Proposal for a Legal Act on Accessible Websites

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Introduction

The Information Society brings unprecedented scope for equal access to information, goods and services, as well as the risk of more exclusion if such access is not guaranteed for all. There is also scope for a thriving digital internal market of goods and services to deliver state of the art accessible websites, yet there are signs that market fragmentation is already impeding the growth of this market.

We live in an era of convergence, so there is an urgent need to fully address e-accessibility across all platforms and to therefore ensure that goods such as touch screen terminals, mobile phones, digital TVs, etc. are accessible. There is also a need to ensure that audiovisual content is accessible. The aim of this paper is to outline the key components of a binding EU legislative act on the accessibility of 'public websites and websites providing basic services to citizens'[1], as proposed in the Europe 2020 Strategy flagship initiative 'A Digital Agenda for Europe' (DAE). We see this as a first step towards full e-accessibility.

This paper was produced as a result of joint work by the European Blind Union (EBU), ANEC, the European Disability Forum (EDF) and AGE Platform Europe.

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[1] As mentioned in the DAE. The present paper offers a more comprehensive definition and examples of the types of websites that need to be included within the scope of the planned instrument.

1   Why now?

- **Past commitments to improve the accessibility of public websites have not been met.** The [Riga "Ministerial Declaration on an inclusive information society"](#) (June 2006) included a commitment to make all public websites accessible by 2010. Ministers also committed to deliver standards in public procurement for Information and Communication Technology (ICT) products and services, with a view to making these mandatory by 2010

- **Accessibility of websites remains low** - according to the [2008 Measuring e-accessibility In Europe Study](#), only 5% of public websites were accessible EU-wide. In addition, a recent ANEC study[2] showed evidence that **the reliability of declarations of accessibility is highly questionable**. Both self-declaration and third party certification proved inaccurate in the vast majority of websites tested.

- **The EU population is ageing, and the likelihood of experiencing a disability increases with age.** This means that the number of people living with a disability will increase – according to the European Commission, 25 % of the EU population will be over the age of 60 by 2020 and currently 21% of persons over 50 experience severe vision, hearing or dexterity impairments. This percentage increases with age, **therefore more and more people will need accessible websites.**

- **The United Conventions for the Rights of Persons with Disabilities (UNCRPD), ratified by the EU, came into force on 22 January 2011 yet disabled and older users continue to face great difficulties accessing websites**. The European Commission must ensure compliance with the provisions in the UNCRPD, including specific provisions on accessibility, access to information and participation in cultural life, recreation and leisure set out in articles 9, 21 and 30 respectively.

- **An increasing number of public services are delivered online to drive costs down, so inaccessible websites jeopardise access to public services for those who use assistive technology to access the Internet.** Because they use public services more than others, disabled and older people are more likely to be confronted with access issues as a result of the drive to move from face-to-face to online service delivery. If websites are not

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[2] See University of Middlesex study for ANEC , which looked at 100 websites across 5 European countries – http://bit.ly/mMbljj

designed accessibly, it is unlikely that significant savings will be achieved because public authorities will need to factor in the cost of setting up and maintaining alternative ways of accessing public services. While there will always be a need for alternative channels of communication for people who cannot access the Internet for a host of reasons - including cost - having accessible public websites would ensure that public monies are more appropriately targeted.

- **Standards on web accessibility exist[3], yet non-binding instruments have failed to deliver accessible websites both in the private and public sectors.**

- **Divergent policy approaches to web accessibility in Member States are fragmenting the market: this creates legal uncertainty, particularly for technology providers.** The fragmented approach to policy making in Member States is clearly illustrated in several reports, including in the 2009 G3ICT White Paper '*Web accessibility Policy Making, an International Perspective*'[4] and in the 2009 European Commission study on '*Web accessibility in European countries: level of compliance with latest international accessibility specifications, notably WCAG 2.0, and approaches or plans to implement those specifications'*.[5] This fragmented approach leads to different requirements on procurements and different certification standards for economic operators who work across borders. This in turn leads to additional costs for businesses and creates barriers to trade, impeding growth in the digital internal market. The lack of harmonisation also impedes the free movement of goods and services within the internal market and is not conducive to innovation. **Without harmonisation legislation to improve the functioning of the internal market of websites, the current level of fragmentation will continue to increase.**

