

Preparing for the European Accessibility Act

I. Overview

As of June 28, 2025, companies that operate within the European Union must comply the European Accessibility Act (EAA),² a legislative directive that requires compliance by all businesses within its scope. The goal of the EAA is to harmonize minimum accessibility requirements within the EU to facilitate e-commerce among its member countries while increasing access to common products and services by “persons with disabilities.”³ Notably, EU Member States have their own accessibility laws, which can be stricter and more detailed than the EAA, provided they meet the EAA’s minimum requirements.

The EAA applies to all businesses and service providers that provide certain products or services (including websites and electronic communications, such as emails) to consumers in the European Union. While not ensuring complete compliance with the EAA, ESPC Members already compliant with US accessibility requirements (and upon technical guidelines developed by the World Wide Web Consortium) may already be along the path to compliance with the high-level performance standards set by the EAA’s requirements, as outlined below.

II. US and EU Accessibility Standards

Background

“Accessibility” generally refers to the ability of individuals with disabilities to enjoy equal access to public accommodations and commercial goods and services. It is regulated by legal and technical standards in the United States, and via national laws and the EAA in the European Union. Both regimes include requirements for the removal of barriers for individuals with disabilities when interacting with certain online products and services, such as by requiring online content be made available to those with hearing, speech, or vision impairments. This Member Bulletin provides an overview of the US requirements as compared to those within the EU.

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² See Directive (EU) 2019/882 available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0882>.

³ “Persons with disabilities” means persons 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. See Article 3(1) of Directive (EU) 2019/882. Title III, however, defines “disability” as (i) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (ii) a record of such an impairment; or (iii) being regarded as having such an impairment as described in paragraph (f) of this section. See Section § 36.105 at <https://www.ada.gov/law-and-regs/regulations/title-iii-regulations/#-36105-definition-of-disability#section8>.

US Standards

Enacted in 1990, Title III of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in places of “public accommodation.” A place of “public accommodation” is defined as a privately operated facility whose operations affect commerce and fall within at least one of twelve categories,⁴ with websites generally considered to fall within the category of “places of public gathering” due to their online availability. Written before the Internet became widely available, Title III does not directly address mobile applications, websites, or other online content; however, the U.S. Department of Justice (DOJ), as the federal agency responsible for ADA enforcement, has taken the position that Title III applies to all public-facing websites and other online services and communications made publicly available by companies. This includes email and SMS communications.

In March 2022, the DOJ released its “Guidance on Web Accessibility and the ADA,” clarifying that the ADA applies to all goods, services, privileges, or activities offered by “public accommodations,” including web-based services. This guidance provides examples of how covered businesses can make websites and online content accessible using the World Wide Web Consortium’s (W3C) Web Content Accessibility Guidelines (WCAG) as a tool to ensure compliance. The WCAG are a set of technical recommendations for improving web accessibility, with each WCAG version containing layers of guidance that work together to make content more accessible, and consist of (i) principles; (ii) general guidelines; (iii) success criteria; and (iv) both “sufficient” and “advisory” techniques.⁵ The four principles that form the foundation of web accessibility in the WCAG require websites to be “perceivable, operable, understandable, and robust.”⁶ Within each principle are guidelines which outline certain objectives to help website developers understand and implement the “success criteria,”⁷ which are further broken down into three levels of “conformance”: A, AA, and AAA. Finally, each WCAG provide informative techniques (i.e., not required) designed to be applicable to current and future web technologies that are either sufficient for meeting success criteria, or which may be considered advisory.⁸

While not legally binding, most courts evaluating web accessibility compliance under Title III use WCAG 2.1 Level AA Conformance⁹ as the technical benchmark. Regardless of the WCAG version that a company implements, both the courts and the DOJ use Level AA Conformance to benchmark the relevant “success criteria,” as Level AA Conformance represents a middle-ground between minimal conformance (Level A) and optimal conformance (Level AAA). WCAG 2.1 outlines five requirements that companies must meet in order to achieve these

⁴ These categories include: places of lodging; food and drink establishments; places of public gathering; sales or rental establishments; service establishments; public transportation terminals, depots, or stations; places of public display or collection; places of recreation; places of education; social service center or establishments; or places of exercise or recreation.

