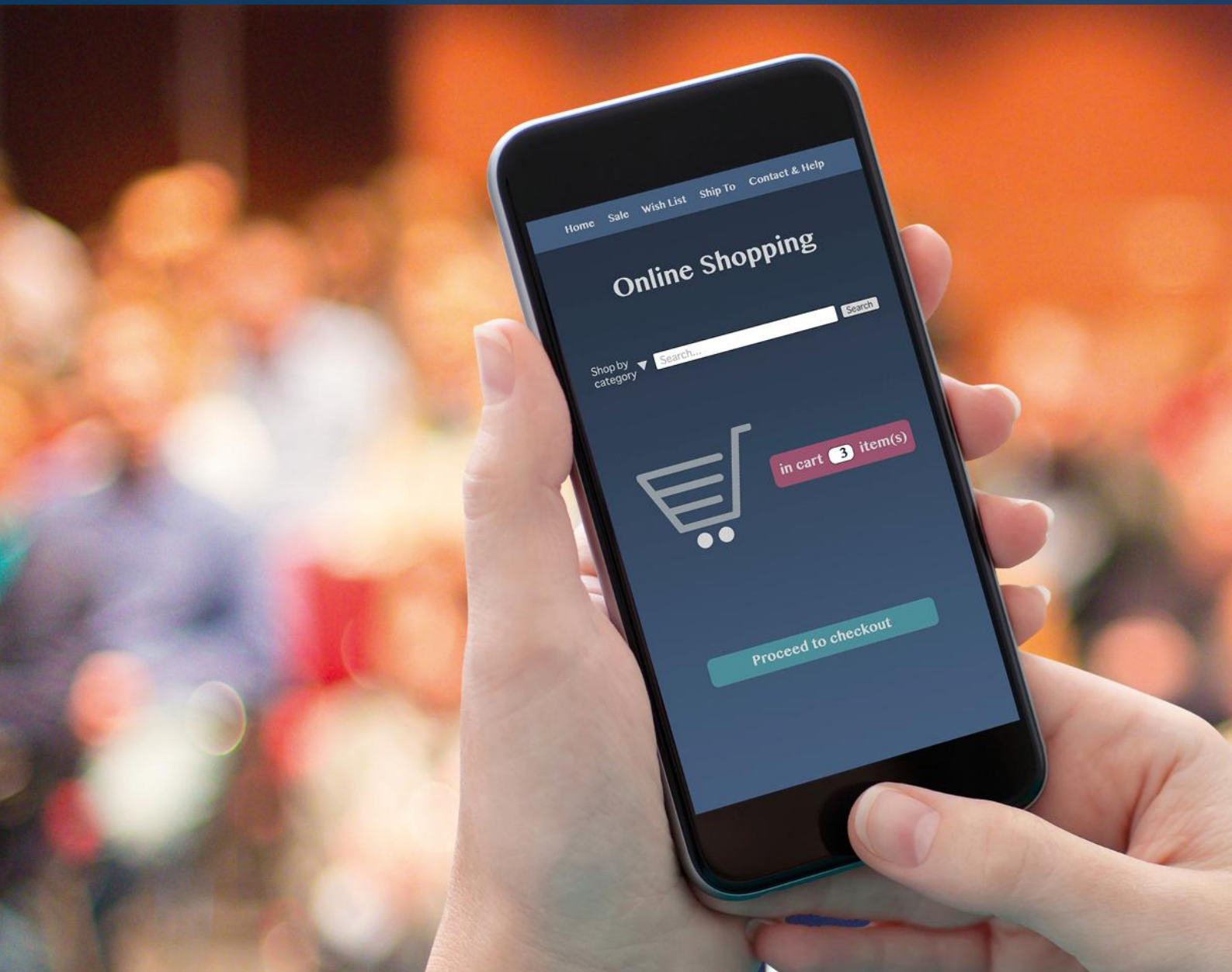


ECOMMERCE EUROPE POSITION PAPER

European Accessibility Act Policy recommendations from the online merchants' perspective

