

Liability of Quasi-Manufacturers for Provision of Information in Disability Accessible Formats in Distance Consumer Contracts – Comparative Perspective

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This article aims to assess regulations on consumer rights in relation to the provision of information in disability-accessible formats by the relevant Georgian and international legislation in force. In particular, the article, through comparative analysis, describes distinctive matters of combating discrimination in consumer relationships, including case law and regulations of the EU and the United Nations. The article discusses liability of quasi-manufacturers derived from failure to fulfil duties of information in consumer distance contracts concluded with consumers with disabilities. In particular, the article evaluates possibilities of compensation of material and non-material damages. Apart from challenging the issues mentioned above, the article distributes comprehensive study on distinguishing terms ‘clearly personalised’ and ‘disability accessible’ in the light of realization of exceptional withdrawal rights prescribed by directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights. Accordingly, the article examines the conformity of the Georgian consumer legislation with the respective EU laws under association agreement between Georgia and the European Union.

Keywords: Quasi manufacturer, liability for discrimination, disability accessible formats, information rights of consumers, universal design.

Kvazigamintojų atsakomybė už informacijos teikimą negalią turintiems asmenims prieinamais formatais nuotolinėse vartojimo sutartyse: lyginamoji perspektyva

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Straipsnyje remiantis Gruzijos ir tarptautiniais teisės aktais nagrinėjama vartotojų teisių apsauga, susijusi su informacijos teikimu negalią turintiems asmenims prieinamais formatais. Lyginamoji analizė leido atskleisti svarbiausius diskriminacijos vartotojų santykiuose prevencijos aspektus, įskaitant Europos Sąjungos ir Jungtinių Tautų teisminę praktiką bei teisinį reglamentavimą.

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Straipsnyje taip pat aptariama kvazigamintojų atsakomybė už informavimo pareigų nevykdymą sudarant nuotolines vartojimo sutartis su negalią turinčiais vartotojais. Ypatingas dėmesys skiriamas materialinės ir nematerialinės žalos atlyginimo galimybėms. Be šių sudėtingų klausimų, straipsnyje gilinamasi į sąvokų „aiškiai suasmenintas“ ir „prieinamas negalią turintiems asmenims“ skirtumus, nagrinėjant išimties sutarties atsisakymo teises, numatytas 2011 m. spalio 25 d. Europos Parlamento ir Tarybos direktyvoje 2011/83/ES dėl vartotojų teisių.

Galiausiai straipsnyje vertinama Gruzijos vartotojų teisių teisinio reglamentavimo atitiktis Europos Sąjungos teisės normoms, kaip tai numatyta Gruzijos ir Europos Sąjungos asociacijos susitarime.

Pagrindiniai žodžiai: kvazigamintojas, atsakomybė už diskriminaciją, negalią turintiems asmenims prieinami formatai, vartotojų informavimo teisės, universalus dizainas.

Introduction

In an era where digital transactions and remote interactions have become commonplace, ensuring equal access to information and services for individuals with disabilities is paramount. Legal systematic research on primary and secondary law is conducted regarding legal frameworks on accessibility concerns in distance consumer contracts in the light of rapid advancement of technology.

A systematic literature research is conducted with a view of investigating the question regarding realization of accessibility rights of disabled people online and its correlation with the fundamental rights and freedoms. Prohibition of online discrimination of people with disabilities is recognized under various international treaties and instruments, including the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD, Articles 5, 9 and 29) and is also enshrined in the EU Charter of Fundamental Rights. (EU Charter of Fundamental Rights, Articles 21, 26 and 33). Therefore, online discrimination conducted on online intermediaries, such as online platforms, gains significance in the light of various fundamental rights (Delfi AS v. Estonia, 2015; Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary, 2016). On the other hand, online platforms serve as economic intermediaries and bear consequential legal responsibilities before users and business partners (OECD, 2019). In the light of the presently mentioned legal instruments, this research aims to conduct comparative analysis of the nature and purpose of accessibility rights for consumers by examining practices of national courts, the European Union and UN judicial bodies.

However, in cases where online platforms exercise a significant degree of control over the products or services offered on their platforms, or where they play an active role in the design, production, or distribution process, they may be deemed to have assumed responsibilities akin to those of manufacturers. However, this would typically be assessed on a case-by-case basis, while taking into account factors such as the platform's level of involvement in the creation or sale of the products or services, its contractual arrangements with sellers, use of IP rights of the seller or manufacturer. Thus, online platforms assume certain responsibilities or obligations that are typically associated with manufacturers or sellers, and they are deemed to function as a quasi-manufacturer (Google France SARL and Google Inc. v Louis Vuitton Malletier SA, Google France SARL v Viaticum SA and Luteciel SARL and Google France SARL v Centre national de recherche en relations humaines (CNRRH) SARL and Others, 2010; Coty Germany GmbH v Amazon Services Europe Sàrl and Others, 2020).

Based on all of the above, the purpose of this paper is to address main research question: *should law prescribe the liability of quasi-manufacturers for the Provision of Information in Disability Accessible Formats in distance consumer contracts?* The liability of quasi-manufacturers for providing information in disability-accessible formats in distance consumer contracts under the EU law is influenced by a complex interplay of directives, regulations, and case law. While the EU legislation primarily targets the public sector and aims to harmonize accessibility standards, consumer protection directives and

the respective case law of the Court of Justice of European Union and ECHR indirectly impact the obligations of digital service providers. As accessibility continues to gain prominence on the EU agenda, ongoing legal developments and jurisprudence will shape the evolving obligations of quasi-manufacturers in ensuring equal access to digital services for individuals with disabilities inside the EU and its candidate countries, such as Georgia. Provision of information to consumers in different stages of the contract forming, including the pre-contractual stage, serves to protect them as individuals from risks and threats that they are unable to resist because of information asymmetry. Thus, we may consider that information asymmetry is an obvious threat for the consumer's welfare, safety and economic interests (Valant, 2015, p. 3). The presence of information asymmetry leads to a lower ability of a consumer in a negotiation with the trader to predict the outcome of the contract under conditions that they cannot influence the terms of an agreement due to the course of standard term contracts (Hesselink, 2007, p. 361–365). Through imposing strict information duties on business operators/traders, the law aims to empower consumers, based on the assumption that consumers can make informed decisions regarding the subject of the contract and other contractual obligations (Howells *et al.*, 2018, p. 95–96).

