DIGITALEUROPE

4 APRIL 2022

DIGITALEUROPE's recommendations for an effective transposition of the European Accessibility Act

Key messages

- Transposition into national law should **safeguard the EU's single market and respect the spirit of the European Accessibility Act**, notably by avoiding any expansion of the scope and requirements.
- The **list of examples of annex II should remain indicative**, to ensure that companies have enough flexibility to decide on the most appropriate accessibility solutions.
- The **standardisation process should be actively supported** by Member States, as harmonised standards will help market surveillance authorities.
- **Member States should consult extensively** with impacted stakeholders, notably the digital industry.

Introduction

DIGITALEUROPE strongly supports the European Commission's commitment to implement at the EU level the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and to defend the rights of persons with disabilities. In this sense, we welcome the European Accessibility Act (EAA, Directive 2019/882/EU) bringing a harmonised set of rules aimed at improving the functioning of the EU single market for accessible products and services.

In this paper, we outline our key recommendations to Member States in the national transposition process of the EAA to guarantee an effective implementation that maximises the internal market objective and ensures that potential concerns for governments, consumers and entities in scope are successfully addressed and resolved.

These proposed guiding principles for transposition complement previous DIGITALEUROPE recommendations with regard to the effectiveness of the EAA standardisation process.

DIGITALEUROPE
Rue de la Science, 14A, B-1040 Brussels
T.+32 (0) 2 609 53 10 / www.digitaleurope.org / @DIGITALEUROPE
EU Transparency Register: 64270747023-20

Our recommendations

1. Members States' transposition should aim for maximum harmonisation of the EAA

The Directive's stated objectives are to promote the smooth functioning of the EU internal market, by preventing fragmentation in the market of accessible products and services, and removing barriers to their free movement (Article 1; Recitals 8, 11, 16, 104). DIGITALEUROPE firmly believes that to achieve those goals, Member States should aim for maximum harmonisation in transposing the Directive – which means avoiding any expansion of the scope, requirements and related administrative provisions as well as specifying the EAA provisions. The latter also risks to conflict with future standards that aim at specifying provisions in a harmonised way across EU Member States.

More specifically, we caution against possible new provisions which would go beyond the legitimate policy objectives set by EU legislators and the overall spirit of the EAA, which is to encourage companies to continue investing to make their products and services more accessible.

Some discussions at national level consider the possibility to integrate the notion of "product recall" beyond the product withdrawal provided for in the EAA careful examination by EU lawmakers which concluded that broader product recalls are counterproductive. Indeed, many accessibility issues may be quickly fixed via software updates, which allow users to keep using the products and/or services in the meantime. Additionally, recalls should be reserved for risks to health and safety. Particular attention should be also paid to both existing and future sectoral legislation – for instance, media legislation addressing TV interfaces – which could create misalignment with the EAA. Sectoral legislation should be aligned with EAA.

The Directive is intended to fully harmonise EU accessibility requirements (e.g. Art. 1 and Recital 8) and expressly notes the need for "common accessibility requirements and rules" to contribute to the proper functioning of the internal market (Recital 104) and equal access to products and services for persons with disabilities across the EU (Recital 3). The need for maximum harmonisation in Member State transposition laws of the Directive is also apparent from the identified disadvantages and harms to consumers that divergent accessibility requirements amongst Member States would create – which would also negatively affect economic operators, particularly small and medium-sized companies (e.g. Recitals 1, 5, 6, 7, 8).

To prevent fragmentation and promote the EU digital single market goals, DIGITALEUROPE strongly recommends that Member States transpose the text

of the Directive as written, avoiding any departure from its scope and technical requirements.

2. Annex II should only be used as indicative examples, not mandatory technical requirements

Annex II of the EAA contains a list of "indicative *non-binding* examples of possible solutions that contribute to meeting the accessibility requirements of Annex I" (subhead of Annex II) for products and services covered by the Directive. Article 4(7) reaffirms the non-binding nature of Annex II guidance by providing that "Member States may inform economic operators of the *indicative* examples, contained in Annex II, of *possible* solutions to meeting the accessibility requirements" of the EAA.

DIGITALEUROPE strongly recommends that Article 4(7) and Annex II are transposed in a way that fully respects the indicative non-binding nature of the examples instead of being adopted as mandatory implementation of the corresponding technical requirements.

Transposition of Annex II as an indicative list of examples rather than a detailed binding interpretation of the EAA accessibility requirements is essential to ensure a future-proof implementation of the requirements and to avoid hindering innovation by supporting accessibility solutions that best meet the needs of persons with disabilities. This is emphasised by Recital 23, which sets out that the requirements should "leave a certain degree of flexibility in order to allow for innovation".

Because the EAA obligations will apply from 28 June 2025, maintaining the flexibility provided by Annex II, as designed, is critical to ensuring that companies can improve their accessibility solutions as technology develops over the next several years. Adopting overly prescriptive requirements at national level risks blocking innovation in accessibility solutions and producing low-quality outcomes, as companies would be forced to comply with requirements that may be out-of-date or no longer best practices by 2025. It would also deny state-of-the-art technology solutions for the benefit of persons with disabilities.

We encourage the timely standardisation process through ESOs where dialogue between stakeholders (industry and DPOs) happens.

3. Support the standardisation process

As with other EU legislation under the New Legislative Framework (NLF), the identification and drafting of European harmonised standards will be crucial to help companies prove compliance to the EAA, as it is the most common and reliable approach to conformity assessment. Using harmonised standards also

simplifies the work of market surveillance authorities, as they know that most companies will be using the same standards and not differentiated methods, much harder to scrutinise. Last but not least, the application of common standards across EU Member States support maximum harmonisation and a digital single market.

This is why we bring to the attention of Member States the risk of not providing sufficient support to standardisation processes for the EAA. This would risk undermining the efforts of the standardisation organisations (ESOs), within which industry representatives have provided and will continue to share their expertise. 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 EAA's implementation. Moreover, the 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, Member States should not release technical specifications over harmonised standards.

If no harmonised standards are developed, or if they are delayed, this would unnecessarily complicate national enforcement, especially as market surveillance authorities would be confronted for the first time with a market access legislation dealing with accessibility and accessibility requirements. In fact, a lack of progress on harmonised standards will create fragmentation that will be difficult to manage, confusing for consumers and technology businesses alike and make trade within the EU more complex than it ought to be.

Additionally, setting new requirements or mandatory solutions into transposition law (cf. sections 1 and 2) would also complicate the standardisation processes at European level, as diverging requirements would likely not be covered by harmonised standards.

Conclusion

Companies developing ICT products and digital services have been, and continue, to be pioneers in accessibility, striving to innovate and ensure that most people can use their products and services. To keep doing this, they need certainty and predictability: only a correct transposition of the EAA in Member States will achieve that goal.

FOR MORE INFORMATION, PLEASE CONTACT:

Martina Piazza

Officer for Technology & Innovation Policy

martina.piazza@digitaleurope.org / +32 049 3098741

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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