



Accessibility legislation in the EU outside the field of employment

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OUTLINE

CONCEPTS

- **Accessibility**
- **Resonable accomodation**
- **Design for all / universal design**

EXISTING LEGISLATION

- **EU conclusion UNCRPD -> declaration of competences**

COM proposals

Accessibility

Accessibility is considered as a wide concept that includes the prevention and elimination of obstacles that pose problems for persons with disabilities in using products, services and infrastructures.

UNCRPD provide no definition!

UNCRPD *Article 1*

Purpose

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which **in interaction with various barriers** may hinder their full and effective participation in society on an equal basis with others.

Preamble

(v) *Recognizing* the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms,

UN Convention on the Rights of Persons with Disabilities

Article 3 Accessibility as a general principle

Article 9 Accessibility

*State parties to undertake appropriate measures **to ensure equal access** for persons with disabilities to:*

- the physical environment
- transportation
- information and communications,
- **including** information and communications technologies **and systems & internet**
- other facilities and services **open or provided to the public, both in urban and in rural areas**

UNCRPD art 9

2. States Parties shall also take appropriate measures:

- (a) To develop, promulgate and monitor the implementation of **minimum standards and guidelines for the accessibility** of facilities and services open or provided to the public;
- (b) To ensure that private entities that offer facilities and services which are open or provided to the public take into account **all aspects of accessibility** for persons with disabilities;
- (c) To provide **training for stakeholders on accessibility** issues facing persons with disabilities;
- (d) To provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) To provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) To promote the design, development, production and distribution **of accessible information and communications** technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

UN Convention & Standards

General obligations...realisation of Human rights

legislative, administrative measure, policies and programmes;

- (f) To undertake or promote research and development of **universally designed goods**, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) To undertake or **promote research and development** of, and to promote the availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- (h) To provide **accessible information to persons with disabilities** about mobility aids, devices and assistive technologies, including new technologies as well as other forms of assistance, support services and facilities;

Concepts: DFA - UD

UNCRPD art 2 “Universal design” means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

CEN Guide 6 accessible design

design focussed on principles of extending standard design to people with some type of performance limitation to maximize the number of potential customers who can readily use a product or service.

NOTE 1 Accessible design is a subset of universal design. Terms such as design for all, barrier-free design, inclusive design, transgenerational design (see 3.7) are used similarly but in different contexts.

NOTE 2 Design for all is more commonly used in Europe. It refers to designing mainstream products and services to be accessible by as broad a range of users as possible. It can be achieved through one of three ways:

- a) by designing products, services and environments that are readily usable by most users without any modification;
- b) by making them adaptable to different users (adapting user interfaces); and
- c) by having standardized interfaces to be compatible with special products for people with disabilities.

NOTE 3 Barrier-free design is more commonly used in codes and standards documents, and often in reference to the removal of barriers in buildings, whether physical or sensory.

Reasonable accommodation

UNCRPD

Article 2

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms"

Reasonable accommodation Dir 2000/78

Article 5 – Reasonable accommodation for disabled persons

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

COM 2008/ 426

Recital 19 “The principle of reasonable accommodation and disproportionate burden are established in Directive 2000/78/EC and the UN Convention on Rights of Persons with Disabilities.”

Article 2

Concept of discrimination

...

5. Denial of reasonable accommodation in a particular case as provided for by Article 4 (1)(b) of the present Directive as regards persons with disabilities shall be deemed to be discrimination within the meaning of paragraph 1.

Art 19 TFEU Treaty proposal COM (2008) 426

Scope

- **Social protection, including social security and healthcare;**
- **Social advantages;**
- **Education;**
- **Access to and supply of goods and other services which are available to the public, including housing.**

Principle of equal treatment of persons with disabilities

Art 4

- **Effective non-discriminatory access (*accessibility*)**
- **Anticipatory**
- **Conditions:**
 - Disproportionate burden
 - Fundamental alteration
 - Provisions of alternatives
- **Reasonable accommodation**
- **Conditions:**
 - Disproportionate burden