1. Right to Information in Disability-Accessible Formats

The liability of quasi-manufacturers for providing information in disability-accessible formats in distance consumer contracts intersects with the fundamental human rights principles, particularly those related to accessibility, equality, and non-discrimination. The core legal instrument for upholding the rights of individuals with disabilities, including access to information and communication technologies, is the UN *Convention on the Rights of Persons with Disabilities* (CRPD), which represents a landmark international agreement affirming the rights of individuals with disabilities.

However, the EU has enacted several directives and regulations aimed at promoting accessibility and consumer protection in digital services. The Web Accessibility Directive (2016/2102) sets accessibility requirements for public sector websites and mobile applications, in terms of promoting equal access to digital services (Directive (EU) 2016/2102, Article 1). Besides, the EU Charter of Fundamental Rights affirms the rights of persons with disabilities as human rights and provide a legal framework for ensuring their equal treatment, participation, and inclusion in society.

In the Georgian context, Georgia has ratified CRPD in 2014, and, together with the disability rights enshrined in the Constitution of Georgia, this represents the core legal instrument for promoting the rights of persons with disabilities.

1.1. Right to information in disability-accessible formats under UN *Convention on the Rights of Persons with Disabilities* (CRPD)

1.1.1. Equality and non-discrimination

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) emphasizes equality and non-discrimination for individuals with disabilities (CPRD, Article 5). The principle of equality and non-discrimination, enshrined in Article 5, serves as a cornerstone of the CRPD, affirming the rights of persons with disabilities to equal treatment and opportunities in all aspects of life. It asserts that individuals with disabilities are entitled to the same respect and consideration as everyone else, regardless of their impairments or limitations (Degener *et al.*, p. 10).

Opportunities must be tailored to specific needs of disabled individuals, which, in scientific literature, is also described as “multidimensional disadvantage equality” (Fina, 2017, p. 158). In com-

parison with other legal documents, where articles on prohibiting discrimination are exercised with conjunction of other fundamental rights, Article 5 of the CPRD contains free-standing provisions and prohibits discrimination on the basis of disability in the enjoyment of any right prescribed by the law (Fina, 2017, p. 160).

By virtue of ensuring the equality of opportunities, case-by-case basis ensures not only ‘access’ to public goods, such as facilitating an entrance to a building, but rather equality of results (Kanter, 2015, p. 842–845). Promotion of non-discrimination principles towards different groups of people with disabilities should be characterized by three main principles: necessity, proportionality and permanence (Waddington *et al.*, 2011, p. 1523–1524).

Inter alia, the article encourages the promotion of persons with disabilities in the private sector through the appropriate policies and measures. Secondly, under Article 5(1) of that Convention, states must recognise that all persons are equal before and under the law, and are entitled without any discrimination to the equal protection and equal benefit of the law, while Article 5(4) of the UNCPRD also expressly authorises specific measures which are necessary to accelerate or achieve *de facto* equality of persons with disabilities (Petya Milkova v Izpalnitelen direktor na Agentsiata za privatizatsia i sled-privatizatsionen, 2017, para. 49). However, in Germany, the Federal Social Court, when interpreting Article 5(2) CRPD and, building on earlier constitutional rulings, found that discrimination can also involve excluding opportunities for the development of an individual’s potential and for the possibility to carry out activities and effective measures (B 8 SO 14/13 R, 2014, paras. 25–26).

In conclusion, Article 5 of the CRPD shifts the paradigm from a medical model of disability to a social model which emphasizes the rights and agency of individuals with disabilities (Bickenbach *et al.*, 2017).

1.1.2. Accessibility

Article 9 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) focuses on accessibility. The article emphasizes the need for the states parties to promote the development and use of assistive devices and technologies so that to facilitate access to information and communication for persons with disabilities (European Parliament, 2020, p. 108–136). Article 9 of the CRPD addresses not only the physical accessibility right of people with disabilities, but also accessibility of information. In conjunction to Article 5, lack of accessibility to any public or private premises, transport or information is qualified explicitly as discrimination (Fina *et al.*, 2017, p. 228).

Article 9 imposes duties upon signatories to identify and remove obstacles from the enjoyment of right of accessibility to facilities and information (Fina *et al.*, 2017, p. 228). Information must be physically reachable, and information about goods and services should be delivered in plain and comprehensive manner, whether they are in contractual relationship or not (CPRD Committee, Comment No. 2, para. 13). Moreover, the State through its established bodies, should continuously monitor the compliance to accessibility requirements by governmental and private enterprises (CPRD Committee, Comment No. 2, paras. 27–33). As long as products and services are offered in the public, they must be available to all including through disability-accessible formats for people with disabilities in all platforms, and by all tools, especially on the internet and when employing information technologies (Schulze, 2007, p. 52).

Unlike the historical discourse, Article 9 embodies the principles of ‘social approach’ which embrace the ideology that people with disabilities shall participate in social life independently, and that their daily existence must not require any assistance from other individuals, and information regarding them must be delivered in accessible formats (Goodley, 2001, p. 225–231). Article 9(2) requires appropriate

measures addressing private entities to promote other appropriate forms of assistance and support to persons with disabilities so that to ensure their access to information (Waddington, 2022, p. 311). Social and cultural rights of people with disabilities can be only fully implemented through the implementation of consumer protection measures, including the most crucial one, specifically, introducing disability-accessible formats in the contract-forming process (Lazer, 2019, p. 188).