⁵ See “WCAG 2 Layers of Guidance” at <https://www.w3.org/TR/WCAG21/>.

⁶ See <https://www.w3.org/WAI/WCAG21/Understanding/intro#understanding-the-four-principles-of-accessibility>.

⁷ “Success criteria” are specific, testable requirements which can be used to evaluate whether a company meets the accessibility standards of a specific version and conformance level of WCAG (e.g., WCAG 2.0 Level A).

⁸ “Sufficient” techniques are those which the W3C consider able to meet specific success criteria, whereas, the advisory techniques are merely suggested methods to improve accessibility.

⁹ See <https://www.w3.org/WAI/WCAG2AA-Conformance> for the full WCAG 2 Level AA Conformance standards.

standards¹⁰; however, the W3C encourages companies to adopt the most recent WCAG 2.2¹¹ version of the guidance if they are in the position to do so because those guidelines build upon previous versions' success criteria. The most recent version, WCAG 3.0, remains in working draft form and is unlikely to be finalized before the end of 2025.¹²

Among other things, WCAG 2.1 Level AA Conformance requires covered entities to meet certain success criteria that fall under each of the four principles. For example, in order for time-based media content to be “perceivable,” captions must be provided for all live video content and any pre-recorded video content must include an audio description. Likewise, entities must provide text alternatives for non-text content, such as images, videos, and audio files, and transcripts for audio content.

These are just some of the WCAG requirements. ESPC Members are encouraged to review the full list of principles, guidelines, success criteria, and specifications for WCAG 2.1 Level AA Conformance to ensure the minimum level of accessibility has been achieved.¹³ Given that this is in support of a legal standard, Members should consult counsel.

The European Union

Similar to Title III, the EAA applies to a broad array of products and services, as well as the provision of emergency communications, but unlike Title III in the USA, which primarily applies to private businesses and non-profit organizations, the EAA's obligations apply to operators in both the public and private sectors providing covered products or services within the EU. The EAA will likely apply to ESPC Members through their provision of email and marketing services, as they fall within the EAA's scope of covered “services,” which includes: (i) *electronic communications services* (except for certain machine-to-machine transmission services); (ii) audio-visual media services; (iii) *websites*; (iv) mobile device-based services including mobile applications; (v) electronic tickets and electronic ticketing services; (vi) delivery of transport service information, including real-time travel information (with certain exceptions); (v) consumer banking services; (vi) e-books and dedicated software; and (vii) *e-commerce services*. Notably, the EAA exempts archived content that is not updated or edited after the EAA's effective date, and “third party content that is neither funded, developed by, or under the control of the operator concerned.”¹⁴

¹⁰ The content must (i) meet one of three levels of conformance; (ii) fully achieve the level of chosen conformance (i.e., the entire webpage versus partial webpage compliance); (iii) ensure that any process presented has the least steps possible to complete the process; (iv) support accessibility regardless of the technology used (e.g., HTML or JavaScript); and (v) only use technologies that do not support accessibility if the same content is provided via accessible technologies and the non-accessible material does not impede a user's access to the remaining content.

¹¹ See the WCAG Understanding Docs at <https://www.w3.org/WAI/WCAG22/Understanding/> for detailed explanations of the WCAG's success criteria.

¹² The status of WCAG 3.0 can be found here: https://www.w3.org/WAI/GL/wiki/WCAG_3_Timeline.

¹³ The W3C Quick Reference documentation (available at <https://www.w3.org/WAI/WCAG22/quickref/?versions=2.1>) allows companies to filter by each success criteria and technique associated with a specific principle and level of conformance.

¹⁴ The standard of the exemption for third-party content has not been clarified, so we recommend consulting with counsel on this point.

