In fact, the selection is quite small at least compared to what EDF expected. Many of the products and services listed there are related to Information and Communication Technology (ICT) and they have a fairly short life-span anyways; i.e. when developing new products the cost of making it accessible is also lower than upgrading existing products. Furthermore, accessible websites or accessible apps already exist and it is technically not difficult to make this available for mainstream products and services.

Then, there is of course the clause in Art. 12 of the Act that refers to a "disproportionate" burden imposed on the manufacturer. This already means that manufacturers can get exemptions from making their products accessible if this is "disproportionate" or would mean a "fundamental alteration" of the nature of the product. (Of course, EDF does not like this clause but as the proposal stands now, it is included).

[For discussions with the industry but NOT with the government you can also add that Member States are supposed to provide the necessary resources to implement the rules. In this case also, EU Funding 2014-2020 could be used to support the relevant process]

5) Will the Accessibility Act mean that all products will need to meet the accessibility requirements? What about products designed for specific disability groups and assistive technologies?

The Accessibility Act does not interfere with the assistive technology market. Products specifically designed or beneficial for a given group of people will continue to exist in the market. For instance, a telephone specifically designed for older people or persons with intellectual disabilities will not need to include other accessibility requirements if that would impose a fundamental alteration of the product.

6) We are already getting the new legislation on Web Accessibility, why do we need a separate Act?

The Web Accessibility Directive, which is likely to be adopted before the autumn, only covers the websites and apps of the public sector (excluding public broadcasters' websites). It does not concern private companies at all.

The Accessibility Act is much broader in scope and also covers websites of private services, such as online shopping, transport services and banking services. The accessibility requirements for websites will remain the same in both directives; therefore our goal is to make sure that there are no gaps between these two.

7) We already have the proposal for an Equal Treatment Directive which covers accessibility.

The proposal for the 2008 Equal Treatment Directive covers accessibility to complement the reasonable accommodation provision. It does not give as detailed and extensive accessibility requirements as the Accessibility Act does. Therefore, the two proposed Directives complement each other but are not at all covering the same things.

Also, the Equal Treatment Directive has been blocked in the Council for almost eight years now (since 2008) so there was the need for new instrument with a different approach.

8) As the Equal Treatment Directive has not been adopted by the Council yet and it has been eight years, what makes you think the Act will be adopted anytime soon?

The Act and the proposed Equal Treatment Directive have different legal bases. The Act is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU), which deals with the Internal Market. The proposed Equal Treatment Directive is based on Article 19 TFEU which is about non-discrimination. The difference is that for the Internal Market, only a qualified majority is needed in the Council whereas for non-discrimination unanimity is required, which is of course much harder to achieve.

While the legal base of the Act also creates new difficulties for EDF, the “lighter” legislative procedure is an advantage and makes it more likely to be adopted quickly.

9) What about the CE marking? Why is this important?

CE marking is meant to be put on the product by the manufacturer to declare that the product complies with certain EU legislation. CE marking also stands for the safety and quality of a product – for persons with disabilities and older people, accessibility is closely connected to these aspects. Therefore, when this Directive is adopted, the CE marking of the products covered by the scope of the Accessibility Act will also mean that they meet the accessibility requirements of this Directive. By putting the

CE marking on the product, the manufacturer declares full responsibility for their products.

From a users' perspective it does not have a great added value (people will not know whether a product is accessible by looking for the CE mark, as this is also used for other regulations, e.g. safety, health, environmental requirements). However, 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.

By keeping the CE marking we will maintain a strong enforcement and monitoring mechanism by national authorities at the same level as other EU requirements for products in more developed domains such as health or environment.

Having said this, it is true that we will need to improve the labelling of the products and services covered by the Directive (CE marking only applies to products) in order to easily know which products are accessible.

To sum up

With the all the arguments about costs and economic benefits we should always return to the fact that the Member States have signed the UN CRPD and already made a commitment to more accessible products and services. The Act facilitates the implementation of the UN CRPD and it is thus not a question of profit but of the rights to access and to inclusion in society.

Contact

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Funded by
the European Union