

LEGAL ALERT

NEW REQUIREMENTS AND OBLIGATIONS REGARDING THE ACCESSIBILITY OF PRODUCTS AND SERVICES

PART I

DECREE-LAW 82/2022 OF 6 DECEMBER

At the beginning of this month, [Decree-Law no. 82/2022 of 6 December](#) was published in the *Diário da República (Official Gazette)*, which, in (late) transposition of [Directive \(EU\) 2019/882 of the European Parliament and of the Council of 17 April 2019](#), lays down the requirements for the accessibility and free movement of products and services and establishes the obligations of economic operators and service providers in this context.

Summary

- **Definition of accessibility and free movement requirements** (to be consolidated by ordinance of the members of the government responsible for the areas of finance, the economy and the sea, culture, labour, solidarity and social security, infrastructure and housing and territorial cohesion, expected by 27 February 2023);
- **Imposition of specific obligations** on economic operators (manufacturers, importers, product distributors) and service providers;
- **Presumption of conformity** in the case of products or services which comply with harmonised standards (or part thereof) the references of which have been published in the Official Journal of the EU and which comply with the technical specifications (or part thereof), provided that those standards or parts thereof cover the accessibility requirements;
- **Conformity guarantee as evidenced by the CE marking;**

- **Safeguarding from fundamental changes and disproportionate burdens:** exemption from the application of these requirements where they are demonstrated to (i) entail a significant change to a product or service resulting in a fundamental change in the basic nature of the product or service or (ii) where they result in a disproportionate burden being imposed on economic operators.

Scope of application

a) Products:

1. General purpose consumer computer equipment and operating systems;
2. Self-service terminals (e.g. payment terminals, cash dispensers, ticketing machines, automatic check-in machines and some self-service terminals providing information);
3. Terminal equipment with interactive computer capabilities for consumer use, used for electronic communications services;
4. Terminal equipment with interactive computer capabilities for consumer use, used to access audio-visual media services, the main purpose of which is to provide access to these services;
5. E-book readers.

b) Services:

1. Electronic communications services;
2. Access services for audio-visual media services;
3. Service elements of air, bus, rail, sea and inland waterway passenger transport (e.g. websites, mobile-integrated services, including apps, e-tickets and e-ticketing services, transport service information);
4. Interactive self-service terminals for urban and suburban transport services and regional transport services, with certain exceptions;
5. Some consumer banking and financial services (including certain types of credit agreements, investment services and activities, payment services or those linked to payment accounts and electronic money);
6. E-books and dedicated software;
7. E-commerce services.

c) “112” Emergency communications service and handling.

Obligations of economic operators

Manufacturers¹:

As a precautionary measure:

- To draw up the technical documentation and enforce or have enforced the conformity assessment procedure in accordance with Annex I to this new statute;
- Where it has been demonstrated that a product complies with the applicable accessibility requirements, to draw up an EU declaration of conformity and affix the CE marking to the product and retain it for a period of five years after the product has been placed on the market;
- To ensure that procedures are in place to maintain the conformity of serial production, taking into account changes in the design or characteristics of the product and changes in the harmonised standards or technical specifications which were a reference for the declaration of conformity of a product;
- To ensure that their products display a type, lot or serial number or other particulars permitting their identification, or, where the size or nature of the product does not allow it, that the information required is given on the packaging or in a document accompanying the product;
- To indicate, particularly in Portuguese, the name of the manufacturer, its registered name or trademark and the address at which it can be contacted about the product or, where this is not possible, on its packaging or in a document accompanying the product;
- To ensure that the product and its labelling are accompanied by instructions and safety information in Portuguese and that they are clear, understandable and intelligible.

For monitoring/correction purposes:

- When placing a non-compliant product on the market, to ensure that the corrective measures necessary to bring that product into conformity or to withdraw it from the market are taken,

¹ In order to extend the scope of the statute, the concept of manufacturer relevant for this purpose covers importers and distributors who place on the market products under their name or trademark or modify products already placed on the market in such a way that compliance with the requirements is affected.

informing the competent national authorities of the Member States in which they have made the product available and providing them with the necessary information, in particular on the non-compliance and corrective measures taken;

- On reasoned request, to provide the supervisory authorities with all the information and documentation, particularly in Portuguese, needed to demonstrate the conformity of the product; and
- To cooperate with the supervisory authorities on any action to address non-compliance with the accessibility requirements for the products they have placed on the market, including bringing the products into conformity with their requirements.