1.2. Right to information in disability accessible formats under Charter of Fundamental Rights of EU

1.2.1. Non-discrimination

Article 21 of the EU Charter of Fundamental Rights underscores the EU's commitment to promoting the full inclusion and participation of people with disabilities in society, in line with international standards such as the UNCRPD. The UN Convention to which the EU is a party, and the EU Charter of Fundamental Rights recognize the importance of taking additional steps to provide vulnerable consumers with impairments “who have difficulty understanding pre-contractual information provided in the standard format (e.g., information on paper or in a .pdf document attached to an email), with information that they can understand (e.g., information in Braille, in a Microsoft Word document or in easy-to-read text)” (Waddington, 2022, p. 308–309). Furthermore, it imposes general obligations on the EU member states to adopt measures to prevent and combat discrimination based on disability (Gerards *et al.*, 2019, p. 348–350), which includes enacting anti-discrimination legislation, promoting accessibility and reasonable accommodation, and ensuring that people with disabilities have access to effective remedies in cases of discrimination (European Union Agency for Fundamental Rights, 2018).

The European Court of Justice interpreted the term ‘reasonable accommodation’ as a broad term which should be understood as referring to the elimination of the various barriers that hinder the full and effective participation of persons with disabilities in the professional life on an equal basis with other workers. Incidentally, people with disabilities should be granted reasonable accommodation, wherever needed in a particular case (TC and UB v Komisia za zashtita ot diskriminatsia, para. 57).

For comparison, recital 20 of Directive 2000/78 provides a list of reasonable accommodation measures, for example: adapting premises and equipment, patterns of the working time, the distribution of tasks or the provision of training or integration resources. Any measure combating discrimination referred as ‘reasonable accommodation’ should be effective and involve practical measures to eliminate obstacles for people with disabilities, and it should not be exhaustive (XX v Tartu Vangla, 2021, para. 48). By establishing the duty to provide a reasonable accommodation under Article 5(3), the CRPD links the equality and non-discrimination norms with the duty to provide necessary and appropriate modification and adjustments (Waddington, 2022, p. 315).

In contrast to provisions addressing the right to accessibility prescribed under Article 9 of the CRPD, which imposes the duty to develop systems universally designed for a wide range of people with disabilities, they still may fail to address everyone's requirements (Waddington, 2022, p. 315).

1.2.2. Promoting integration

Article 26 of the EU Charter of Fundamental Rights focuses on the rights of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration, and participation in the life of the community. Moreover, Article 26 fully corresponds with article 19 of the UN *Convention on the Rights of Persons with Disabilities* (UNCRPD) on living independently

and being included in the community, which the EU has ratified and committed to implementing. To illustrate, Directive 2000/78 is one of the EU acts which refers to matters governed by the UN Convention (Council Directive 2000/78/EC, Article 1), with the result that this convention may be relied on in order to interpret that directive (DW v Nobel Plastiques Ibérica SA, 2019, paras. 39–40). Likewise, similar obligations enshrined in the UN *Convention on the Rights of Persons with Disabilities* (CRPD), the provisions of which may be relied on for the purposes of interpreting the EU directives, so that the latter must, as far as possible, be interpreted in a manner that is consistent with that convention (XX v Tartu Vangla, 2021, para. 49).

In particular, the objective of the EU and national legislations regarding the promotion of integration and independence of disabled people is to facilitate expressing their legitimate wishes and to make choices freely when personal assistance services are provided, and persons' personal autonomy in their daily life is a 'legitimate objective' not only within the meaning of Article 19 of the UNCRPD, but within the meaning of Article 6(1) of Directive 2000/78 (J.M.P. v AP Assistenzprofis GmbH, 2023, para. 44).

Unlike the consumer rights directive, the CPRD requires States to enable persons with disabilities to participate in recreational, social, leisure and sporting activities on equal basis with others. Under the notion of participation, this means not only the actual process of taking part in such occasions, but also the right to receive, perceive and understand the information about such events (CPRD, Article 30(5)). Moreover, this right must be read in conjunction of Articles 9 and 19 of the CPRD, which ensure general accessibility for all public events, buildings and sights. Ensuring full disclosure of information in accessible formats before and during cultural, social and leisure events can be fulfilled by different tools, among which, the CPRD committee names personal assistants, guides, readers, professional sign language and tactile interpreters (Broderick, 2019, p. 277–278). As a good practice for cultural organizations, one might consider adapting tickets, posters, certain performances in person or online by a range of technical resources: audio description, spiriting and adaption to sign language. Resources may vary over the nature of disability (Tatic, 2015, p. 50).

The EU law generally addresses accessibility rights related to physical environment, which introduces national and union level requirements for accessibility to buildings, public facilities and transport (Hosking, 2017, p. 151). Several legislation tools include provisions on the publication of information in accessible formats, including the Web Accessibility Directive. Moreover, AVMSD imposes accessibility requirements on providers of audio-visual media services, and EAA intends to establish accessibility principles for products and services, rather than implementation of these standards (Broderick, 2019, p. 405).

To generalize on the court decision in the big picture, legislation seeks to guarantee the right of persons with disabilities to organize how they lead their life in as self-determined and independent a manner as possible. Ensuring their independence, social and occupational integration and participation in the life of the community forms part of the rights recognized by the EU law, in accordance with Article 26 of the Charter (J.M.P. v AP Assistenzprofis GmbH, 2023, paras. 58–61).