March 2017



Introduction: Overall perspective on the European Accessibility Act

Ecommerce Europe is the voice of the e-commerce sector in Europe. Through its 19 national associations, Ecommerce Europe represents over 25,000 online shops across Europe. Its mission: boost the e-commerce industry by helping decision makers shape policies fit for future sustainable growth. To do so, Ecommerce Europe takes initiatives to come up with innovative market solutions and provides a platform for expert discussion, connect online retailers with relevant stakeholders. It also highlights the importance of e-commerce to the economy through the provision of in-depth research on the European and global markets. Additionally, Ecommerce Europe stimulates the industry by developing initiatives like its European Trustmark label - provided for free to more than 10,000 certified online shops across Europe.

In December 2015, the European Commission published a Proposal for a Directive on the approximation of laws, regulations and administrative provisions as regards the accessibility requirements for goods and services (the European Accessibility Act).¹ Ecommerce Europe welcomes the objectives of the proposed legislation, and strongly supports the principle of accessibility as a means of promoting the inclusion of disabled people in society.

Despite this, Ecommerce Europe views the Proposal as deeply problematic in several key ways, and in particular fears the impact that the proposal would have on the e-commerce sector. Firstly, the Proposal has failed to take into account the considerable work that is being done by the private sector in order to improve the accessibility of goods and services to disabled people. In particular, the e-commerce sector has done a great deal to enhance the access of disabled people to goods and services. This contribution to accessibility made by the private sector and the e-commerce sector specifically should be taken into account by the legislation.

The proposal creates an overall obligation for e-commerce firms to provide for accessibility for all categories of disabled people that will result in very high burdens of compliance in relation to, for example, audiovisual requirements, which will prove particularly problematic for SMEs. The extent of these compliance burdens has been evidenced by a study on the implementation costs of the Act for online merchants, conducted by three German associations, including Ecommerce Europe's German national association, Händlerbund.² Meanwhile, the provisions in the current Proposal for exemptions from the legislation are themselves highly burdensome for businesses, and, in Ecommerce Europe's view, would prove highly difficult to meet, especially for smaller firms.

Moreover, the Accessibility Act as proposed does not sufficiently take the principle of proportionality into account. In particular, the use of market surveillance tools as proposed in the Act is excessive to the purposes of the legislation. It is not proportionate that perfectly safe and properly functioning goods could be recalled from the market simply for not being accessible. Meanwhile, the obligation to notify market surveillance authorities about exemptions in all the countries where 'the product or service is made available' is problematic. Finally, the 'design for all' approach that is taken in the Proposal is deeply unrealistic, and impractical in many cases, and reflects the failure of the Accessibility Act to take the most proportionate approaches to achieve its aims and does not take into account the specific needs

¹ [COM\(2015\) 615 final 2015/0278\(COD\)](#), hereafter referred to as the Proposal

² For more information, please see the study attached, conducted by Händlerbund, bevh, and Bundesverband Onlinehandel, entitled *Implementation of the accessibility requirements of the Web Content Accessibility Guideline 2.0 according to the Directive COM(2015) 615 final 2015/0278 (COD)*. Also available upon request to info@ecommerce-europe.eu.

of different categories of disabled people. The Draft Report³ by Rapporteur Morten Løkkegaard (ALDE, Denmark), has put forward some key changes to the Proposal, many of which are welcomed by Ecommerce Europe. In particular, the exclusion of microenterprises from the scope of the legislation is welcome, as is the removal of provisions conflating accessibility with safety. In addition, Ecommerce Europe views favorably the clarification in the Løkkegaard Draft Report concerning the design for all approach. Finally, Ecommerce Europe acknowledges MEP Løkkegaard's efforts to clarify the scope with regards to e-commerce, but nonetheless continues to have concerns about its clarity.