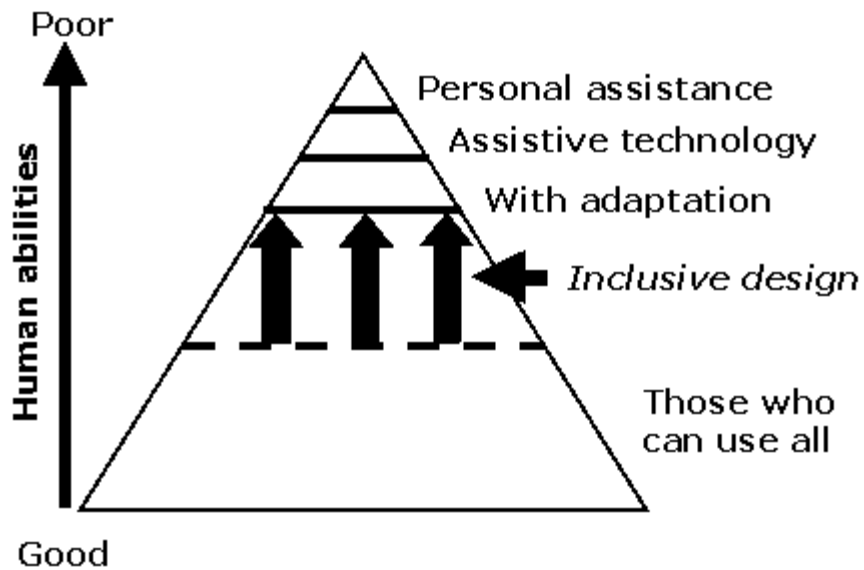
Concepts

Accessibility

- **anticipatory manner (preventive, proactive)**
- **most common problems**
- **General group**
- **design and functioning of the product**
- **general guidelines or standards**
- **Link with discrimination**

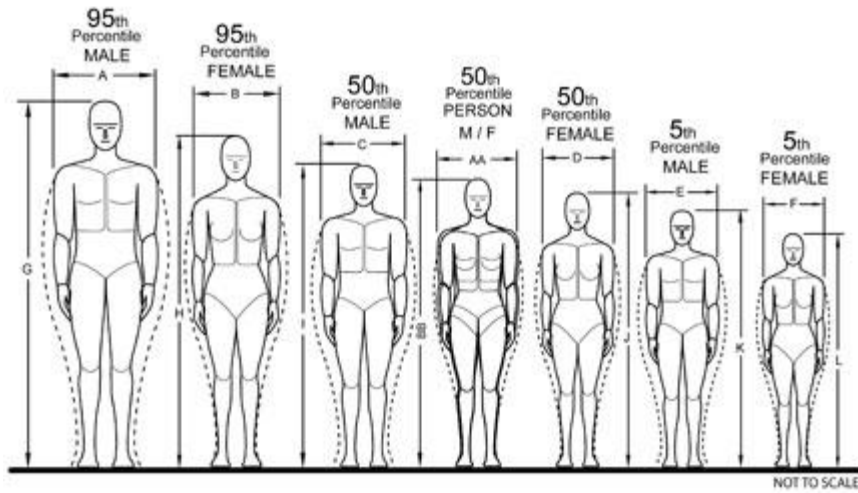
Reasonable accommodation

- **Reactive**
- **Individual persons**
- **Particular problems**
- **Disproportionate burden**



