



AUTISM-EUROPE'S RESPONSE TO THE PROPOSAL FOR A EUROPEAN ACCESSIBILITY ACT

1- Introduction

Autism-Europe is an international association whose main objective is to advance the rights of people with autism and their families and to help them improve their quality of life. We ensure effective liaison among more than 80 member autism organisations over 30 European countries, including 25 Member States of the European Union, governments and European and international institutions. We also play a key role in raising public awareness, and in influencing the European decision-makers on all issues relating to the rights of people with autism and other disabilities involving complex dependency needs.

Autism is a lifelong developmental disability that affects how a person communicates with, and relates to, other people. It also affects how they make sense of the world around them.

It is a spectrum condition, which means that, while all people with autism share certain difficulties, their condition will affect each individual in different ways. Some people with autism are able to live relatively independent lives but others may have accompanying learning disabilities and need a lifetime of specialist support. People with autism may also experience over- or under-sensitivity to sounds, touch, tastes, smells, light or colours. 1% of the European Union is on the autism spectrum.

Article 9 of the UN Convention on the Rights of Persons with Disabilities on accessibility require State Parties 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.”* It makes specific reference to ensuring access to “communications, including information and communications technologies and systems” on an equal basis with others. **For persons with autism, access to communication that takes into account their specific requirements is something that is greatly needed.** Making communication accessible to persons with autism goes beyond simply translating information into an easy-to-read format or using pictograms, but would additionally require a transition towards more simplified structures and processes when developing new goods and services.



Autism-Europe and its members welcome this long awaited proposal and recognise its potential for bringing about a positive impact in the lives of persons with disabilities. The adoption of the EAA is a positive response to the recommendation of the UN CRPD Committee, put forward in the Concluding Observations last year.

We would also like to voice our **satisfaction with the fact that this act comes in form of a Directive**, meaning it will eventually become a binding legislative act for all EU Member States. However, we would like to underline that further attention must be paid to the scope of the act, as well as measures for its enforcement. **Greater precision must also be employed when presenting accessibility requirements** to avoid a loose interpretation and to allow an efficient transposition of the Directive. .

In this paper we aim to highlight the aspects of the proposed Directive that we find to be the most in line with the needs of disabled people, with special attention given to the needs of people with autism, while at the same time pointing out where there is room for improvement. In this spirit, we would therefore like to make the following comments on the proposal:

➤ **SCOPE (ARTICLE 1)**

- Legal Basis

The legal basis proposed is Article 114 of the Treaty on the Functioning of the European Union (TFEU). By choosing article 114 of the Treaty on the Functioning of the European Union as the legal basis, the purpose of the EAA is to avoid the fragmentation of the EU market due to a lack of harmonised legislation and to create more market opportunities for businesses. It is also anticipated that the EAA can reduce the cost of accessible products and services and have a positive impact on public budgets in the long-term, by reducing the dependency of older and disabled persons as announced by the European Commission. As a consequence, the EAA proposal states that the planned directive is expected to have a “positive impact on several rights recognised in the Charter of Fundamental Rights of the European Union”. In order for the Directive to be effective and have a meaningful impact on the lives of people with disabilities, it is **necessary that the Directive provides very clear and precise criteria for the harmonisation of accessibility requirements in order to ensure the effectiveness of the rights of people with disabilities.**

It is also key that the enforcement mechanism is strong, coherent, resourced and accessible in order to monitor the obligations related to accessibility defined for economic operators.



Autism-Europe welcomes the fact that products and services related to Information and Communication Technologies are covered extensively in the EAA. However, there is a lack of clear definition for equipment described as “(d) consumer terminal equipment with advanced computing capability”. Depending on the definition, it may exclude for example feature phones that are not smartphones, land line telephones, audio-visual media services driven by consumer terminal equipment with simple computing capability. This is not in line with the General comments of the CRPD on Article 9, which calls for a wide range of access technologies to be covered.¹

Using Article 114 TFEU as legal basis, the scope of the products and services covered can be broadened to other areas, such as health. Accessibility to health services can be improved for people with autism, within general healthcare facilities, such as the accessibility of the healthcare environments, avoiding excessive waiting time, as well avoiding noisy and confusing settings which can all prove distressing for autistic people. To be truly accessible, patients with autism should also be offered ongoing personal support during all the phases of healthcare in public or private services, including hospitalisation or day care, by parents, personal assistants, or other skilled professionals provided by the health services.