Key recommendations for European policymakers

- 1. Take into account market-based solutions to the issue of accessibility**
- 2. Provide further evidence of single market barriers resulting from differences of national legal frameworks for accessibility**
- 3. Develop a more clearly defined and more targeted scope**
- 4. Take into account the cost of compliance for businesses, especially SMEs**
- 5. Reduce the compliance burden placed on importers and distributors by the Act**
- 6. Develop a less burdensome framework for exemptions and notification, especially for SMEs**
- 7. Re-consider the 'design for all approach' taken by the Accessibility Act**
- 8. Develop a more suitable alternative to the CE mark to demonstrate accessibility**

³ [PE 597.391](#), hereafter referred to as the Løkkegaard Draft Report

1. Take into account market-based solutions to the issue of accessibility

The Proposal fails to take into account the considerable innovation that has been realized by private sector actors in order to make their products accessible for disabled people. In particular, the e-commerce sector has achieved a great deal in terms of improving the access of disabled people to goods and services, for instance, by making it easier for people with limited mobility to shop from home, and then delivering these goods to their home or place of residence.

Speaking more broadly, many important innovations have been provided by the market to improve the capacity of disabled people to buy goods and services online. These include technological solutions that make it easier for those with limited mobility to use computers, image and video descriptions that allow blind, deaf, visually and hearing impaired people to access visual and sound-based information, and reading software that allows the blind and visually impaired to read information on websites.

Taken together, these market-based solutions represent a considerable degree of innovation on behalf of the sector in order to make their products and services more available to disabled people. However, the existence of such solutions has largely been overlooked by the Proposal.

These market-based solutions reflect the reality that businesses understand the need to commit to make goods and services accessible where possible, and they are also an indication of the incentive in terms of gaining a competitive advantage that businesses have to promote accessibility.

2. Provide further evidence of single market barriers resulting from differences of national legal frameworks for accessibility

In the justification for the Proposal, one of the principle arguments that is made by the European Commission is that there are currently internal market barriers arising from the different member state level regulatory frameworks for the issue of accessibility. However, insufficient evidence is provided in order to support this claim, which, if not proven, undermines the rationale for the Proposal.

Ecommerce Europe's own research, through the "Cross-border E-Commerce Barometer 2016"⁴ was focused on identifying the key remaining barriers to cross-border e-commerce in Europe, and there was no indication from online merchants that issues relating to differing accessibility standards is a significant issue.

Instead, according to the results of the 2016 Barometer, language barriers, high delivery costs, differences in national consumer rights laws, data protection and copyright laws, over-complicated and discrepancies in turnover tax and VAT regulations, differing methods of payment, and high fraud risks are the greatest barriers for online merchants selling cross-border in the EU. Given this situation, we would like to request that the European Commission provides further evidence of the existence of internal market barriers related to accessibility.

Overall, although Ecommerce Europe is well aware of the impact that legal differences make for merchants selling cross-border, there has been little evidence of the specific issues related to

⁴ Cross-border E-Commerce Barometer 2016, <https://www.ecommerce-europe.eu/app/uploads/2016/07/Research-Report-Cross-Border-E-commerce-Barometer-2016-FINAL.pdf>

accessibility that are being used to justify the Accessibility Act. Therefore, further information is required to demonstrate the existence of internal market barriers related to accessibility.

3. Develop a more clearly defined and more targeted scope and exemptions

With specific reference to e-commerce, the definition provided in the Proposed Act is the 'online sale of products or services.' In the Løkkegaard Draft Report, the term 'e-commerce' has been replaced in the scope by 'online marketplace,' taking the definition in the Directive 2016/1148 concerning measures for a high common level of security of network and information systems across the Union. Ecommerce Europe welcomes the effort of the Rapporteur in clarifying and reducing the scope of the Act in relation with e-commerce, as it seems that the Draft Report limits the potential impact of the Directive on online merchants, especially smaller ones. In fact, Ecommerce Europe perceives that online merchants will be excluded from the scope of the Directive since the definition of 'online marketplaces' in the Directive 2016/1148 does not include them. Ecommerce Europe, however, asks policymakers to carefully take into account the potential impact of the Directive on online marketplaces and calls, in relation with the scope, for an increase of legal certainty for all parties.