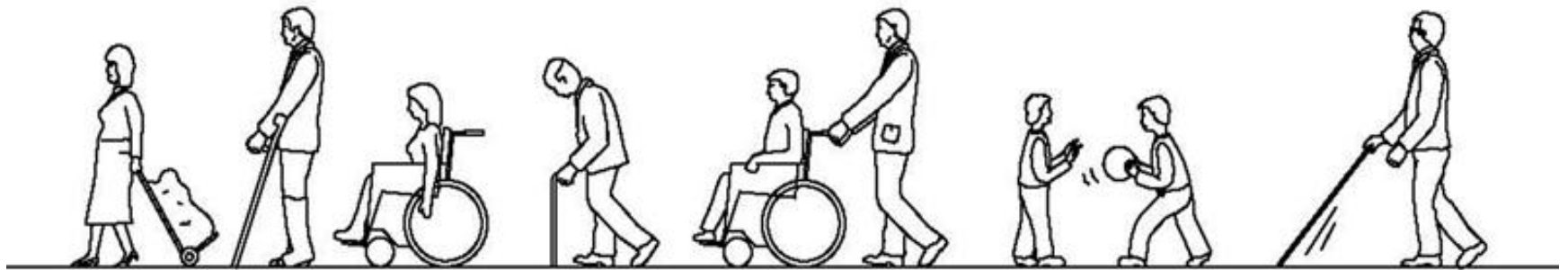


European
Commission





European
Commission



Concepts

Accessibility

(following design for all)

+ reasonable accommodation

(including assistance)

-> equal access ????

AT



Accessibility



Drivers for accessibility

- **UN Convention on the Rights of Persons with Disabilities**
- **Ageing of the population**

Accessibility

Legislation

EU competence in the disability field

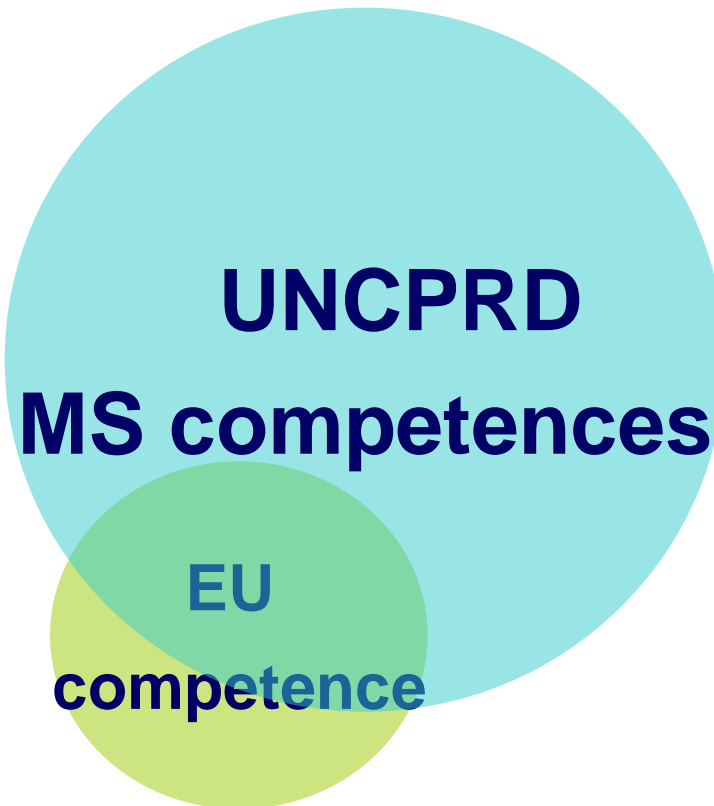
No specific single legal basis providing for legislative or other action in the disability field

Art. 19 TFEU Non-discrimination on the basis of disability

Other legal bases can be relevant, e.g. Transport (Art. 90-100 TFEU), State Aid (107-109 TFEU) Employment (145-150 TFEU), Social Policy (151, 153 TFEU) Education (Art. 165 TFEU), Public health (Art. 168 TFEU)



EU competence in UNCPRD matters



Declaration of competence

18 legal acts dealing with accessibility

10 legal acts dealing with independent living, social inclusion work and employment

9 dealing with personal mobility

5 dealing with access to information

5 dealing with statistics and data collection

3 dealing with development cooperation



UNCRPD EU declaration of competences

...regarding accessibility

DG ENTR

(radio & terminal equipment, Lifts, machinery (platforms) Busses, Medical products)

DG MOVE

high-speed rail system, inland waterway vessels and passenger ships , motor vehicles and their trailers, and of systems, technical specification of interoperability relating to 'persons with reduced mobility' in the trans-European conventional and high-speed rail system , rights of disabled persons and persons with reduced mobility when travelling by air

DG INFSO

regulatory framework for electronic communications networks and services, universal service and users' rights relating, television broadcasting activities