- **The Digital Agenda for Europe** renews the commitment to web accessibility and announces that the European Commission will *"based on a review of options, make proposals by 2011 that will make sure that public sector websites (and websites providing basic services to citizens) are fully accessible by 2015."*

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[3] E.g. W3C Web Content Accessibility Guidelines 2.0
[4] http://bit.ly/lTIRNP
[5] http://bit.ly/913VyJ -See Annex II, "Overview of Accessibility Related Obligations Imposed on Website Owners in Selected Member States & of National Sources of Data on Compliance"

2 Costs and benefits of increased web accessibility

Our previous position papers[6] have described the benefits of increased web accessibility extensively, both from a social and from an economic point of view. In the present paper we wish to stress the fact that costs/benefits analyses of a 'status quo' should take into account the hidden costs of e-exclusion, as well as the costs of fragmentation to businesses as they need to adapt to an array of national legislative frameworks and cannot make economies of scale. Analyses should also factor in the negative impact of a status quo on innovation. All these costs may be difficult to estimate, yet they are real.

While there are costs incurred in ensuring accessibility of existing websites, designing accessible websites from the outset doesn't cost more[7]. In addition, costs will be offset by social and economic benefits. Evidence[8] shows that improving a website's accessibility not only ensures information is available to the widest possible audience, but also makes business sense. Some of the benefits include:

- Search engines can more accurately index the content of accessible websites, which very often results in higher ranking and greater frequency of valid matches to search queries;
- Potential for online sales is improved: many disabled consumers prefer to shop online and use accessible websites;
- Overall usability is improved for <u>all</u> users, regardless of how they access web pages; commercial differentiation is thus improved because finding information is easier and encourages people to stay longer on a website;
- Maintenance costs are reduced - better organised, simpler, cleaner coding and content make pages easier to work with and maintain for designers, developers and content authors.

In addition accessible websites can generate savings for public authorities by reducing the need to operate alternative channels of communication for people with disabilities and older people, as more of them are able to use mainstream accessible websites. Furthermore, accessible websites mean new consumers and new markets, i.e. new opportunities to generate economic growth.

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[6] See section 4 below for references
[7] Costs will only be incurred if web designers have no knowledge of current web accessibility standards
[8] See the well documented experience of FTSE 100 financial services company Legal and General, a UK company which has been able to monitor the benefits of making its website accessible http://bit.ly/C1FED

3   What type of act is needed?

We believe that an **EU binding legislative act** is needed**.** EU action is **necessary** to avoid further fragmentation of the internal digital market. At present manufacturers and service providers have to comply with varying degrees of national legislation on the matter. This is not conducive to investment in market-wide solutions nor is it fostering much needed innovation. So there is an urgent need to harmonise requirements in order to dismantle current barriers to the free movement of products and services.

There is **robust and unquestionable evidence from the United States** (US) which demonstrates that binding legislation is effective in delivering accessibility, including web accessibility. **Section 508** of the Rehabilitation Act of 1973 created a level playing field and is behind major improvements in accessibility features in a wide range of ICT products. Section 508 establishes accessibility requirements for electronic and information technology developed, maintained, procured or used by the Federal government, including websites. For example, it is worth noting that it is the pressure of US educational authorities that led Apple to mainstream accessibility features[9] in all its products, including the *Iphone* and the *Ipad*. **We strongly believe that binding legislation on web accessibility will create a similar virtuous cycle in the EU and a level-playing field for manufacturers and service providers.** This will also ensure that the EU is able to compete with the US in this developing market.

3.1   A well defined scope

The scope of the legislation should be carefully defined so as to fully encompass the scope outlined in the relevant action in the Digital Agenda for Europe Communication from the European Commission: "Based on a review of options, make proposals by 2011 that will make sure that public sector websites (and websites providing basic services to citizens) are fully accessible by 2015".