In addition, the proposed scope is not future-proof, in that it does not provide for flexibility in terms of innovation in the sector of e-commerce, which is particularly problematic in a field that is developing rapidly, and in which significant developments will have taken place by the time that the Accessibility Act is adopted. Therefore, Ecommerce Europe calls on legislators to rationalize the proposed scope by narrowing it to make it more focused, and by clearly defining the terms of the scope in order to provide maximum clarity. Moreover, Ecommerce Europe advocates for a principle-based and future-proof approach, which takes into account the differences between different categories of disabled people, and the size of the company which has to comply.

The review clause in the Proposal, which envisages a review of the legislation every five years, is not sufficient to prevent the scope of the Act losing touch with realities, given the rapidity of innovation in the e-commerce sector.

4. Take into account costs of compliance for businesses, especially for SMEs

The cost of complying with the Accessibility Act as currently proposed would be highly burdensome for online merchants, and would be disproportionately burdensome for SMEs. Considerable evidence of these high costs has already been published, and should be taken into account by legislators when considering the Proposal. For example, a joint study conducted by three German e-commerce associations, including Ecommerce Europe's member Händlerbund, calculated that the implementation costs for a German SME with several and multilingual online shops would be €913,000 with 1,305 working days (PT) for unique implementation costs (excluding running costs).⁵

Within this calculation, for example, it was estimated that it would take 100 PT to provide text alternatives to all audio and video content, a further 100 PT to provide subtitles in synchronized media, and 150 PT for error identification. In addition, another 50 PT would be required for training of IT staff in how to adhere to the requirements of the Act, while a further 50 PT would be required for adjustments related to online forms on a given website.

⁵ Händlerbund, bevh, and Bundesverband Onlinehandel Study on the *Implementation of the accessibility requirements of the Web Content Accessibility Guideline 2.0 according to the Directive COM(2015) 615 final 2015/0278 (COD)*.

Ecommerce Europe welcomes the provision in MEP Løkkegaard's Draft Report that provides for the exclusion of microenterprises from the scope of the legislation, as such compliance burdens would be unreasonable for them to bear. However, Ecommerce Europe encourages policymakers to consider a broader exemption based on compliance costs, as evidence has demonstrated that the implementation costs associated with complying with the provisions currently proposed, would be unreasonable to bear for many SMEs and not just for micro-enterprises.

5. Reduce the compliance burden placed on importers and distributors

In addition to the costs of compliance for the producers of goods, there will also be an additional burden placed on importers and distributors of goods, who, under the proposed Act, will be required to verify compliance with the Directive and themselves comply with information obligations.

The information obligations imposed by the Proposal include informing competent national authorities in all the countries where a product is 'made available' immediately if a product does not conform with the provisions of the Act, and providing, on request of the competent national authorities, all the necessary documentation to demonstrate the conformity of a given product with the provisions of the Act. As such, these obligations would impose a considerable burden on importers and distributors.

The administrative tasks associated with these verification and information obligations would include drawing up technical documentation, carrying out conformity assessment procedures and drawing up declarations of conformity.

These specific burdens result from an alignment in the current Proposal between the procedures for products relating to health and safety and the proposed procedures for accessibility requirements. However, as above outlined, these procedures create a significant compliance burden for importers and distributors, and it is unclear why this procedure has been chosen for the purposes of accessibility requirements.

Although the Løkkegaard Draft Report has removed references in the Proposal that conflate issues of accessibility with issues of safety, this has not been reflected in a reduction of the burdens for importers and distributors. From the perspective of Ecommerce Europe, this is regrettable.

It is therefore Ecommerce Europe's view that a more streamlined and less burdensome procedure for the verification and information obligations for importers and distributors should be developed by policymakers.

6. Develop a less burdensome framework for exemptions and notifications, especially for SMEs

In Ecommerce Europe's view, the framework proposed for exemptions in the Accessibility Act Proposal presents major issues for the e-commerce sector, and especially for smaller businesses. The conditions for exemptions, as laid out in Article 12 of the proposal, rely on terms that are not clearly defined, and place all the burden for demonstrating qualification for an exemption on the trader.