Articles 5, 9 and 21 of the CPRD, covering a wide range of social and cultural rights, which can be only fully implemented through introducing disability-accessible formats in the contract-forming process, have gained more importance through the development of digital markets (Lazer, 2019, p. 188).

1.3. Right to information in disability accessible formats under Georgian legislation

The Constitution of Georgia enshrines rights of people with disabilities under the umbrella of the right of equality. In particular, Article 11 of the Constitution of Georgia states that all persons are equal before the law. This catalogue of prohibited discrimination grounds does not include 'disability', which,

on the other hand, is expressed in exclusive wording. The fourth paragraph of the article states: “The State shall create special conditions for persons with disabilities to exercise their rights and interests.”

Georgia has ratified the United Nations *Convention on the Rights of Persons with Disabilities* (UNCPRD) and has committed to implementing its provisions to ensure the full realization of disability rights. Thus, the Supreme Court of Georgia underlines obligation of the State to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability in accordance to Article 4 of UNCPRD (Supreme Court of Georgia, 2023, №სს-716-2022).

On these grounds, the right to information in disability-accessible formats may be assumed as a part of general obligation of the State to ensure full participation of every citizen in public life and maintaining the standard of life (Supreme Court of Georgia, 2023, №სს-716-2022). The Constitution of Georgia promotes the importance of social rights (Supreme Court of Georgia, 2023, №დს-1176(23-22)), which requires adequate public administration through law-making and social policies (Supreme Court of Georgia, 2017, №დს-365-360 (3-16)).

2. Concept of Legal Protection of Disability

The CJEU has adapted its interpretation of the concept of disability for the purposes of the EU equality law with the guidance found in Article 1 CRPD and Preamble recital (e) (Lawson *et al.*, 2018, p. 468). Particularly, when interpreting the employer’s obligation to promote disability rights under the Employment Equality Directive in a consistent manner with the Convention, CJEU has held that the concept of ‘disability’ for the purposes of the Directive must be understood as: a limitation which results in particular physical, mental or psychological impairments which, in interaction with various barriers, may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers (HK Danmark v Dansk almennyttigt Boligselskab and HK Danmark v Dansk Arbejdsgiverforening, 2013, para. 38).

Under the EU case law, international agreements concluded by the EU “form an integral part of the Community legal system” (R. & V. Haegeman v Belgian State, 1974, para. 5), and therefore it has the jurisdiction to interpret the provisions of such agreements (R. & V. Haegeman v Belgian State, 1974, para. 6; Meryem Demirel v Stadt Schwäbisch Gmünd, 1987). This line is maintained in the fundamental legal instruments of the union, for example, Article 216(2) TFEU regarding international treaties provides that “[a]greements concluded by the Union are binding upon the institutions of the Union and on its Member States.”

As for the CPRD, it should be noted that, from the from the time of its entry into force of the Decision 2010/48 that the European Union has approved the UN Convention, the provisions of that Convention are an integral part of the European Union legal order (HK Danmark v Dansk almennyttigt Boligselskab and HK Danmark v Dansk Arbejdsgiverforening, 2013, para. 30). Thus, in line with the established case law, as far as possible, the EU regulations should be interpreted in a manner consistent with that convention (HK Danmark v Dansk almennyttigt Boligselskab and HK Danmark v Dansk Arbejdsgiverforening, 2013, para. 32).

While the UNCPRD states that disability may refer to long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder full and effective participation in society on an equal basis with others (CPRD, Article 1), the contracting states may take additional measures to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities. In this context, it is worth mentioning that

the Italian case law, on the basis of the social model of disability, extended the understanding to the administration to people with ‘psychosocial disabilities’, including people with addictions or compulsive behaviours. ‘Administration of support’ could be exemplified as by a group of a person who has difficulties in managing his family life because of his alcohol and gambling addictions (Tribunal of Catanzaro, 2020). Meanwhile, the Tribunal of Varese extended this approach when granting the administration of support on the grounds of the compulsive spending disorder (Tribunal of Varese, 2012).

2.1. Medical model of disability

The medical model of disability, characterized by its focus on individual impairments and medical interventions, has been critiqued for its limited understanding of disability and its failure to address societal barriers. The Medical model of disability entails that persons with disabilities require shelter and social welfare, and the fact of impairment precludes them from full legal capacity (Degener, 2016). It strengthens social stigmatization and is concentrated mostly on the ‘charity’ model, which reflects the role of the State as a sole provider of the public welfare and undermines the role of the private sector (Broderick *et al.*, 2019, p. 19).

Whilst, after ratifying the CRPD by the European Union, the CRPD served as a reference point for interpreting the Union law regarding discrimination on the basis of disability (European Commission v Italian Republic, 2013; Wolfgang Glatzel v. Freistaat Bayer, 2014; Mohamed Daoudi v Bootes Plus SL and Others, 2016), the CJEU still may interpret disability rights almost identically to a medical model of disability, and the court states that “there is nothing in Directive 2000/78 to suggest that workers are protected by the prohibition of discrimination on grounds of disability as soon as they develop any type of sickness”, but also scribble lines between medical concepts of medical defects and social accessibility (Sonia Chacón Navas v Eurest Colectividades SA, 2006).

2.2. Social model of disability

The CRPD perceives that disability emerges when long-term physical, mental, intellectual or sensory impairments interact with various barriers which may hinder people with the presently mentioned impairments so that their full and effective participation in society should be ensured on an equal basis with others. A mere fact of long-term physical, mental or any other kind of impairment does not constitute disability (CRPD, Article 1).

To this end, the link between impairment and disability does not exist (Lawson *et al.*, 2018, p. 471). The social model of disability stipulates that, in disabled individuals who have impairments, crucial role is granted to the environment in which the person inhabits (Priestly, 1998, p. 13).