DG MARKT

4 PP directives (water, energy, transport and postal services sectors water, energy, transport and telecommunications sectors, public works contracts, public supply contracts and public service contracts, postal services and the improvement of quality of services), information society services, in particular electronic commerce, in the Internal Market harmonisation of certain aspects of copyright and related rights in the information society

DG REGIO

European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation



Other relevant EU legal acts relevant and responsible services

DG MOVE

Rights of passengers in bus and coach and by sea and inland waterway

DG INFSO

amending a common regulatory framework for electronic communications networks and services,

DG ENTR

REGULATION (EU) No 305/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC

Transport

Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air OJ L 204, 26.7.2006, p. 1-9.

Regulation (EC) No 1371/2007 of the European Parliament and of the Council of 23 October 2007 on rail passengers' rights and obligations OJ L 315, 3.12.2007, p. 14-41

Commission Decision 2008/164/EC of 21 December 2007 concerning the technical specification of interoperability relating to persons with reduced mobility in the trans-European conventional and high-speed rail system (notified under document C(2007) 6633), OJ L 64, 7.3.2008, p. 72-207

Directive 2001/85/EC of the European Parliament and the Council of 20 November 2001 relating to special provisions for vehicles used for the carriage of passengers comprising more than eight seats in addition to the driver's seat, amending Directives 70/156/EEC and 97/27/EC (OJ L 125, 13.2.2002, p.1)

Legislative proposal in maritime transport and for busses and coaches.

Transport Rights PRM

- The **managing body** of an airport, port terminal, staffed rail stations or train and appointed coach station shall be responsible to provide assistance up to seats inside the vehicle/ship/plane.
- **Carriers** are mainly responsible for allocating seats in order to meet passenger needs and the carriage of mobility equipment, plus assistance to move inside the vehicle/ship/plane if necessary/ feasible.
- No **opt-out** for carriers – but infrastructure managing bodies can subcontract for the supply of assistance.
- Assistance **without additional charge** to PRMs.

Transport Rights PRM

Special conditions in case of refusal **ASSISTANCE**

Accessibility and information

- **Carriers, rail operators and terminal/stations operators shall have in place non-discriminatory access conditions.**
- **The access conditions shall be made publicly available.**
- **Information on conditions of carriage, journey conditions and access conditions are to be made available in appropriate and accessible formats for disabled persons and PRM (“where feasible” for coach).**
- **Confirmation of assistance by any means available including SMS (maritime).**