We suggest that the scope should be as wide as possible in order to cover websites delivering a wide range of basic services that are of public interest. A non-exhaustive list would include the following:

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[9] Such as 'voice over' technology

- Public services such as those delivered by national, regional and local authorities, e.g. education; social protection; health; employment; housing; etc.

- Other basic services of public interest including network services (e.g. postal services, energy, transport, water), financial services (e.g. banking services), and so on.

Some of these services may or may not be delivered by a public authority. This in our opinion is <u>not</u> a distinction that should be used as a criterion to determine which websites are included in or excluded from the scope of the legal instrument. Instead, the focus should be on the service provided.

3.2   An effective legal basis

As outlined above, there is evidence of market fragmentation resulting from the adoption of varying national legislation and web accessibility standards in Member States. We therefore believe that the legal basis of the legislative instrument should be an **internal market legal basis**. The principal aim of the legislative act would be to foster harmonisation and improve the functioning of the internal market.

There is a clear need to deliver a single market of accessible mainstream ICT goods and services by eliminating the differences in specifications and in particular to organise the harmonization of standards for the accessibility of websites. This is the only way to guarantee a level playing field for economic operators (e.g. web design companies, software developers, etc.) who would then be able to develop and commercialise websites and related services across all 27 EU member states.

The freedom of movement of citizens would also be enhanced if they could rely on the same level of accessibility of online services (e.g. access to local authority websites, etc.) wherever they live in the EU.

The functioning of the Internal Market would be vastly improved by ensuring that common minimum standards for the provision of accessible websites are adhered to. **This cannot be sufficiently achieved by Member States alone - this is why European action is necessary to ensure the free movement of goods and services in this area.**

3.3   Clear definitions

Several terms need to be defined as accurately and comprehensively as possible. We have outlined above the need to carefully define the **types of services** that would need to be covered, but it is equally important to define what is meant by '**Web Accessibility'.** We believe that the definition should refer to the use of appropriate features when designing a website in order to ensure that the largest possible number of people, including people with disabilities, are able to fully access and interact with the content of the website. We believe that this can best be achieved by adhering to the concept of 'Design for all'. People with disabilities are a heterogeneous group - some people will require assistive technology to access the Internet. It is therefore important to support the development of such technology, and equally important to ensure compatibility and interoperability between assistive and mainstream technologies.

3.4   An efficient link to web accessibility standards

Standards on web accessibility shall be set and published at European level to ensure accessibility of websites for people with disabilities. The standards applicable shall be published in the Official Journal of the European Union. Member States shall ensure that public sector providers refer to the standards published in the Official Journal where applicable[10].

The European Commission may request one or several European standardisation bodies to draft European standards or European standardisation deliverables. These should be market-driven and based on consensus.

Compliance with these standards must be independently verified at regular intervals and on a harmonised basis; users should have a right to be informed of the results of this verification and Member States should ensure that corrective action is taken where those results demonstrate that standards are not being met.

Where public websites are subject to a public procurement tendering process, reference should be made to the provisions featured in the recently published European Commission proposal on the future of European Standardisation[11].

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[10] The European Commission issued Standardisation Mandate 376 on ICT accessibility requirements in public procurement. Some of the expected deliverables concern web accessibility
[11] European Commission Proposal for a Regulation on European Standardization - COM(2011)315

Binding legislation and standards should be seen as complimentary approaches and not as alternative routes to web accessibility. Legislation should lay down a sustainable framework capable of addressing the challenges brought on by the pace of development in the ICT sector. Standards should be evolving tools that support the implementation of legislation.

Therefore, reference to web accessibility standards such as, but not limited to, W3C WCAG 2.0 should be included within the legal instrument. The mechanism should make use of 'New Comitology' instruments, i.e. delegated or implementing acts, as appropriate. It is of paramount importance however to ensure that the legislation is 'future-proof' and does not hinder innovation.