Autism-Europe believes that the scope of the Act should also be extended to the built environment, which in the EAA proposal is merely introduced as an enabling clause in Article 3. This article should address access to the built environment more directly, using as its basis the [Impact Assessment](#) conducted before the AEE proposal was published. Without Access to the built environment access to other products and services, no matter how accessible they are, might in many cases remain impossible. For persons with autism, access to the built environment focuses particularly on providing orientation signs that can be processed and

¹ According to the General comment on the article 9 - 5. While different people and organizations understand differently what information and communications technology (ICT) means, it is generally acknowledged that ICT is an umbrella term that includes any information and communication device or application and its content. Such a definition encompasses a wide range of access technologies, such as radio, television, satellite, mobile phones, fixed lines, computers, network hardware and software. The importance of ICT lies in its ability to open up a wide range of services, transform existing services and create greater demand for access to information and knowledge, particularly in underserved and excluded populations, such as persons with disabilities. Article 12 of the International Telecommunication Regulations (adopted in Dubai in 2012) enshrines the right for persons with disabilities to access international telecommunication services, taking into account the relevant International Telecommunication Union (ITU) recommendations. The provisions of that article could serve as a basis for reinforcing States parties' national legislative frameworks.

followed easily, accommodation to clarify the environment, and appropriate use of alternative/augmentative communication modes.

Autism-Europe also considers skilled assistance to communication, in the form of easily available staff to support orientation, to be necessary to ensure people with autism can fully access public buildings including schools and public offices, can avoid problems navigating public transport, train stations and airports, and can enjoy social activities in theatres, cinemas and sports complexes.

Importantly the Directive only applies to products and services that will be newly developed. Thus it would mean that existing products and services will not have the obligation to be made accessible and will continue to exclude a part of the population from using them in their everyday life. Autism-Europe considers that current goods and services should also be made gradually accessible.

Furthermore, Autism-Europe has noted that “**consumers and other-users**” are mentioned in articles 5, 7 and 8. However “end-users” are not systematically mentioned in other articles. To ensure coherence, we suggest to mention them throughout the document, for example in articles 3.5 (Accessibility Requirements), Article 17 (Market surveillance of products), 25 (Enforcement).

➤ **DEFINITIONS (ARTICLE 2)**

Autism-Europe would like to see a definition of “accessibility” included in the Proposal. The proposal should lay down a comprehensive and complete definition of “universal accessibility” covering all aspects of accessibility, **including cognitive, psychical and sensorial accessibility**, in conformity with article 9 of the Convention on the rights of Persons with Disabilities.

➤ **ACCESSIBILITY REQUIREMENTS (ARTICLE 3)**

According to our comments on article 2, accessibility should not be focused only on persons with physical disabilities but **accessibility requirements must also include the adoption of**

clear criteria to guarantee all types of accessibility, including cognitive, psychical and sensorial. Thus **we welcome the requirements listed in Annex 1** that can be directly linked to accessibility needs of people with cognitive disabilities, **however we believe they should be better described, more detailed and also more systematically included throughout the Annex 1 to the goods and services mentioned.** Without a clear and precise wording of the accessibility requirements, the transposition of the text of the Directive will be rendered inefficient.

The requirements for the built environment are insufficient, stating that Member States “may decide” to include the built environment if it is related to the provision of the product or service. This can be strengthened by requiring that the related built environment must be accessible as it will not make a difference for persons with disabilities that a service or product is accessible if they cannot physically or **cognitively** have access to it.

With regards to persons with autism, special attention must be paid to providing signals in plain language and to the use of pictograms. This should be made available, for example, on the user interface of self-service terminals (at cash machines in banks or ticket machines in train stations for example). In addition to this, it should also be a requirement to give persons with disabilities the possibility to seek assistance from the staff of the service provider.

➤ **FUNDAMENTAL ALTERATION AND DISPROPORTIONATE BURDEN (ARTICLE 12):**

Article 12 of the proposed Directive discusses the issue of disproportionate burden. In paragraph 3 of this article, it is outlined on the subject of disproportionate burden that economic operators should take into account “(a) the size, resources and nature of the economic operators” and “(b) the estimated costs and benefits for the economic operators in relation to the estimated benefit for persons with disabilities, taking into account the frequency and duration of use of the specific product or service”.

Autism-Europe thinks that some clear criteria should be established to define and measure the concept of “disproportionate burden” as well as “fundamental alterations” and to avoid abuses or misunderstandings.

In the Proposal the issues (art. 12.3) to be taken into account by economic operators to assess the compliance with accessibility requirements are not complete and not well defined. If this is

not amended, many operators will be able to justify the lack of compliance with these requirements by using the ambiguous excuse of “disproportionate burden”.

➤ **PRESUMPTION OF CONFORMITY (ARTICLES 13-15):**

In our opinion, this concept remains unclear in the Proposal; we recommend explaining in detail the situations in which this presumption can take place.

➤ **GENERAL PRINCIPLES OF THE CE MARKING OF PRODUCTS (ARTICLE 16):**

Annex II of the draft EAA provides detailed information on the conformity assessment procedure of products. The European Commission has chosen to apply the ‘CE-marking’ to signal compliance with accessibility standard, a system already in place under Regulation (EC) No 765/2008¹⁰. It is applied to products that are placed in the EU internal market. However, the CE marking seems insufficient to guide consumers on which products are accessible to persons with disabilities. Indeed, the Directive will apply to products and services that are newly developed, thus it will entail a confusion with products that are already on the market. Autism-Europe therefore recommends that the European Commission should introduce a separate marking system to clearly show consumers which products comply with the provisions of the EAA. The later should be clear and easily identifiable.