Interoperability Directives



Directive 96/48: Interoperability on the High Speed TEN

Directive 2001/16: Interoperability on the Conventional TEN



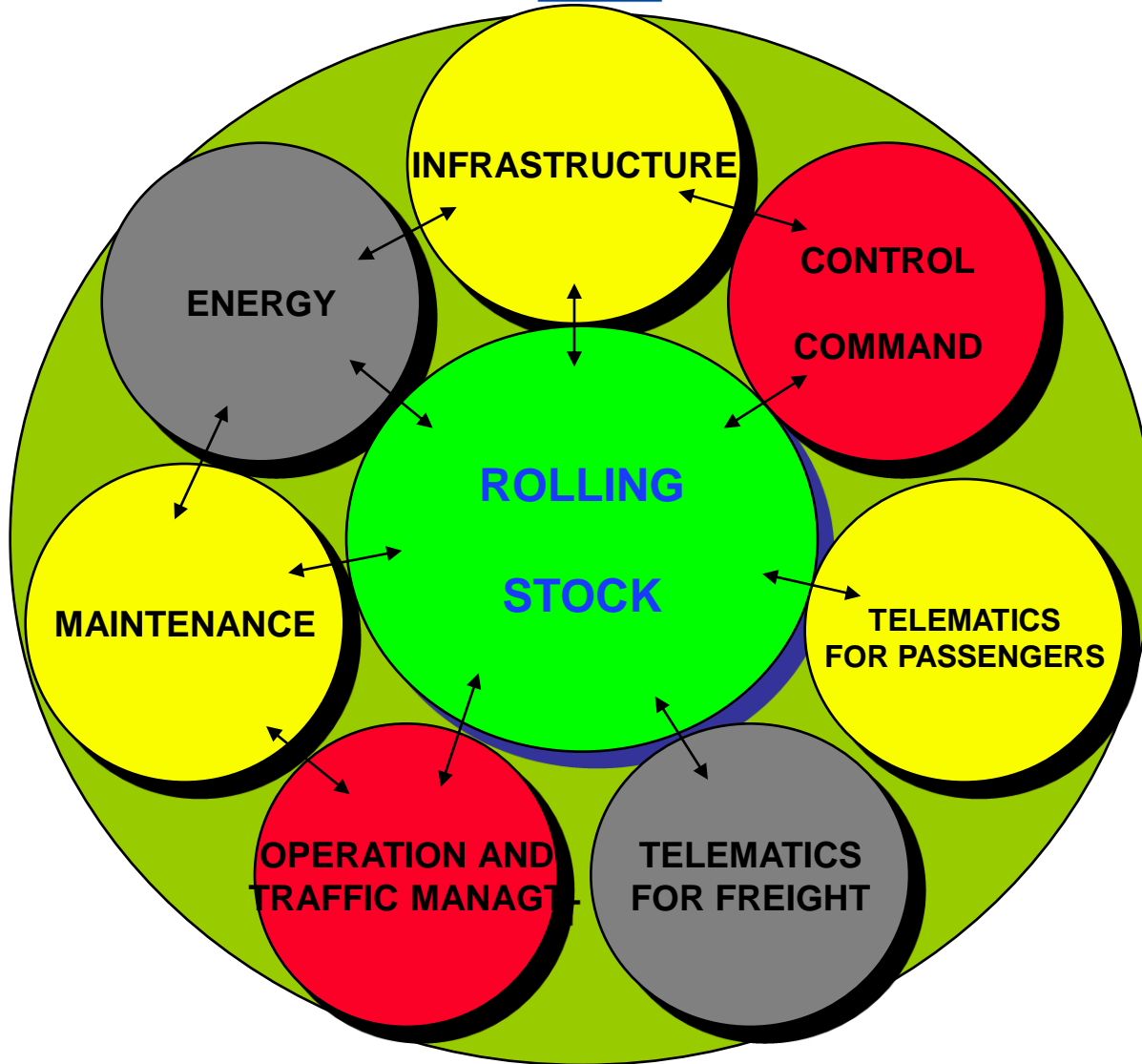
Directive 2004/50 modifying 96/48 and 2001/16

