

# DIGITALEUROPE's Comments on the Proposal for a European Accessibility Act

Brussels, 2 February 2016

Member companies of DIGITALEUROPE agree with Commissioner Thyssen's statement that "disability should not be a barrier to full participation in society<sup>1</sup>", and share with the European Commission the view that innovation on accessible products and services is key to social and economic inclusion. As a matter of fact, digital technologies have enabled wider participation in work, social and leisure activities. Everything from home working and online shopping to social media has improved engagement and provided new opportunities for these consumers.

The ICT industry has had a leading role in developing and implementing accessible solutions. In an effort to improve the understanding of accessibility needs and further accessibility solutions, DIGITALEUROPE members cooperate with a number of different stakeholders and umbrella organisations. So far intense competition, industry-led self-regulatory initiatives, self-commitments and voluntary standardisation activities have led to the rapid spread and improvement of accessibility features<sup>2</sup>.

DIGITALEUROPE supports the development of a coherent global market for accessible products and services, and we believe the most effective way to realize this is through the development and adoption of international convergent solutions. This includes consistency with other large markets, such as the United States. Moreover, our members consider that functionality and technological neutrality should be the principles for drafting a future-proof regulation.

We are glad to be given the opportunity to comment on the European Commission's draft proposal, and we wish to contribute further to the process in order to clarify the implication of the provisions for economic operators. The following comments cover some of the broad areas of our concerns:

## 1. Proposed Alignment to the New Legislative Framework

DIGITALEUROPE notices the intent of the European Commission to base the entire proposal on the principles of the New Approach and New Legislative Framework (NLF) whose primary function is to regulate the safety and environmental compliance of products. However, for the reasons outlined below, we consider the full alignment to the NLF and the use of CE-marking inappropriate to achieve the aim of the Directive:

The use of traditional market access tools (used e.g. for safety requirements) in this case does not seem to have undergone a real cost-benefit analysis in the conducted impact assessment. We foresee that the administrative burden created by the proposed new requirements will lead to increased prices for all consumers and economic operators. In the end, this may even further exclude those consumer groups whose cause this legislation wants to champion.

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1 European Commission, Commission proposes to make products and services more accessible to the disabled persons, Press Release, 2.12.2015

2 For instance, several manufacturers contribute to the GARI database – [www.gari.info](http://www.gari.info) - an online reporting tool and public database for the accessibility features available on individual mobile devices

If adopted, DIGITALEUROPE sees potential issues with the enforceability of such complex requirements, which would be difficult to verify and test by Market Surveillance authorities. It would require substantial investments in a new area of activity for national enforcement authorities, which could ultimately hinder the effectiveness of the Directive.

The NLF and CE-marking have been shown to be applicable to physical goods and supply chains but its use for services, software, and websites is unprecedented, and if implemented could not leverage the existing processes that companies have in place for showing conformity. E.g. for websites, which often change on a nearly continuous basis, the concept of CE-marking and corresponding Declaration of Conformity, representing compliance at a particular point in time, is impractical. Additionally, there is the risk that certain products could not be introduced at all into the European market, such as for example big data visualisation and specific assistive technologies, if there are no known ways to make them accessible to all users.

In general, offering the best product by responding to a specific disability or by taking advantage of the latest technological innovation might not be possible when confronted with a blanket requirement for every product to have all the same accessibility requirements. For this and the various reasons outlined above, the use of CE-marking in this area might not fulfil its intended promise. We would therefore suggest to the EU legislators to investigate other regulatory solutions, including only a partial alignment with the NLF. Such a framework should take into account that complete conformity of products, services, and software products with accessibility requirements cannot be guaranteed all of the time. Known accessibility exceptions in a product should be tolerated using a “best meets” approach.

## 2. Scope

In our opinion, the various products and services identified by Article 1 are often too generic and do not give the digital industry the necessary clarity to know which products and services offered would be covered or not. For example, the terms ‘general purpose’ [Art 1.1a] and ‘advanced computing capability’ [Art 1.1 c, d] are subject to different interpretations, and may have different meanings today versus when the legislation will come into effect. Some of the definitions need to be defined much more precisely, as concepts such as e.g. e-commerce and e-books are potentially very broad. In our view, B2B is not and should not be included in the scope of this Directive, as employer responsibility legislation in this area already exists to drive a demanding market, and the integration of B2B e-commerce solutions extends into many other functions including physical functions such as warehousing and logistics.