Importers:

As a precautionary measure:

- To ensure *(i)* that the manufacturer has used the conformity assessment procedure and has drawn up the required technical documentation, *(ii)* that the product bears the CE marking and is accompanied by the required documents, *(iii)* that the product is accompanied by Portuguese language versions of instructions and safety information, and *(iv)* that the manufacturer has complied with the requirements for identification of the product and of its manufacturer;
- To indicate, particularly in Portuguese, the name of the importer, its registered name or trademark and the address at which it can be contacted about the product or, where this is not possible, on its packaging or in a document accompanying the product;
- To ensure that storage or transport conditions do not harm compliance with the applicable accessibility requirements while the product is under its responsibility; and

For monitoring/correction purposes:

- Keep a copy of the EU declaration of conformity available to the market surveillance authorities for a period of five years.

Distributors:

As a precautionary measure:

- To verify that *(i)* the product bears the CE marking and is accompanied by Portuguese language versions of the necessary documents and instructions and safety information, *(ii)* the manufacturer has complied with the product identification requirements, *(iii)* the

manufacturer and the importer have complied with the requirements for their own identification;

- To ensure that storage or transport conditions do not harm compliance with the applicable accessibility requirements while the product is under their responsibility;
- To refrain from placing on the market products which do not comply with the applicable accessibility requirements, until their compliance is ensured, and to inform the manufacturer or importer thereof and the market surveillance authorities.

For monitoring/correction purposes:

- When placing a non-compliant product on the market, to ensure that the corrective measures necessary to bring that product into conformity or to withdraw it from the market are taken, informing the competent national authorities of the Member States in which they have made the product available and providing them with the necessary information;
- On reasoned request, to provide the supervisory authorities with all the information and documentation, particularly in Portuguese, needed to demonstrate the conformity of the product; and
- To cooperate with the supervisory authorities on any action to address non-compliance with the accessibility requirements for the products they have placed on the market.

Obligations of service providers²

As a precautionary measure:

- To draw up the “actions on services meeting accessibility requirements”; set out in Annex II to this statute;
- To make available to the public, in writing and orally, in a manner accessible to persons with disabilities, and as long as the service is available, how the services meet the applicable accessibility requirements;
- To ensure that procedures are in place for ensuring that the provision of services remains in line with the applicable accessibility requirements, taking into account changes in the characteristics of the service provision, changes in the applicable accessibility requirements

² Unless provided by micro-enterprises (which employ fewer than 10 persons and whose annual turnover does not exceed EUR 2 million or whose annual balance sheet total does not exceed EUR 2 million), in which case these obligations do not apply.

and changes in the harmonised standards or in the technical reference specifications in order to declare that the service complies with the accessibility requirements.

For monitoring/correction purposes:

- If the service is non-compliant, to take the necessary corrective measures to ensure compliance, inform the competent national authorities of the Member States in which they provide the service and provide them with the necessary information;
- On reasoned request, to provide the supervisory authorities with all the information and documentation, particularly in Portuguese, needed to demonstrate the conformity of the service and;
- To cooperate with the supervisory authorities on any action to address non-compliance with the accessibility requirements for the services.

Supervision

Supervisory bodies (depending on the nature of the products/services):

- National Communications Authority (ANACOM);
- Media Regulatory Authority (ERC);
- Mobility and Transport Authority and the National Civil Aviation Authority (ANAC);
- Instituto da Mobilidade e dos Transportes, I.P. (Mobility and Transport Institute) (IMT);
- Banco de Portugal (BdP) [Bank of Portugal];
- Portuguese Securities Commission (CMVM);
- Economic and Food Safety Authority (ASAE);
- Municipalities;
- General Inspectorate of Cultural Activities (IGAC).

Measures:

- In the event of non-compliance, the economic operator may be required to take the necessary corrective measures to bring the product/service into conformity;
- Where such measures are not adopted within the time limit set by the supervisory authorities, the economic operator may be required to recall or withdraw the non-compliant products;

- Failure to comply with the obligations laid down in this statute may also result in a serious infringement (in the case of legal persons, a fine of between EUR 12,000 and EUR 24,000 and possible additional penalties) or a very serious infringement (in the case of legal persons, a fine of between EUR 24,000 and EUR 44,891.81 and possible additional penalties).

Term

Effective date:

7 December 2022.

Transition period:

- 28 June 2025: applies to products already on the market;
- 28 June 2027: applies to the service and handling for emergency communications to the European emergency number “112”;
- 28 June 2030: service providers whose facilities are legally in use (who may maintain them until that date) and contracts concluded before this statute entered into force.

We are available for any clarifications on this statute and as soon as the ordinance with the detail of accessibility requirements is published, we will release Part II of this *Legal Alert*.

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