

2015/0278(COD)

10.5.2016

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on the Internal Market and Consumer Protection

on the proposal for a directive of the European Parliament and of the Council
on the approximation of the laws, regulations and administrative provisions of
the Member States as regards the accessibility requirements for products and
services

(COM(2015)0615 – C8-0387/2015 – 2015/0278(COD))

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SHORT JUSTIFICATION

The aim of the proposal is to implement consistently, across the EU, accessibility provisions of the UN Convention on the Rights of Persons with Disabilities¹, thus furthering the free movement of accessible products and services in the EU. The rights of people with disabilities need to be promoted and safeguarded.

Audiovisual media services (AMS) and e-books are fully covered by the proposal.

For AMS, however, the relevant directive² provides a specific set of rules. Its provisions, including those on AMS accessibility, are in keeping with freedom of information and of the media, and with the protection and promotion of media pluralism and cultural diversity, and abide by Member States' policy competence for the media and the arts.

The AMS Directive is currently being revised by the Commission; a proposal is very likely to be published on 25 May 2016. With due regard for the fundamental freedoms referred to and to Member State competence, it would seem preferable to promote accessible AMS by means of an incentives model under the AMS Directive itself rather than taking the restrictive and repressive approach that has been opted for in this proposal. That is the only way in which account can be taken of the specific characteristic inherent to all AMS, i.e. the fact that they are vehicles for cultural goods, meaning that it is also warranted to lay down definitive rules in what is the more specific AMS Directive.

With regard to audiovisual media, the model opted for in the proposal for a directive may prove to put diversity at risk.

Rules on maximising AMS accessibility are clearly desirable. Legislation must reconcile, as well as possible, the conflicting interests deriving from the UN Convention on the Rights of Persons with Disabilities and from the UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions³. The EU, as a legal entity, has itself acceded to both UN conventions: on 23 December 2010 to the disabilities convention, and as long ago as 18 December 2006 to the cultural diversity convention. It is not evident, however, that the need for interests to be reconciled is met by the proposal for a directive.

Article 167 TFEU stipulates that the EU must take cultural aspects into account in all its action, observing the subsidiarity principle in the process. Accordingly, outside its area of exclusive competence the EU may act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level (Article 5(3) TEU). Member States themselves can ensure that e-books and AMS are adequately accessible - to such an extent, even, that the desired positive impact on the EU internal market can be brought about without intervention at EU level - otherwise the rising cross-border demand for AMS and e-books, which have been made markedly more accessible over recent years, cannot be accounted for. Across the EU, there

¹ United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities.

² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 95, 15.4.2010, p. 1).

³ 2006/515/EC: Council Decision of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (OJ L 201, 25.7.2006, p. 15).

has been an overall increase in audio descriptions and subtitling. Accordingly, it is proposed that e-books and AMS be removed from the proposal for a directive and that a culture and media derogation be incorporated. That also goes for radio services and for services accompanying AMS or radio services not covered by the proposal for a directive.

Lastly, it remains questionable whether the proposed directive would be effective overall, having regard to Article 12(2) in conjunction with Article 12(5) thereof. Those provisions would require economic operators to give reasons as to why compliance with accessibility requirements represented a disproportionate burden on them, and they would have to do no more than report that situation to the 'relevant market surveillance authority'. Responsibility for assessing disproportionality in this connection would lie expressly, and solely, with economic operators (cf. paragraph 5). Though any misassessment could be reviewed by the authority concerned - Article 17(2) - it remains unclear what would happen if an economic operator's assessment and the market surveillance authority's assessment differed.

It would nonetheless appear appropriate to uphold standardisation efforts for 'consumer terminal equipment with advanced computing capability related to audiovisual media services', e.g. smart TVs, and for e-book readers.

AMENDMENTS

The Committee on Culture and Education calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Article 1 – paragraph 1 – point d

Text proposed by the Commission

(d) consumer terminal equipment with advanced computing capability related to audio-visual media services.

Amendment

(d) consumer terminal equipment with advanced computing capability related to audio-visual media services ***within the meaning of Article 1(1)(a) of Directive 2010/13/EU of the European Parliament and of the Council^{1a}.***

^{1a} ***Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 95, 15.4.2010, p. 1.***

Amendment 2

Proposal for a directive

Article 1 – paragraph 1 – point da (new)

Text proposed by the Commission

Amendment

(da) e-book readers.

