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# Standardisation is key to the success of the European Accessibility Act

## Recommendations

The European Accessibility Act (EAA) sets EU-wide accessibility requirements on many products and services. While recognising standardisation as means of compliance with the requirements, the Act's provisions do not ensure that the standardisation process will be carried out effectively.

To ensure that standardisation best supports the implementation of the Accessibility Act, DIGITALEUROPE recommends the following:

- ▶▶ **The Commission should release the standardisation request(s) no later than January 2020.** This would give European standardisation organisations (ESOs) sufficient time to draft quality standards and allow the industry to implement these standards into their development processes by 2025.
- ▶▶ **Technical specifications cannot and should not replace standards.** Technical specifications should only be used as last resort – after all standardisation options available have been exhausted.
- ▶▶ **The Commission should provide its definition of “undue delays”** in the standardisation process and explain what it would mean in practice. The industry and ESOs need certainty that the mandate would not be withdrawn without a sensible reason.
- ▶▶ **The digital industry should be consulted on the standardisation process.** As the ICT industry is the only sector fully in the scope of the Accessibility Act, DIGITALEUROPE should be informed and involved in the standardisation process, from the early stages.
- ▶▶ **Commission HAS consultants should be involved in the standardisation process** from the very beginning, to provide comments and input throughout the standardisation work, to resolve technical issues and minimise potential delays.

DIGITALEUROPE looks forward to working with the Commission to discuss and implement the above proposals to ensure that ICT products and services will be even more accessible.



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## Reasoning

### Relationship with the NLF

The European Accessibility Act<sup>1</sup> sets provisions which deviate from the spirit of the New Legislative Framework (NLF). The NLF is based on the principle that presumption of conformity of products and services to the EU legislation may be demonstrated through compliance with harmonised European standards. This is the most common and reliable approach to conformity assessment with NLF legislation. However, the Act sets provisions that may complicate or prevent the adoption of harmonised standards (cf. EAA article 15).

### Standardisation timeline

To draft harmonised standards, European Standards Organisations (ESOs) need to receive a standardisation request (‘mandate’) from the European Commission. The Act allows the Commission to release a mandate up to 2 years after the entry into force of the Directive, up until June 2021, which greatly reduces the time remaining for ESOs to draft the standards in collaboration with all Member States and stakeholders. As standard drafting may take several years, especially for legislation as complex as the Accessibility Act, we suggest that the Commission releases the mandate within 6 months after the publication in the OJEU, instead of 2 years – which means no later than January 2020.

Without enough time, it is likely that no standards would be available when the accessibility requirements enter into force in 2025 – even though companies would need up to 2 years to implement standards into their testing and manufacturing processes. The option to demonstrate compliance through the familiar route of harmonised standards would then be unavailable. This could complicate the implementation of the Act as companies, authorities and consumers are hindered without the valuable reference point of a harmonised standard. This scenario already happened, for instance with the Radio-equipment directive.

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<sup>1</sup> Directive 2019/882 on the accessibility requirements for products and services (European Accessibility Act) <https://eur-lex.europa.eu/eli/dir/2019/882/oj>

In the accessibility field specifically, the ICT industry has already been confronted to significant time constraints in the development of harmonised standards under Commission's mandate 554. Mandate 554 was released in April 2017 to request a harmonised standard under the Web Accessibility directive<sup>2</sup>, which sets accessibility requirements for websites and mobile applications of public sector bodies. The work on the harmonised standard EN 301 549 V2.1.2 for the Web Accessibility directive was carried in about 17 months – for the standard to be ready by September 2018, deadline for transposition in Member States. The industry acknowledges that releasing the standard in such a short timeframe was extremely challenging and that additional standardisation time would have proven useful. Yet in that specific case, the mandate was released only 5 months after publication of the Directive in the Official Journal of the European Union, which ensured that the standardisation process was feasible, albeit challenging.

For the standardisation work of the Accessibility Act, which is expected to be more complex, ESOs and stakeholders such as the ICT industry will need additional time. A swift release of the mandate, within 6 months after the publication of the Act in the OJEU, would greatly help reducing time uncertainty.

- ▶ **Our recommendation:** The mandate should be released within 6 months after publication in the OJEU, by January 2020. This would ensure a fast take-up of the issue by ESOs and a seamless implementation of standards by the industry, ahead of the June 2025 compliance date.