Directive 2007/32 amending Annex VI of 96/48 and 2001/16



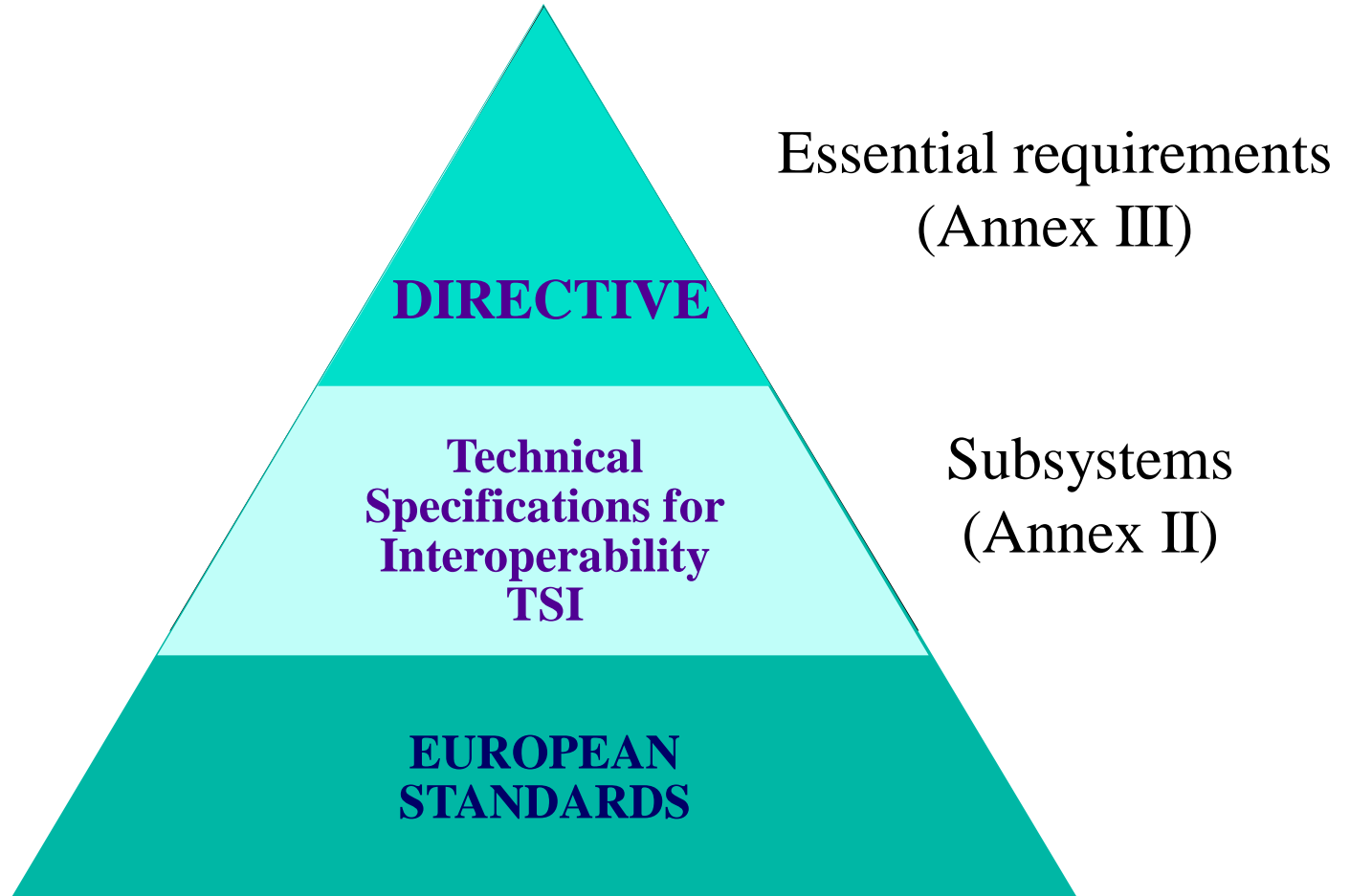
Directive 2008/57/EC on the Interoperability of the Rail System within the Community (covering both HS and CR and extended to the whole of the European Network)

Sub-systems





3-layer regulatory structure





High-Speed and Conventional rail TSIs

Commission Decision 2008/217/EC of 20 December 2007 on the TSI "safety in railway tunnels"

Commission Decision 2008/164/EC of 21 December 2007 on the TSI "accessibility for persons with reduced mobility"

Commission Regulation (EU) No 454/2011 of 5 May 2011 on the TSI "telematics applications for passenger services"

ICT

Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)

Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive).

These 2 Directives are currently under revision and the accessibility provisions have been reinforced in the Commission proposals.

Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity

Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

Revision of EU telecoms package

Revision of 5 Directives - EU framework for electronic communications

Adopted November 2009, implementation deadline is 25 May 2011

Most relevant:

Universal Service Directive – universal service and end-user rights

Framework Directive – inclusion of issues related to users with disabilities in the general policy aims

Universal service

mandatory provisions

Universal service: safety net of minimum set of services defined at EU level to be available to all, independently of geographical location, at an affordable price.

Provision universal service by designated undertakings may be financed from public funds/sector specific funding.