Or. de

Amendment 3

Proposal for a directive

Article 1 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) audiovisual media services and related consumer equipment with advanced computing capability;

deleted

Or. de

Amendment 4

Proposal for a directive

Article 1 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) e-books;

deleted

Or. de

Amendment 5

Proposal for a directive Article 1 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This Directive shall be without prejudice to radio services, audiovisual media services and services accompanying them, and cultural goods and services.

Or. de

Amendment 6

Proposal for a directive Article 2 – paragraph 6

Text proposed by the Commission

Amendment

(6) "audiovisual media services" means services within the meaning of Article 1(1)(a) of Directive 2010/13/EU of the European Parliament and of the Council;¹

deleted

¹ *Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ L 95, 15.4.2010, p. 1).*

Or. de

Amendment 7

Proposal for a directive Article 3 – paragraph 5

Text proposed by the Commission

(5) ***Audiovisual media services and the related consumer equipment with advanced computing capability*** shall comply with the requirements set out in Section IV of Annex I.

Amendment

(5) ***Consumer terminal equipment with advanced computing capability related to audiovisual media services*** shall comply with the requirements set out in Section IV of Annex I.

Or. de

Amendment 8

Proposal for a directive Article 3 – paragraph 8

Text proposed by the Commission

(8) ***E-books*** shall comply with the requirements set out in Section VII of Annex I.

Amendment

(8) ***E-book readers*** shall comply with the requirements set out in Section VII of Annex I.

Or. de

Amendment 9

Proposal for a directive Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The accessibility requirements referred to in Article 3 shall not apply if suitable alternatives, such as accessible products or services, are available to all consumers on the same conditions.

Or. de

Amendment 10

Proposal for a directive Annex I – Section IV – title

Text proposed by the Commission

Audiovisual media services and the related consumer equipment with advanced computing capability

Amendment

Consumer ***terminal*** equipment with advanced computing capability ***related to audiovisual media services***

Or. de

Amendment 11

Proposal for a directive Annex I – Section IV – point A

Text proposed by the Commission

A. Services

1. The provision of services in order to maximise their foreseeable use by persons with functional limitations, including persons with disabilities, shall be achieved by:

(a) ensuring the accessibility of the products they use in the provision of the service, in accordance with the rules laid down in point B "Related consumer equipment with advance computing capability"

(b) providing information about the functioning of the service and about its accessibility characteristics and facilities as follows:

(i) the information content shall be available in text formats that can be used to generate alternative assistive formats to be presented in different ways by the users and via more than one sensory channel;

(ii) alternatives to non-text content shall be provided;

(iii) the electronic information, including the related online applications

Amendment

deleted

needed in the provision of the service shall be provided in accordance with point (c).

(c) making websites accessible in a consistent and adequate way for users' perception, operation and understanding, including the adaptability of content presentation and interaction, when necessary providing an accessible electronic alternative; and in a way which facilitates interoperability with a variety of user agents and assistive technologies available at Union and international level;

(d) providing accessible information to facilitate complementarities with assistive services;

(e) including functions, practices, policies and procedures and alterations in the operation of the service targeted to address the needs of persons with functional limitations.

Or. de

Amendment 12

Proposal for a directive Annex I – Section IV – point B – title

Text proposed by the Commission

Amendment

B. Related consumer equipment with advance computing capability: *deleted*

Or. de

Amendment 13

Proposal for a directive Annex I – Section VII – title

E-books

E-book readers

Or. de

Amendment 14

**Proposal for a directive
Annex I – Section VII – point A**

Text proposed by the Commission

Amendment

A. Services

deleted

1. The provision of services in order to maximise their foreseeable use by persons with functional limitations, including persons with disabilities, shall be achieved by:

(a) ensuring the accessibility of the products they use in the provision of the service, in accordance with the rules laid down in point B "Products";

(b) providing information about the functioning of the service and about its accessibility characteristics and facilities as follows:

(i) the information content shall be available in text formats that can be used to generate alternative assistive formats to be presented in different ways by the users and via more than one sensory channel;

(ii) alternatives to non-text content shall be provided;

(iii) the electronic information, including the related online applications needed in the provision of the service shall be provided in accordance with point (c).

(c) making websites accessible in a consistent and adequate way for users' perception, operation and understanding, including the adaptability of content

presentation and interaction, when necessary providing an accessible electronic alternative; and in a way which facilitates interoperability with a variety of user agents and assistive technologies available at Union and international level;

(d) providing accessible information to facilitate complementarities with assistive services;

(e) including functions, practices, policies and procedures and alterations in the operation of the service targeted to address the needs of persons with functional limitations.

Or. de

Amendment 15

Proposal for a directive Annex I – Section VII – point B – title

Text proposed by the Commission

Amendment

B. "Products"

deleted

Or. de