As W3C web accessibility standards and guidelines do not specifically address accessibility for people with intellectual disabilities, we would like to highlight the need to complement those guidelines with additional rules on the provision of alternative content accessible to persons with limited abilities to read and understand text.

3.5   Appropriate enforcement mechanisms

There should be a general instruction to Member States to foresee sanctions in their national legislation implementing the EU legislation. Penalties should be effective, proportionate and dissuasive.

3.6   A realistic timetable

We suggest a two step approach for the websites within the scope of the legislation:
- All new websites should achieve web accessibility no later than a year after the adoption of the legislation.
- All existing websites should achieve web accessibility within 3 years of the adoption of the legislation.

3.7   Appropriate monitoring, reporting and oversight

The legislative act should include mechanisms for oversight both in Member States, through existing or new national regulatory authorities, and at EU level, with a reporting mechanism from Member States to EU level.

Member States should ensure regular monitoring and reporting to the Commission on the implementation of the legislation. The Commission should provide a report to the European Parliament and the Council on the

implementation of this legislation and its impact on economic operators and consumers – we suggest that this should take place every two years. This report should be available to the public.

4   References

AGE-EDF Position on the Future Digital Agenda, February 2010

AGE-ANEC-EDF response to the survey on European e-inclusion policy, March 2009

AGE-ANEC-EDF Response to the European Commission's Communication "Towards an Accessible Information Society", February 2009

EBU response to EU Consultation on 'Post i2010, a new EU Strategy for the Information Society, September 2009

EBU response to EC White Paper on Modernising ICT Standardisation in the EU, September 2009

EBU response to Commission consultation on web accessibility and other e-accessibility issues, September 2008

ANEC-EDF Joint Position on Web and eAccessibility legislation, July 2008

ANEC-EDF Joint Position on e-Accessibility, December 2007

For more information, please do not hesitate to contact us:

AGE Platform Europe
Contact: Julia Wadoux - Tel: +32.2.280.14.70 - julia.wadoux@age-platform.eu

ANEC, the European consumer voice in standardisation
Contact: Chiara Giovannini - Tel: +32.2.743.24.72 - chiara.giovannini@anec.eu

European Blind Union (EBU)
Contact: Carine Marzin - Tel: +44.207.391.2087 - carine.marzin@rnib.org.uk

European Disability Forum (EDF)
Contact: Nadège Riche - Tel: +32.2.282.46.05 – nadege.riche@edf-feph.org

5   About us

AGE Platform Europe - http://www.age-platform.eu

AGE Platform Europe is a European network of organisations of people aged 50+ and directly represents over 25 million older people in Europe. AGE Platform Europe aims to voice and promote the interests of the 150 million inhabitants aged 50+ in the European Union and to raise awareness of the issues that concern them most. AGE Platform Europe's work focuses on a wide range of policy areas that impact on older and retired people. These include issues of anti-discrimination, active ageing, social protection, pension reform, social inclusion, health, research, accessibility of public transport and of the build environment, and new technologies.

ANEC, the European consumer voice in standardisation - http://www.anec.eu

ANEC is the European consumer voice in standardisation, defending consumer interests in the processes of technical standardisation and conformity assessment as well as related legislation and public policies. ANEC was established in 1995 as an international non-profit association under Belgian law and represents consumer organisations from 31 European countries. ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.

European Blind Union (EBU) - http://www.euroblind.org

The **European Blind Union (EBU)** is a non-governmental, non profit making European organisation founded in 1984. It is one of the six regional bodies of the World Blind Union, and it promotes the interests of blind people and people with low vision in Europe. It currently operates within a network of 45 national members including organisations from all 27 European Union member states, candidate nations and other major countries in geographical Europe.

European Disability Forum (EDF) - http://www.edf-feph.org

The European Disability Forum (EDF) is the European umbrella organisation representing the interests of 80 million persons with disabilities in Europe. The mission of EDF is to ensure disabled people full access to fundamental and human rights through their active involvement in policy development and implementation in Europe. EDF is a member of the Social Platform and works closely to the European institutions, the Council of Europe and the United Nations.