Universal service for disabled end-users:

New mandatory provisions

- equivalent access and affordability of publicly available telephone service provided over network connection at a fixed location

- equivalent access and affordability of comprehensive directories and directory enquiry services

Universal service

other provisions

Other provisions

- measures to allowing disabled end-users to take advantage of the choice of undertakings and service providers

- accessibility of public payphones to disabled end-users

NRAs may assess the general need and design specific requirements

End-user rights

transparency

Transparency and publication of information:

- regular information to disabled subscribers on details of products and services designed for them*
- publication of information on measures taken to ensure equivalent access for disabled end-users*
- information on quality of service parameters so that (disabled) end-users have access to comprehensive, reliable, comparable and user-friendly information*

(possible NRA requirements on providers of electronic communications networks/services)

End-user rights

harmonised numbers

112 and emergency services

- equivalent access for disabled end-users to emergency services, including measures enabling access to emergency services while travelling in other MS (e.g. SMS service, text-relay, video-relay or other real-time functionalities)

116xxx numbers for harmonised services of social value

- access for disabled end-users to services provided under '116' numbering range (to the greatest extent possible), incl. when travelling
- Commission may adopt technical implementing measures

Must carry obligations

- possibility to impose transmission of complementary services, particularly accessibility services to enable appropriate access for disabled end-users

End-user rights

equivalent access and choice

Requirements that may be imposed by relevant national authorities on all undertakings providing electronic communications services:

Ensuring equivalence in access and choice for disabled end-users

- access to electronic communications service equivalent to that enjoyed by majority of end-users (i.e. functionally equivalent access allowing same usability of services but by a different means, e.g. accessible information on services, billing, customer services, design for all, terminal equipment)

- benefit from choice of undertakings and services available to majority of end-users (i.e. consumer protection requirements such as e.g. equivalent terms and conditions of services, incl. prices and tariffs)

End-user rights

terminal equipment

MS to encourage availability of terminal equipment offering necessary services and functions (i.e. better end-to-end solutions for disabled and more incentives to invest in new technology and services for manufacturers of goods and service providers)

Inclusive Communications Experts Group (INCOM)

BEREC's report on ensuring equivalence for disabled end-users

http://www.erg.eu.int/doc/berec/bor_10_47Rev1.pdf



Public Procurement Directives

2004/18/EC & 2004/17/EC

The preambles to the revised Directives (paragraph 29 and paragraph 42):

“Contracting authorities should, **whenever possible**, lay down **technical specifications so as to take into account accessibility criteria for people with disabilities or design for all users.**”

Articles on technical specifications (Article 23, and Article 34):

“Whenever possible [these] technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.”

Award phase...(art 53)

the criteria on which the contracting authorities shall base the award of public contracts shall either:

(a) when the awards is made to the tender most economically advantageous from the point of view of the contracting authority, various criteria linked to the subject matter of the public contract in question, for example quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics,....

(b) the lowest price

Staff working paper on SOCIAL CONSIDERATIONS IN PUBLIC PROCUREMENT - SEC(2010) 1258.

Key issues

Objectives

legal framework

Overview of the procurement process

Identifying the needs-> subject matter of the contract

Technical specifications

Technical capacity

Exclusion selection and award criteria

Contract performance

http://ec.europa.eu/internal_market/publicprocurement/other_aspects/index_en.htm#social

Structural Funds General regulation: Article 16 on accessibility and non-discrimination

Article 16 Regulation 1083/2006

*The Member States and the Commission shall take **appropriate steps to prevent any discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation during the various stages of implementation of the Funds** and, in particular, in the access to them.*

*In particular, **accessibility** for disabled persons shall be one of the criteria to be observed in defining operations co-financed by the Funds and to be taken into account during the various stages of implementation.*



Recent developments

- *Revision of the Public Procurement Directives COM(2011) 896*
 - *article 40 technical specifications*
 - *article 61 quality assurance standards (accessibility)*
 - *article 66 award of contracts (accessibility)*
 - *article 84 public oversights (report includes accessibility)*
- *New Structural Funds regulation COM(2011) 615*
 - *Article 7 on discrimination*
 - *Article 87 operational programmes: description disability and accessibility*
 - *article 100 monitoring: disability and accessibility*
 - *article 101 reporting: disability and accessibility*
 - *ex ante conditionalities: UN Convention and accessibility*
- *Proposal for Trans European Networks*
 - *article 4 objectives (accessibility)*
 - *article 10 priorities (accessibility)*
 - *article 39 use of new technologies (accessibility)*
 - *article 43 accessibility for all users*