In concrete terms, the social model entails ideas of positive rights, affirmative action and reasonable accommodation. In controversy to the medical model, the social model is distancing itself from the patronizing and paternalistic approach to persons with disabilities, by perceiving them as members of the community with equal rights, which has also been reflected in the evolution of the international standards relating specifically to disabilities (Supreme Court of India, 2016).

The cornerstone of the **social model** of disability is the external barriers caused by the social and natural environment, attitude, and legislative obstacles. To overcome the above-mentioned impedimental circumstances, this model vests responsibility not only in the government, but rather society as a whole is responsible for tackling the above-mentioned disadvantages. The term ‘society’ entails the unity of person and entrepreneurial initiatives (Broderick *et al.*, 2019, p. 20–21).

Under this model, challenge comes from social ignorance towards the dignity of people with disabilities (Quinn *et al.*, 2002, p. 14) Justice can be achieved when people with disabilities will be treated with respect to their capabilities, which may vary according to physical or mental impediment groups, and the private sector has a serious say in achieving this stage of equality because one of the first interactions between society and people with disabilities is the daily economic relationship, such as trade and services (Harnacke, 2013, p. 777).

Goods and services designed are deemed to be universally accessible (Universal Design) if they are accessible, used and understood by the greatest possible extent of human population, especially by people with disabilities (Grimble *et al.*, 2010). It entails computer and information technologies (D'souza, 2005, p. 3–9) and assistive devices, which are designed for the people with disabilities and are used for various purposes, including: medical, employment, housekeeping (Broderick, 2019, p. 139–140), and which may be used for distance contracts by consumers with disabilities.

States are responsible for ensuring accessibility for disabled individuals in the public and private domains for buildings, goods and services (Bacher v. Austria, 2014). Thus, the State should take effective actions by imposing the relevant obligations on private enterprises to comply with the accessibility requirements (Nyusti and Takacs v. Hungary, 2010).

3. Disability Accessible Formats under EU Law

The European Union undertakes significant steps towards ensuring digital inclusion for people with disabilities. It aligns with broader disability rights frameworks and presents both opportunities and challenges for public sector bodies (Council Directive 2016/2102, Recital 12). Effective implementation often requires a combination of technical solutions and policy measures (Greco *et al.*, 2017, p. 64–65). In general, public bodies are required to comply with the four principles of accessibility which are established under the aforementioned directive: perceivability, operability, understandability, and robustness (Council Directive 2016/2102, Recital 37).

The current market attitudes towards disability-accessible formats resulted in a situation when people with impairments are rarely fully informed about the contractual obligations, characteristics of goods or services. Limited provision of consumer information in disability-accessible formats, which would be an alternative to the standard formats, leads people with physical impairments, such as vision, hearing, or cognitive impairments, to misguided economic decisions, resulting in financial loss (Eskyte, 2019, p. 524–525). Bearing in mind that disabled people are a significantly diverse group with different needs in terms of the format in which information should be provided, “accessible formats can include texts in Braille, large print, audio, sign language, and text-based information, documents in Microsoft Word, and easy-to-read texts and symbols. In order to be accessible to the full range of non-disabled and disabled consumers, information needs to be presented in a variety of forms” (Waddington, 2022, p. 309). For the purposes of the Web Accessibility Directive, the principle of perceivability means that information and the user interface must be presentable to users in ways they can perceive with respect to the nature of their disability (Council Directive 2016/2102, Recital 37). This means that the content should be available to at least one of the user's senses (sight, hearing, touch). For example, the principle of perceivability may be achieved by offering text alternatives for the non-text content, offering captions for multimedia, and ensuring that the content can be resized or adjusted without loss of information (Lazar, 2015, p. 121). In addition to operability, the principle of understandability also tackles with interfaces of web and mobile applications. In particular, this means that information and the operation of the user interface must be understandable (Council Directive 2016/2102, Recital 37).

To ensure interface understandability, users must be able to comprehend the information as well as the operation of the user interface, e.g., making the text readable and understandable, ensuring that web pages appear and operate in predictable ways, and helping users avoid and correct mistakes (Petrie *et al.*, 2009).

As for the principle of robustness, one should mention that it entails duty to content which should be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies (Council Directive 2016/2102, Recital 37). As technologies and user agents evolve, the content should remain accessible. It can be achieved by using standards to ensure compatibility with the current and future user tools and providing content that can be reliably interpreted by a wide variety of user agents (Harper *et al.*, 2008).

The *European Accessibility Act* (EEA) (Directive (EU) 2019/882) addresses how information can be made accessible to consumers with disabilities in the context of certain products or services. In Annex I Section I, and in Annex II, instructions are provided for the provision of information in disability-accessible formats. In particular, information regarding the use of a product should be made available via more than one sensory channel (e.g., through electronic files which can be read by a computer using screen readers); be presented in an understandable way (e.g., by using the same words in a consistent manner, or in a clear and logical structure so that persons with intellectual disabilities can better understand them); be presented to users in ways they can perceive (e.g., by providing subtitles in video instructions); be presented in fonts of an adequate size and a suitable shape; be made available in text formats that can be used for generating alternative assistive formats (e.g., by printing in Braille); be accompanied by an alternative presentation of any non-textual content (e.g., by accompanying a diagram with a text description identifying the main elements or describing key actions); include a description of the user interface of the product; include a description of the functionality of the product which is provided by functions aiming to address the needs of persons with disabilities; and include a description of the software and hardware interfacing of the product with assistive devices (Waddington, 2022, p. 310).

