



New EU Directive on accessibility requirements

Summary

The European Commission has proposed a European Accessibility Directive, which would set common accessibility requirements for certain key products and services to ensure people with disabilities and others including the elderly can participate in society “on an equal basis with others”.

- The Directive would implement sector specific accessibility requirements for certain services provided by transport operators (rail, bus, air and waterborne) and banks.
- Products within the scope of the proposed Directive include PCs, telephones, TV equipment, audiovisual services, ATMs, e-books and e-commerce websites.

As a Directive, it will need to be transposed into national law by Member States. The accessibility obligations will only apply to products placed on the market and to services provided after that national law comes into effect, currently expected around 2023/24.

This may seem some way off. However, considering the products and services to which the Directive would apply and the changes that would have to be made to comply with the Directive, government entities, transport operators and others may want to develop an early awareness of the Directive in order to factor its effects into future decision-making.

This may be particularly relevant in franchised areas of the transport sector (rail and potentially bus) in which bidders may make commitments to provide products or services falling within the Directive’s scope, particularly where the franchise runs beyond 2023.

The core issue: required functionality

The primary aim of the Directive is to ensure that disabled persons are able to access certain vital products and services “on an equal basis with others”. It aims to ensure this by setting out required functionalities that certain types of product and services must have if they are to be supplied within the common market. These differ depending on the type of product or service.

The functional requirements cover issues such as labelling, instructions and warnings and font changes. It also includes ensuring certain interfaces used to provide services have text and speech alternatives, allow for flexible magnification of text, and allow control of volume. It will be for economic operators to determine what technical solutions are needed to achieve these functional requirements.

Effect on products and services

In relation to products, the Directive would impose new obligations:

- On manufacturers – to ensure that manufactured products with the scope of the Directive conform to the functional specifications.
- On importers – to place only “compliant products” on the market.
- On distributors – to check that the products they are distributing bear a ‘CE’ marking, which will be the indication of a product’s conformity with the accessibility requirements of the Directive.

Relevance to the Transport sector

- The Directive will supplement rather than supersede the existing European framework of rights of disabled persons and those with reduce mobility¹.
- Bidders for franchises or other long term contracts, particularly those running beyond 2023, may wish to take the Directive into account when making commitments to provide products or services within the Directive’s scope.
- The Directive would create additional accessibility requirements in the design and functionality of websites, mobile device-based services, smart ticketing, provision of real-time information, self-service terminals, ticketing machines and check-in machines.
- Example: self-service ticket machines would need to have text and speech alternatives, allow for flexible magnification of text and allow volume control by the customer.
- Products and services which already conform to “harmonised standards” (such as Rail system interoperability standards) would automatically be said to comply.

In the case of transport and banking services subject to the Directive, service providers will need to have records to demonstrate that their services meet the functional requirements and will have to provide consumers with a range of additional information about their services.

Avoiding a disproportionate burden

The proposed Directive includes 'safeguarding provisions' to ensure that the relevant accessibility requirements would not apply to the extent that they would impose a disproportionate burden on the economic operator concerned. This would involve a cost/benefit assessment weighing the cost to the operator against the benefit to disabled persons, taking account of the operator's size and resources. There would also be certain derogations available to micro enterprises and SMEs.

Enforcement powers

Where there is a complaint about a service, competent authorities should have powers to investigate such complaints, require corrective action, and verify that such action is taken. Member States would be required to adopt "effective, proportionate and dissuasive" penalties for cases of infringement.

Relevance to Public Procurement

The definitions used in the Directive will create a common language for the (pre-existing but currently undefined) accessibility obligations under the Procurement Directives and Transport Procurement Regulations².

The Directive will create new accessibility requirements which competent authorities must apply:

- when establishing the technical specifications and award criteria related to all public contracts and concessions subject to the Procurement Directives²;
- when developing the social and quality criteria it will use in tender procedures for rail or road public passenger transport services under Regulation 1370/2007; and
- to all transport infrastructure forming part of the Trans-European Transport Network in accordance with Article 37 of Regulation 1315/2013,

except where to do so would impose a disproportionate burden under the test provided by the Directive.

Where the complaint relates to a product, competent authorities would have power to require corrective action or require the product's removal or recall from the market, potentially on a permanent basis if the product was not brought into conformance. It would also inform other Member States of the non-conformance so that they could take similar measures.

National implementing legislation would also provide provisions to ensure effective compliance, including empowering consumers to take action and empowering other organisations to bring actions on behalf of consumers.

Further comment

As noted above, national implementing legislation for the Directive is not expected to come into effect until 2023/24. However, services (such as booking, purchasing and provision of real-time information) will have to be compliant from that point. Given that the interfaces for these services (for example self-service machines) often have a long shelf life, transport operators looking to procure new systems to provide these service in coming years may wish to take the Directive into account in order to future proof against its effects.

As the definitions used in the Directive will create a common language for the Procurement Directives and Transport Procurement Regulations, it may be worth gaining a familiarity with these definitions as, even before the Directive is in force, they may well be used as an aid to interpretation where such definitions are used in a procurement sphere.

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¹ In the transport sector this includes the **Passenger Rights Regulations** (including Regulation 1371/2007 on passenger rights and obligations in respect of rail; and Regulation 181/2011 on the rights of passengers in bus and coach transport) and applicable EU legislation on accessibility of vehicles (including Directive 2008/57/EC on the interoperable rail system; Decision 2008/164/EC on technical specifications for persons of reduced mobility (the "PRM TSI"); and Regulation 661/2009 concerning type approval requirements for motor vehicles (relevant to low platform buses)

² Directive 2014/23/EU (the concessions procurement Directive), Directive 2014/24/EU (the public procurement Directive) and Directive 2014/25/EU (procurement by entities operating in the water, energy, transport and postal services sectors) (the "**Procurement Directives**") and Regulation 1315/2013 for all transport infrastructure forming part of the Trans-European Transport Network and Regulation 1370/2007 (on open access and subsidised public services by rail and by road compensating public service operators and/or granting exclusive rights in return for the discharge of public service obligations) (the "**Transport Procurement Regulations**")

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