➤ **ENFORCEMENT (ARTICLE 25)**

Article 25 of the Directive proposal states that “Member States shall ensure that adequate and effective means exist to ensure compliance with this Directive”. Autism-Europe considers that emphasis should also be put on the need for monitoring by the competent authorities in Member States to take place on a regular basis, and to systematically sanction non-compliance.

It is mentioned that “public bodies or private associations, organisations or other legal entities which have a legitimate interest [...] may take action under national law before the courts or before the competent administrative bodies”, given the challenges many persons with



disabilities face when trying to access the justice system itself, this provision does not seem to offer a real possibility of sufficient action against non-compliant economic operators.

➤ **TRANSPPOSITION (ARTICLE 27)**

Autism-Europe considers that a period of 6 years is too long for the application of the Directive. Such a long period is not ambitious enough in our view to transpose the Directive, in particular for ICT related products, evolving quickly.

➤ **ANNEX I (ACCESSIBILITY REQUIREMENTS):**

Annex 1 is an essential part of the Directive, because it provides accessibility requirements. It should thus be sufficiently detailed, precise and explicit to ensure that the implementation of the Directive is coherent and effective. **Autism-Europe considers that more specific and detailed requirements should be included to respond to the needs of people with autism. Accessibility requirements for people with autism should also be applied to all products and services listed in the annex.**

The “Must be understandable” requirement is too vague since it could be interpreted only as “easy-to-read” to respond to the needs to people with intellectual disability, which would not necessarily accommodate the needs of all people with autism. It should be therefore further specified. It should also be included in all the sections where it is currently not mentioned under the sections of Annex 1.

Autistic people may need pictures and symbols, so we advise replacing the wording “the information content shall be available in text formats” by “the information content shall be available in text, **pictures and pictograms**”.

Echoing Inclusion-Europe’s position, **pictograms**’ are important requirements to fulfil the accessibility needs of persons with intellectual disabilities, therefore we also suggest adding under:

- Section 1 ‘User interface and functionality design’: ‘provide pictograms and other alternatives to text, including voice and easy-to-read’;

- Section 3 'Services' and 'Related terminal equipment with advance computing capability used by consumers': 'provide signals in pictograms and other alternatives to text, including voice and easy-to-read';
- Section 5 'Websites used for the provision of passenger transport services'.

- Under Section V on 'Air, bus, rail and waterborne passenger transport services; websites used for provision of passenger transport services; mobile device-based services, smart ticketing and real time information; self-service terminals, ticketing machines and check-in machines used for provision of passenger transport services', and under Banking services, Mobile device-based banking services (Section VI), especially to Mobile device-based banking services and user interface and functionality design, we suggest adding: **'alternatives to text content, that include text to pictogram, text to voice or text to easy-to-read'**.

Idem, in the built environment, the requirement for "communication and orientation via more than one sensory channels" should consider specifying the need for clear sign-posting for people with autism, with the use of pictograms and tools that facilitate the person's mobility across the environment without getting lost. This sign-posting should allow to access personal assistance.

Concerning the web accessibility requirement contained in Annex 1 (Section IX, Part B – Services), it is requested to achieve accessibility by "making websites accessible in a consistent and adequate way for users' perception, operation and understanding". "Cognitive load" should be added as a requirement, as often online services make cascading demands on cognitive resources, creating an overload that makes extrinsic and intrinsic cognitive processing unnecessarily difficult.

Access to personal assistance from the staff or services providers should also be granted for people with disabilities when using user interface or to navigate the built environment. Assistance should be considered as a measure to enhance accessibility for people with disabilities. Personnel involved in providing services should also receive adequate training on how to facilitate accessibility. Likewise public authorities in charge of monitoring the services should receive specific training. These are necessary conditions to ensure a more accessible access to goods and services for people with disabilities.



Conclusion

Autism-Europe welcomes the publication of the Accessibility Act. In order for the Accessibility Act to have a real impact on the lives of people with disability and to address the barriers to access goods and services, the accessibility requirements need to be clear and detailed. They also need to address the diversity of accessibility needs of people with disabilities, including for people with autism. Autism-Europe intends to pursue its cooperation with interested stakeholders to support further improvement in the text of the European Accessibility Act.

AUTISM-EUROPE aisbl

Rue Montoyer 39

Brussels 1000

BELGIUM

Tel: +32(0)2.675.75.05

Fax: +32(0)2.675.72.70

Email: [secretariat\(at\)autismeurope.org](mailto:secretariat(at)autismeurope.org)

www.autismeurope.org