The same attitude prevails in many jurisdictions which tend to harmonize accessibility opportunities by issuing guide principles for different kinds of sectors. To illustrate, ‘web content accessibility guidelines’ can foster the development of disability-accessible online forms for consumers with cognitive disabilities, to whom clear communication assumes even greater significance, particularly in contracting online, where human communication from the trader is mostly excluded. It means that contracts governing the supply of online services are often difficult to read and understand. A solution for achieving accessible formats for the information flow for people with cognitive disabilities might be strategies such as ratings, diagrams and standardized disclosure of key features, such as tailoring of information to their preferences instead of navigating complicated documents. Such information can be delivered in pop-up boxes and embedded videos, playing to the best learning style of the recipient (Maker *et al.*, 2018, p. 835).

Consumers with disabilities, namely, consumers with ‘mental or physical infirmity’ are recognized ‘particularly vulnerable’ under the EU consumer protection directives. (Council Directive 2005/29, Art. 5(3)). At the same time, these directives do not clearly impose certain obligations on the traders to ensure delivery of pre-contractual information to consumers in disability-accessible formats, on the basis of which, specifically vulnerable consumers can give their informed consent (Waddington, 2022, p. 308).

4. Liability of Quasi-Manufacturers for Provision of Information in Disability Accessible Formats in Distance Contracts

The European Accessibility Act (2019/882) aims enhancing the functioning of the internal market for accessible products and services by removing barriers created by divergent national regulations. It seeks to ensure that people with disabilities can participate fully in society and the economy, and improve the accessibility of relevant information (Council Directive 2019/882, Recital 1).

The wide scope of the directive has a huge impact on Disability Rights in promoting disability rights by ensuring equal access to products and services. This aligns with the UN *Convention on the Rights of Persons with Disabilities* (CRPD), emphasizing the right to accessibility (Lawson *et al.*, 2018, p. 9). The Act is seen as a significant step towards economic and social inclusion for people with disabilities. By harmonizing the accessibility requirements, it reduces market fragmentation and fosters innovation in an accessible design (Mace *et al.*, 2017, p. 47). In addition, the four principles of accessibility of websites and mobile applications, as used in Directive (EU) 2016/2102, are extended to the directive which additionally ensures common frames for accessibility formats designed under European Standard EN 301 549 V1.1.2 “Accessibility Requirements Suitable for Public Procurement of ICT Products and Services in Europe” (2015-04) (Council Directive 2019/882, Recital 47).

The Directive is expected to drive technological innovation, as companies develop new solutions to meet the accessibility requirements. This includes advancements in assistive technologies and accessible design practices (Arch *et al.*, 2018, p. 13). Meanwhile, implementation of the Act presents challenges, including the requirement to ensure compliance across diverse sectors and managing the costs associated with making products and services accessible. Studies suggest that effective implementation will require robust monitoring and enforcement mechanisms (Greco *et al.*, 2019, p. 889).

The Directive prescribes a varied list of obligations upon various actors in the private sector: manufacturers (Council Directive 2019/882, Article 7), authorized representatives (Council Directive 2019/882, Article 8), importers (Council Directive 2019/882, Article 9), distributors (Council Directive 2019/882, Article 10), and service providers (Council Directive 2019/882, Article 13). The main question which arises is whether, in distance consumer contracts online platforms and other types of quasi-manufactures than importers, distributors and service providers are liable for the conformity of their products and services with disability-accessible formats prescribed by the law.

4.1. Information duties in distance contracts

Article 2(7) of Directive 2011/83/EU defines a distance contract as: “A contract concluded between a trader and a consumer under an organized distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded.”

Derived from the legal notion of distance contracts, contracts may qualify as such, if it satisfies cumulatively three core elements: *a*. Organized Distance Sales or Service-Provision Scheme, which means that the contract must be part of a structured business model designed for selling goods or providing services at a distance; *b*. No Simultaneous Physical Presence, which means that the trader and consumer are not physically present together at any point during the contracting process; and *c*. Exclusive Use of Distance Communication, which means that the entire process, from the offer to the conclusion of the contract, must be conducted by using distance communication methods (e.g., internet, telephone, email) (Council Directive 2011/83, Recital 20).

Despite the legal clarity regarding the definition of distance contracts as agreements between the consumer and the trader concluded via electronic communication means, the European Accessibility Act (2019/882) does not provide the same terminology for the presently mentioned legal relationship. In particular, the Act states that the Directive defines e-commerce services as a service provided at a distance, through websites and mobile device-based services, by electronic means and at the individual request of a consumer, with a view to concluding a consumer contract (Council Directive 2019/882, Recital 42). However, ‘consumer’ means any natural person who, in contracts, is acting for purposes which are outside the scope of one’s trade, business, craft or profession (Council Directive 2011/83, Article 2.1) Every other private representative of e-commerce, legal or natural person, under the European Accessibility Act (2019/882), should be deemed as the trader, who is acting, including through any other person acting in his/her name or on his/her behalf, for purposes relating to his/her trade, business, craft or profession in relation consumer (Council Directive 2011/83, Article 2.2).

The Consumer Rights Directive (Directive 2011/83/EU) establishes stringent information duties for traders in distance contracts to protect consumer rights and ensure transparency. These duties are designed to inform consumers comprehensively on pre-contractual stage.

Articles 6 and 8 of the Directive outline the extensive pre-contractual information that traders must provide to consumers before the latter are bound by a distance contract. This information must be clear and comprehensible, and includes the following: the identity and contact details of the trader, the main characteristics of the goods or services, the total price, payment, delivery, and performance details, the right of withdrawal, and the duration of the contract (Twigg-Flesner, 2013, p. 116–117).