## Technical specifications & “undue delays”

The Accessibility Act, in its article 15, states that if there are “undue delays” in the standardisation procedure, the Commission may withdraw the mandate and draft mandatory technical specifications instead of harmonised standards. These technical specifications would be developed outside the well-established governance system set in place to develop European Standards and may be incompatible with the code of good practice for the preparation, adoption and application of standards of the WTO TBT Agreement<sup>3</sup>. Specifically, as such technical specifications are not necessarily created in collaboration with industry, they may not be easily implemented.

The vagueness of the term “undue delays” will lead to high uncertainty for ESOs and industry, especially if the mandate has been released late and time is running out. In the Act, a recital (n°76) also states that an “undue delay” may happen if the Commission does not publish a reference to a harmonised standard because it considers that the draft standard does not satisfy the requirements which it was supposed to cover. This means that an “undue delay” may be two-fold: an unspecified lateness in the process or a lack of

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<sup>2</sup> Directive 2016/2102 on the accessibility of the websites and mobile applications of public sector bodies <https://eur-lex.europa.eu/eli/dir/2016/2102/oj>

<sup>3</sup> WTO Technical barriers to trade [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm)

quality of the draft standard. We encourage the Commission to exchange with ESOs and industry to better define “undue delays”.

- ▶ **Our recommendation:** The Commission should specify what an “undue delay” is for its services and in which circumstances this provision of the Act would be used. DIGITALEUROPE believes that it should be used only in exceptional cases, where there is a proven failure of the standardisation process, and after agreement from all parties (including the industry).

ESOs have expertise and a track record of producing quality accessibility standards (such as EN 301 549), which makes them most suitable to draft standards supporting the implementation of the Accessibility Act. Moreover, industry is committed to participate in the standards development process. Due to the many advantages of the standardisation process, including the experience and knowledge of its actors, we believe that there is no reason to release technical specifications over harmonised standards.

Additionally, the Act permits the use of technical specifications that meet the Annex II criteria of Regulation 1025 on European standardisation<sup>4</sup>. However, there is no process mentioned to identify such technical specifications and the Act waives the requirement that these technical specifications be developed by a non-profit organisation. This introduces an inconsistency with the identification of other ICT technical specifications carried out by the European multi-stakeholder platform for ICT standardisation and no justification of the waiver is provided.

- ▶ **Our recommendation:** Technical specifications should not replace standards and should be used only if all other standardisation options available have failed. Technical specifications cannot reach the same level of quality as the work done within ESOs, where drafts are reviewed by qualified experts and ultimately endorsed by Member States and the industry.

## Dialogue with industry

All the provisions outlined in this paper may complicate the smooth implementation of the Accessibility Act as they could result in a situation where no harmonised standards are published, and manufacturers and service providers would struggle to comply with the requirements of the accessibility legislation. This would be also the case if the Commission decides to withdraw the mandate and to hastily draft technical specifications which would prove unfit for the industry due to a lack of concertation with stakeholders.

The digital industry has always been a reliable standardisation partner for ESOs and has proven expertise in the field, through participation in the ESOs’ work. We believe that the industry’s and qualified experts’ knowledge and experience in both standardisation and accessibility can greatly benefit the Commission’s implementation work for the Accessibility

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<sup>4</sup> Regulation 1025/2012 on European standardisation <http://data.europa.eu/eli/reg/2012/1025/oj>

Act. Moreover, as companies start preparing to comply with the legislation, full transparency and involvement are needed to ensure the best conditions for a smooth implementation, which will benefit the European consumers that need it the most.

- ▶▶ **Our recommendation:** We call on the Commission to benefit from the existing expertise through ongoing dialogue with the digital industry and its main representative DIGITALEUROPE.

## Commission scrutiny & HAS consultants

These past years, Commission representatives, and Harmonised Standards (HAS) consultants mandated by the Commission have regularly asked for clarifications and changes to draft standards, sometimes rather late in the standardisation process. In some cases, standards about to be published have been questioned, which led to unforeseen delays in the standardisation process and by extension, in the implementation of several pieces of legislation.

For the Radio-equipment directive, no standards were ready when the Directive entered into force, notably because late changes were requested to the draft standards. This is why DIGITALEUROPE encourages the Commission and ESOs to find a system to ensure that comments from HAS consultants, and more generally from Commission services, can be provided and integrated as early as possible during the standardisation process.

- ▶▶ **Our recommendation:** HAS consultants should participate to the drafting of the standardisation request and join the meetings of standardisation organisations, to ensure that they can provide input and comments throughout the standardisation process, to resolve technical issues in draft standards and minimise potential delays.

FOR MORE INFORMATION, PLEASE CONTACT:



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## About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

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