The EAA is built upon the four principles of accessibility discussed above, and largely aligns with the WCAG 2.1's requirements. Annex I of the EAA provides detailed schedules that provide both general and specific accessibility requirements applicable to any products and services within its scope, but these requirements lack the specific compliance details in the guidelines, success criteria, and techniques provided by the WCAG. While the EAA seeks to harmonize accessibility requirements throughout the EU, it only sets a *minimum threshold* for compliance, so ESPC Members must familiarize themselves with any national laws of the Member States within which they operate to confirm that their services meet those requirements and to determine whether the Member State has identified additional products and services that will be within the scope of its law.¹⁵

The EAA itself does not reference the WCAG 2.1 or other WCAG standards, but compliance with them appears to provide a strong foundation for compliance with the EAA by providing the technical framework to meet the EAA's legal obligations. But there are differences, so that compliance with WCAG 2.1 or higher does not appear fully to meet the EAA's requirements. For example:

- The EAA requires that information be made available in more than one “sensory channel,” such as written and via audio file, whereas the WCAG 2.1 *recommends* that content presentation not rely upon only one sensory channel but falls short of explicitly requiring more than one sensory channel.
- Any support services (e.g., customer support call centers and help desks) must also be able to provide information and assistance to individuals regarding the accessibility of the company's services, while also being accessible in its own right. The WCAG 2.1 does not address support services, but best practice would be to align with the EAA's requirements wherever possible.
- Unlike WCAG 2.1, the EAA specifically states that subcontractors and service providers must fully comply with the EAA's obligations and ensure “proper and continuous training” of their personnel in order to ensure those subcontractors or service providers are knowledgeable about how to use accessible services, *particularly if those parties will provide advice about a covered product or service or engage in advertising relating to a product or service that falls within the scope of the EAA.*
- While US law only requires publicly available accessibility statements be provided by federal agencies and their contractors, the EAA requires *both public and private* providers of covered products and services to maintain publicly available accessibility statements in both written and oral form, to be maintained as long as the service is provided.

Thankfully, the EAA takes a “think small first” approach to implementation and does not require businesses to implement its requirements where such implementation would fundamentally alter the basic nature of the product or service or would result in a “disproportionate burden” on the

¹⁵ The European Commission has provided a “transposition tracker” listing the laws of the Member States as the EAA is adopted, which can be used to determine whether additional products and services are in scope, or if the Member State's accessibility requirements are more restrictive. See <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32019L0882>.

provider of the product or service (with criteria to assess whether a disproportionate burden exists in Annex VI of the EAA). Additionally, the EAA provides certain exemptions for small companies that it defines as “microenterprises.”¹⁶ The scope of “disproportionate burden” is still unclear, and ESPC Members should consult counsel before applying any exception, such as this one, to its website or services.

The EAA does not provide for specific enforcement measures or sanctions, and instead relies upon each EU Member State to ensure that: (i) “adequate and effective means exist to ensure compliance”; and that (ii) any penalties imposed will be “effective, proportionate, and dissuasive.” ESPC Members should therefore remain updated on enforcement trends within the EU Member States within which they operate.

III. Next Steps for ESPC Members

ESPC Members should first determine whether their services are in scope of the EAA and then determine whether general or specific accessibility requirements are applicable to those services under the EAA. ESPC Members should then determine whether there are additional requirements under the local laws of the EU Member States in which they operate. ESPC Members whose services are compliant with WCAG 2.1 Level AA Conformance, should complete a gap analysis to determine whether additional steps must be taken to ensure compliance with the EAA. ESPC Members should also ensure that their agreements with any service providers or sub-contractors require compliance with accessibility standards. Remaining updated with regulatory guidance and enforcement actions within the EU Member States will also assist ESPC Members in maintaining compliance, both with the EAA and any applicable national laws (as well as US standards). Finally, any ESPC Members that have not yet addressed accessibility requirements should consider reviewing the W3C’s WCAG 2.1 quick reference guide¹⁷ to ensure the minimum US accessibility requirements are implemented while moving towards compliance with the EAA.

¹⁶ A “microenterprise” means an enterprise which employs fewer than 10 persons and which has an annual turnover not exceeding EUR 2 million or an annual balance sheet total not exceeding EUR 2 million. See Article 3(23).

¹⁷ See <https://www.w3.org/WAI/WCAG22/quickref/?versions=2.1>.