Information which should be clear and comprehensible, in the context of people with disabilities, means that the prescribed list of information should be delivered in an accessible manner, without impairment (Köhler, 2017, p. 49–50). Provision of clear and comprehensive information to disabled consumers is an essential aspect of consumer protection. The Preamble of the directive also states that, in providing clear and comprehensible pre-contractual information, the trader “should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee” (Council Directive 2011/83, Recital 34). Some scholars think that while provisions in the Preamble to a Directive are not binding, under this legal statute, a legal duty to provide a *de facto* reasonable accommodation in the form of accessible information is already established. Thus, Recital 34 should be interpreted as establishing a legal duty for traders to provide accessible information to consumers with disabilities (Waddington, 2022, p. 321) and, therefore, member states and actors to whom/which it may concern, should ensure transposition of this legal norm to national legislation with this correlation (Ferri, 2020, p. 293).

While Directive 2011/83/EU sets the general framework for consumer information, it is complemented by other legal instruments, like the European Accessibility Act and the CRPD, which specifically address the needs of disabled consumers. Ensuring accessibility involves adopting best practices in digital content creation, adhering to accessibility standards, and providing information in multiple formats to accommodate different disabilities (Mac Síthigh, 2017).

Accordingly, consumers have the right to receive mandatory information prescribed by Directive 2011/83/EU in accessible formats, designed in accordance to the European Accessibility Act (2019/882), i.e., four principles of accessibility and the European Standard EN 301 549 V1.1.2 “Accessibility requirements suitable for public procurement of ICT products and services in Europe” (2015-04).

The key Information duties which should be delivered to disabled consumers in clear and comprehensive manner, i.e., disability-accessible formats prescribed by the European Union legislation, entails:

1. Identity and contact details of the traders – Traders must provide their name, geographical address, and, where available, their telephone number, fax number, and e-mail address (Twigg-Flesner, 2013, p. 116).
2. Main characteristics of the goods or services – A clear description of the goods or services must be provided to enable the consumer to make an informed decision (Howells *et al.*, 2005, p. 271).
3. Total price – The total price of the goods or services, including taxes, must be provided. If the price cannot be calculated in advance, the manner of its calculation must be explained. Any additional freight, delivery, or postal charges must also be disclosed, or, if these cannot be calculated in advance, a statement that such charges may be payable must be presented (Weatherill, 2013, p. 146).
4. Payment, delivery, and performance details – Information about the arrangements for payment, delivery, and the time by which the trader undertakes to deliver the goods or provide the services must be provided (Micklitz, 2017, p. 37–38).
5. Information regarding right of withdrawal – Consumers must be informed about their right to withdraw, including the conditions, time limit, and procedures for exercising that right. A standard withdrawal form should also be provided (Rott, 2013, p. 48).
6. Duration of the contract – The duration of the contract must be specified, or, if the contract is open-ended or automatically renewed, the conditions for termination must be provided (Wilhemsson *et al.*, 2006, p. 27).

However, the recent case law in the European Union and the United States of America developed a new legal concept regarding the liabilities of online platforms. Corresponding to the fast-paced e-commerce industry, the interpretation of existing legal instruments should be extended in the way that would ensure full protection of disabled consumers before powerful online trading platforms.

4.2. Online platform as quasi-manufacturer

Cases C-682/18 (YouTube) and C-683/18 (Cyando) were brought before the Court of Justice of the European Union (CJEU) to address issues related to copyright infringement and the responsibilities of online platforms. These cases were initiated by copyright holders who claimed that these platforms facilitated the unauthorized sharing of their protected content.

With regard to the e-commerce directive which stipulates that there is no general obligation on providers when providing the services to monitor the information which they transmit or store, nor is there any general obligation to actively seek facts or circumstances indicating illegal activity, the court states that online platforms are protected under the E-Commerce Directive as long as they act as neutral intermediaries (Frank Peterson v Google LLC and Others and Elsevier Inc. v Cyando AG, 2021). But, if a platform has actual knowledge of illegal activities or information and fails to act expeditiously to remove or disable access to the infringing content, it cannot benefit from the liability exemption. An active role in promoting or optimizing content could also negate the exemption (Angelopoulos, 2020, p. 105–110). The ruling provides clarity on the scope of intermediary liability, while emphasizing that platforms, as quasi-manufacturers, are liable for user-generated content as long as they do not remain neutral and do not have knowledge of the infringing content (Husovec, 2020, p. 654–656).

In another case, the liability of online platforms was established when operators were using ‘sponsored links’ to trigger entry of users into sites offering imitated versions of products, and were providing links to competitors of their respective trademarks (Google France SARL and Google Inc. v Louis Vuitton Malletier SA, Google France SARL v Viaticum SA and Luteciel SARL and Google France SARL v Centre national de recherche en relations humaines (CNRRH) SARL and Others, 2010). The

CJEU clarified that *Google* could benefit from the liability exemption provided by the E-Commerce Directive if it played a passive role, by virtue of not having knowledge of or control over the data stored by its advertisers. However, if *Google* had active involvement, such as optimizing or promoting the advertisements, it could lose this exemption (Strowel, 2011, p. 8). In general, wherever a service is provided that consists of the storage of information provided by a recipient of the service, the service provider is not liable for the information stored at the request of a recipient of the service, on condition that the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent, or when the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information (Council Directive 2000/31, Article 14.1).

In line with infringement of intellectual property rights and trademarks, which ignite misleading activities before consumers, the CJEU ruled that the operator using, without manufacturer's consent, a sign identical with that trademark, in the course of false, misleading advertisement, should be deemed as a quasi-manufacturer who/which is liable for the damages caused by such activity (*Daimler AG v Együd Garage Gépjárműjavító és Értékesítő Kft*, 2016).

Echoing Articles 14 and 15 of the E-commerce directive, the Court of Justice stated that the operator is liable for damages if it exercises direct or indirect control over prohibition of unlawful use of a trademark on its platform. Additionally, the technical conditions necessary for a third party to use trademarks are created (*Coty Germany GmbH v Amazon Services Europe Sàrl and Others*, 2020).