The Act provides for exemptions in cases where there is a 'significant change' in an aspect or feature of a product or service, or compliance would impose a 'disproportionate burden.' The assessment of whether or not this is the case is itself burdensome, and may not be feasible for SMEs. The burden of

proof rests on businesses to demonstrate that, according to these terms, they qualify for an exemption.

In the proposal, a procedure for making a case to qualify for an exemption is outlined, which involves compiling estimates of the costs of implementing the requirements of the proposed Act, in relation to the estimated benefits of the goods and services being made accessible to the several different categories of disabled people. These are estimates that are relatively hard to quantify, especially for smaller e-commerce operators, which have very limited human and financial resources. Meanwhile, it is more broadly difficult to conceive of a reliable means of estimating the benefits to the several categories of disabled people of a company making its good and/or services accessible.

Furthermore, the assessments envisaged by the proposal are very difficult to quantify. There is therefore a risk that differences of interpretation by different national regulators on this issue could produce fragmentation between the Member States. This fragmentation would be detrimental to the completion of a uniform Digital Single Market, and would thus be counter-productive to the stated aims of the Proposal.

In addition, further legal uncertainty risks being produced by the obligation to notify market surveillance authorities about exemptions, as laid out in Article 12.6. The proposed Accessibility Act would require businesses to notify all market surveillance authorities in countries where 'the product or service is made available.' This is both a high level of obligation and also risks producing legal uncertainty, as the phrase 'is made available' does not have a clear and indisputable definition and may cover a bigger geographical area than the one that the trader is actually targeting.

Therefore, Ecommerce Europe urges policymakers to reconsider this obligation to notify market surveillance authorities about exemptions in all countries where a product is 'made available.' A clearer, less burdensome framework is needed. The Løkkegaard Draft Report's exemption of SMEs from this obligation is viewed highly positively by Ecommerce Europe, although it would be preferable to reconsider the obligation more fundamentally and work towards a sort of One-Stop-Shop scheme for notification of exceptions.

In the view of Ecommerce Europe, it is therefore essential that the framework for exemptions from the proposed Accessibility Act is reformulated in order to provide greater clarity, and to provide greater ease and flexibility for SMEs.

7. Re-consider the 'design for all' approach taken in the Accessibility Act

The 'design for all approach' taken by the Accessibility Act, which requires products and services to be designed so that they are usable by all consumers without need for further simplification, is ambitious and practically difficult. It is highly difficult to manufacture a product that is accessible to all varieties and degrees of disability. The essential requirements covered under this design for all approach are unclear and therefore difficult to enforce.

In practice, the needs of consumers with radically differing degrees and types of disability vary greatly, and it is therefore a better approach to develop targeted goods and services that are specifically adapted to the needs of specific groups of disabled people. A blanket approach risks undermining the availability of specialized, targeted goods and services aimed at specific groups of disabled people.

Ecommerce Europe welcomes the clarification in MEP Løkkegaard's Draft Report that the design for all

approach in the Act must not be taken to mean that targeted goods and services adapted for the needs of specific groups of disabled people are not compliant with accessibility requirements. However, Ecommerce Europe nonetheless believes that a design for all approach is a suboptimal and unrealistic means of securing accessibility, and therefore encourages policymakers to develop a more flexible framework.

8. Develop a more suitable alternative to the CE mark to demonstrate accessibility

As a final remark, the proposed use of the CE mark to demonstrate the adherence of products to accessibility requirements is ill-considered and risks producing confusion amongst consumers. The use of the CE mark to demonstrate compliance with health and safety and environmental standards is already well known amongst businesses and consumers, and therefore an extension to also cover compliance with accessibility requirements will produce ambiguity. This is because those goods and services that secure exemptions from accessibility requirements will still be able to apply the CE mark, making it difficult for consumers to verify accessibility.

Furthermore, given that the Accessibility Act is applicable for both goods and services, the use of CE marking, which is demonstrably better suited to demonstrating the conformity of goods, is deeply sub-optimal.

Ecommerce Europe therefore suggests that policymakers look to develop an alternative framework for the demonstration of compliance with accessibility requirements, which provides greater clarity, and is suitable for both goods and services.

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