Beyond this needed clarity, we believe definitions should be flexible enough to accommodate technological evolution. The scope covers today’s products and services but it might struggle to be fit for the future. It could fail to address the increasingly converged and complex digital environment that will be the status quo at the time the rules come into effect, sometime after 2022. Ticket and check-in machines, for example, are already being replaced by applications for mobile devices. The ICT industry has a strong track record for rapid change in form factor and business model. There is thus a significant risk that many of these categories will no longer exist or only exist in vastly unimaginable ways when the Directive comes into effect. Likewise, in Article 2, several definitions might become outdated as they use references to EU legislation that are about to be reviewed, in particular those for telephony services (Directive 2002/21) or audiovisual media services (Directive 2010/13/EU).

## 3. Functional Requirements and Standards

Functional requirements in legislation must be unambiguous and objective enough to allow for multiple implementations, yet specific enough for the determination of conformity. This is a delicate balance and provided that these requirements are backed by one or more stakeholder accepted standards, for which presumption of conformity can be demonstrated, this balance can be achieved. The functional requirements in Annex I would

require further analysis to ensure that they are not over prescriptive nor too generic, and that mapping to standards will result in compatible accessibility features without preventing barriers to specific accessibility requirements.

DIGITALEUROPE members participate in the development of global accessibility standards that accommodate new technologies, benefit all users, build upon the generally recognized body of expertise, can be objectively measured, and are harmonized to meet the needs of all geographies. Regulations and policies that adopt such standards enhance the market for accessible products and services rather than creating barriers or disincentives.

In order to ensure the development of state of the art accessibility standards, industry and stakeholder participation is key. While DIGITALEUROPE supports the development and application of harmonized standards as a means of demonstrating conformity with the requirements of the Directive, we are concerned about the ability for the European Commission to adopt implementing acts in order to establish common technical specifications, in case no harmonized standards exist. In fact, this secondary legislation procedure does not foresee a systematic consultation of industry. This in turn might result in the specifications failing to take into consideration possible technological limitations, advancements, or other valuable industry input that would allow for the creation of a workable legal framework. Moreover, these decision-making procedures further extend the timeline, causing increased legal uncertainty for operators.

## 4. Public Procurement

The proposed Directive also addresses public procurement requirements. In our view, public procurement policies promote innovation through competition, furthering progress toward the shared goal of deploying increasingly accessible technology more quickly and broadly across Europe. There is extensive experience that can for example be drawn from US Section 508. We strongly support an approach that embeds accessibility into public procurement by reference to harmonised standards linked to award criteria. Use of harmonised standards allows the adoption of new innovations and progress without depending on the regulatory cycle that delayed updates in the US. Use of award criteria, as opposed to technical requirements, supports flexibility for procurement (e.g. value for money issues and parallel approaches), as well as promoting further competition and innovation on accessibility by vendors.

## 5. Conclusions

DIGITALEUROPE is looking forward to supporting the efforts of the European institutions in promoting accessibility in the European Union. In order to achieve this goal, our members will gladly contribute their expertise and knowledge of the development of accessibility features. As we do not see full alignment with the New Legislative Framework as the most effective approach, we suggest to explore further regulatory options that are more suitable to fulfilling this objective. We would thus welcome any initiative that brings together the different stakeholders, industry as well as user groups, in order to develop long-term solutions that address the existing concerns and further the common goal of widening participation in society through accessible products and services.

### Further information

DIGITALEUROPE - [eInclusion and accessibility through global standards](#)

DIGITALEUROPE - [Input to the Impact Assessment Questionnaire for the EAA](#)

DIGITALEUROPE - [Response to the Public Consultation with a view to a European Accessibility Act](#)

DIGITALEUROPE - [A vision for access to the internal market](#)

DIGITALEUROPE - [Initial comments on “A vision for the internal market for industrial products” COM\(2014\)25](#)

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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. DIGITALEUROPE's members include 61 corporate members and 37 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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<b>Bulgaria:</b> BAIT	<b>Ireland:</b> ICT IRELAND	<b>Sweden:</b> Foreningen Teknikföretagen i Sverige, IT&Telekomföretagen
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<b>Denmark:</b> DI Digital, IT-BRANCHEN	<b>Lithuania:</b> INFOBALT	<b>Turkey:</b> Digital Turkey Platform, ECID
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