Likewise the described case law, the CJEU provides clarity on the extent of liability for online platforms that facilitate the sale of goods by third-party sellers. Platforms like *Amazon* are not considered to be using trademarks merely by providing storage and logistics, but supporting the whole chain of transaction provides a solid ground for classification of online platforms as quasi-manufacturer, and therefore is liable for damages before consumers (*Coty Germany GmbH v Amazon Services Europe Sàrl and Others*, 2020). Moreover, the ruling absolves *Amazon* from direct trademark infringement liability in this context, it underscores the need for online marketplaces to adopt robust mechanisms to prevent the sale of counterfeit goods, aligning with their role as neutral intermediaries (*Coty Germany GmbH v Amazon Services Europe Sàrl and Others*, 2020).

Besides the case law, the EU legislation is implied to extend liability to importers of products and to persons who present themselves as producers by affixing their name, trade mark, or any other distinguishing feature, or who supply a product the producer of which cannot be identified (Council Directive 85/374, Preamble).

In connection to the European Accessibility Act (2019/882), it is worth mentioning that online platforms may be deemed case-by-case as just a service provider or a distributor. In some cases, it may accomplish both roles mentioned above, when providing warehouse and distribution service to consumers and some other end user (*Coty Germany GmbH v Amazon Services Europe Sàrl and Others*, paras. 45, 53). Depending on the business scheme, the roles of online platforms may differ. Notwithstanding the regulations provided by the European Accessibility Act (2019/882) regarding the manufacturer's liability for the conformity of goods with the applicable accessibility requirements (Council Directive 2019/882, Article 7.1) and ensuring technical documentation (Council Directive 2019/882, Article 7.2), or regarding the distributor's liability on CE marking, instructions and safety information in a language which can be easily understood by consumers and other end-users (Council Directive 2019/882, Article 10.2), meeting the storage or transport conditions jeopardises its compliance with the applicable accessibility requirements (Council Directive 2019/882, Article 10.3), the Directive leaves room for avoiding duties of providing information regarding consumer contract terms, goods

and services in disability-accessible formats in the pre-contractual and contract forming stages when the consumer concludes a distance contract through and by online platforms.

On the other hand, under Directive 2019/882, small and medium-sized businesses can seek an exemption if they can demonstrate that complying with the accessibility requirements would impose a disproportionate burden. This assessment should consider factors such as the size and resources of the business, the cost of compliance, and the benefits of accessibility improvements (Council Directive 2019/882, Recitals 64–66). Microenterprises and small businesses claiming this exemption must provide a clear and detailed explanation, based on objective criteria, to the relevant authorities (Waddington *et al.*, 2018, p. 152). This flexibility for small businesses acting as economic operators (such as manufacturers, importers, and distributors) in meeting the accessibility requirements for products and services may cause deterioration of the core consumer protection instrument – the realization of right to information, prescribed under Directive 2011/83.

Moreover, content from third parties that is neither funded by nor developed by, nor under the control of, the public sector body is exempt from the Web Accessibility Directive (2016/2102) concerning the public sector. This includes embedded videos or external links to the third-party content (Council Directive 2016/2102, Recital 30). This means that a disabled consumer of public services may not exercise their right to access information if, on public webpages or applications, third parties create some content. Undoubtedly, public service providers should encourage conformity of the third-party content and bear responsibility to undertake certain actions to avoid any derogation from the rule (Wheatley, 2017, p. 68).

All in all, consumers should receive information regarding goods and services in a clear and comprehensible manner if that information is not already apparent from the context (Council Directive 2011/83, Article 5.1). Moreover, the Directive states that, in providing that information, the trader (importer, distributor, intermediaries such as online platforms) should consider the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological impairments in a way which the trader could reasonably be expected to foresee (Council Directive 2011/83, Recital 34).

Conclusion and Recommendations

1. To enhance pre-contractual information accessibility, states should mandate that all pre-contractual information should be provided in accessible formats, such as large print, Braille, audio, and easy-to-read text, so that it would be tailored for individuals with disabilities. Additionally, the EU should implement specific regulations under the EU consumer protection directives to require traders to make accessible information a standard offering, thus enabling vulnerable consumers to make informed decisions.
2. Protection of disabled consumers' rights requires the EU and national consumer protection laws to incorporate mandatory accessibility standards covering physical, sensory, and cognitive impairments. Moreover, consumer rights directives should be updated so that to clarify trader obligations in providing accessible information formats, aligning with the standards set by the CRPD and the *European Accessibility Act* (EEA).
3. Businesses should be obliged to use inclusive information delivery methods, including: digital, audio-visual, and text-based formats, ensuring that consumers can receive and understand the key details.
4. States should introduce universal guidelines for businesses on using plain language, subtitles, audio descriptions, and screen-reader-compatible documents in order to enhance clarity and accessibility.

5. Online contract accessibility may be improved by introducing web accessibility standards that would address the specific needs of disabled consumers, such as web content guidelines for cognitive disabilities that would enable simpler navigation, interactive pop-ups, and visual aids.
6. States should adopt effective monitoring and reporting systems that would assess compliance with the CRPD accessibility standards, including penalties for those businesses which fail to provide reasonable accommodations and broaden the application of the Universal Design principles, ensuring that consumer products, services, and information delivery methods are inherently accessible to the largest possible range of people, including those with disabilities.
7. The EU, i.e., not only the Union member states, but also candidates to membership, should expand the accessibility Legislation to cover cultural and social Activities by: a) extending the scope of consumer rights directives so that to ensure accessible information for cultural, educational, and recreational activities; b) collaborating with cultural institutions and online marketplaces to adopt assistive measures like sign language interpretation, audio descriptions, and digital guides, voice-activated assistance and digital Braille displays with the objective to create universally designed information-sharing tools.

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