Accessibility

Non legislative measures
Standardisation



Accessibility related standardization work at EU level

Mandate 376: *Accessibility requirements for public procurement of products and services in the **ICT** domain*

Mandate 420: *Accessibility requirements for public procurement in the **Built Environment** (including **transport infrastructures**)*

Mandate 473 *to include Accessibility following **Design For All** in relevant standardization activities*

Accessibility in the EDS 2010-2020 (1)

Problem:

- **not enough accessible goods and services in the European market;**
- **fragmentation of markets to be removed through harmonisation**
- **barriers for free movement of persons with disabilities**

- **EDS 2010-2020**
 - developing specific standards for particular sectors
 - improve the proper functioning of the internal market
 - use legislative and other instruments, such as standardisation
 - optimise the accessibility of the built environment, transport and ICT
 - explore the merits of adopting regulatory measures, based on the principles of smarter regulation, to ensure accessibility of products and services, including measures to step up the use of public procurement.



Member States	General legislation	Transport		Built environment		ICT	
		Legislation Regulation	Standards	Legislation Regulation	Standards	Legislation Regulation	Standards
			Guidelines		Guidelines		Guidelines
<u>Austria AT</u>	N+R		N	R	N	N	
<u>Belgium (federal) BE</u>		N+R	N+R	R	R	N+R	N+R
<u>Bulgaria BG</u>		N	N	N	N	N	N
<u>Cyprus CY</u>	X	X		X			
<u>Czech Republic CZ</u>		X		X	X	X	
<u>Germany DE</u>	N+R	R		N+R	N+R	N+R	
<u>Denmark DK</u>		N	N	N			N
<u>Estonia EE</u>		N		N		N	N
<u>Greece EL</u>		N		N			
<u>Spain ES</u>	N	N+R		N+R		N	
<u>Finland FI</u>				X	X		
<u>France FR</u>	N	N	N	N	N	N	N
<u>Hungary HU</u>				X		X	
<u>Ireland IE</u>	N		N	N	N+R		N
<u>Italy IT</u>		N		N+R		N	
<u>Luxembourg L</u>		N		N	N		N
<u>Lithuania LT</u>							
<u>Latvia LV</u>		X	X	X	X	X	X
<u>Malta MT</u>	N			N	N		N
<u>The Netherlands NL</u>		N	N	N	N	N+R	
<u>Poland PL</u>		N		N		N	
<u>Portugal PT</u>	N	N	N	N+R	N	N	N
<u>Sweden SE</u>		N		N	N	N	N
<u>Slovenia SI</u>			N	N	N	N	
<u>Slovak Republic SK</u>		N		N		N	
<u>United Kingdom UK</u>	N	N		N	N		

Steps towards a European Accessibility Act

- **Launch a study on cost-benefit analysis and data collection on accessibility of goods and services in the area of ICT, built environment and transport**
- **Consult Member States, civil society, businesses**
- **Impact Assessment**
- **European Accessibility Act (2012). Its nature, scope and content will depend on the Impact Assessment with results of the study and the consultation**

EC work programme 2012 item 99

European Accessibility Act: improving accessibility of goods and services in the Internal Market

"Proposal for a Directive to improve the market of goods and services that are accessible for persons with disabilities and elderly persons, based on a "design for all" approach. This business friendly initiative will include binding measures to promote procurement and harmonisation of accessibility standards."

http://ec.europa.eu/atwork/programmes/docs/cw_p2012_annex_en.pdf

Roadmap

A. Context, problem definition

B. Objectives of the initiative

C. Options

D. Initial assessment of impacts

E. Evidence base, planning of further work and consultation

http://ec.europa.eu/governance/impact/planned_ia/docs/2012_just_025_european_accessibility_act_en.pdf

Access City Award

- Awareness raising on urban accessibility: (transport, buildings and public spaces, ICT, public services provision)
- Commitment to improvements in accessibility
- Role model to inspire other cities
- Promote best practices
 - First Launch of the competition 2010
 - Award 2011 Avila,
 - Award 2012 Salzburg,

