



The European consumer
voice in standardisation



Joint ANEC – EDF position on Web- and eAccessibility legislation

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“In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

Article 4, paragraph 3 of the Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

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1. Executive summary

In response to a request from the 'Information Society and Media' Directorate General for views on legislation in the fields of web accessibility and eAccessibility, ANEC and EDF call on the European Commission to propose a Directive on web accessibility and a horizontal Directive on eAccessibility. Such a proposal should be based on revised provisions of and guidelines for existing acts. We provide details on the scope of the acts and the role of standards in complementing legislation.

In particular, ANEC and EDF consider that:

- Non-binding instruments have already been used (Council Resolutions and Ministerial Declaration) and, reminding the example of the "Riga dashboard", web accessibility objectives might not be achieved. ANEC and EDF ask for a reinforcement of legal web accessibility provisions and the adoption of binding legislation (directive) against the evidence that consumers with disabilities face several barriers to using the Internet.
- Although we agree that new or existing sector-specific legislation on eAccessibility should be proposed or implemented whenever justified, ANEC and EDF believe that a general eAccessibility Directive should address the areas that are not covered by specific legislation and ensure that eAccessibility is not forgotten amidst rapid technological developments such as Voice over IP or Mobile TV.
- In our views, binding legislation and standards should be seen as complimentary instruments, not as two different ways of working. The legislation should lay down a framework which is sustainable given the rapid developments in the ICT sector. The standards should then be evolving tools that can ensure the implementation of the legislation.

2. Background

At the international level, the United Nations Convention on the Rights of People with Disabilities, the first convention on the rights of people of the new millennium, was adopted on 13 December 2006. The European Communities and 27 Member States of the European Union (EU) already signed the Convention and are in the process of ratifying it. The Convention is very clear on what States Parties shall do to fulfil their obligations: they shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to information and communications, including information and communications technologies and systems¹.

At the EU level, diverse soft-power instruments have sought to address e- and web accessibility:

- The Council Resolution of 20 March 2002 on the eEurope Action Plan 2002: accessibility of public websites and their content²
- The Council Resolution on 6 February 2003 "eAccessibility" - improving the access of people with disabilities to the knowledge based society³
- In 2006, eAccessibility became part of the eInclusion pillar of the "i2010 – A European Information Society for growth and employment" initiative⁴ which aims to address the main challenges and developments in the Information Society and media sectors up to 2010. EAccessibility is one of the pillars of eInclusion. While the latter aims at preventing the so called "digital divide", eAccessibility deals mainly with access to Information Society by people with disabilities and ageing people
- The Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee and the Committee of the Regions – 'eAccessibility'⁵
- The 2006 Riga Ministerial Declaration⁶
- When the European Commission launched the 'Measuring Progress of eAccessibility in Europe' Study to measure the degree of accessibility of ICT products and services across Europe, it was agreed that if the results were not satisfactory, the European Commission would be advised that additional legislation would be considered. "The results show that whilst some progress towards

¹ The article 9 defines accessibility and eAccessibility. The article 21 states the freedom of expression and opinion, which includes the "freedom to seek, receive and impart information and ideas" with appropriate ICT means. The article 30 provides that cultural and recreational activities (cultural life, recreation, leisure and sport) should also be accessible on an equal basis with others. This includes provisions of information for television and films in accessible format.

² OJ L 335, 19.12.2001, p. 15

³ OJ C 39, 06.02.2003, p. 3

⁴ COM(2007)694 final

⁵ COM(2005)425 final

⁶ Ministerial Declaration approved unanimously on 11 June 2006, Riga, Latvia

eAccessibility can be detected in Europe, this has not been enough and further EU-level measures need to be considered.”⁷

- The e-Inclusion Communication published in November 2007 recognised there was strong evidence that voluntary mainstreaming of accessibility in goods and services had not led to significant progress and, in particular, that the market had failed to ensure the accessibility of ICT.

3. Introduction

Following the workshop organised by the eInclusion Unit of the Directorate General Information Society and Media of the European Commission on e and web accessibility legislation in June 2008, ANEC and EDF would like to submit in writing the opinions expressed at the event. When relevant, we reiterate the positions contained in the joint ANEC/EDF position on eAccessibility⁸. The paper was prefaced by both Commissioners Kuneva for Consumer Affairs and Reding for Information Society and Media.

The present ANEC-EDF response follows the structure of the document provided by the European Commission at the 10 June workshop. Section 5 is dedicated to web accessibility while section 6 is dedicated to a possible eAccessibility horizontal legislation.

4. Definitions

By “eAccessibility” ANEC and EDF understand access to mainstream ICT products and services by the widest possible number of people, regardless of their age or disabilities, in accordance with the concept of Design for All.

By “web accessibility” ANEC and EDF mean access to mainstream websites by the widest possible number of people, regardless of their age or disabilities, in accordance with the concept of Design for All⁹.

However, persons with disabilities who are a very heterogeneous group, may still need in some cases special services or goods. It is therefore important to also support the development of assistive technologies and ensure compatibility and interoperability between assistive and mainstream technologies.

⁷ Assessment of the Status of eAccessibility in Europe, MeAC – Measuring Progress of eAccessibility in Europe, October 2007, p. ii.

⁸ Joint ANEC/EDF Position paper on eAccessibility, November 2007 ANEC-DFA-2007-G-057final

⁹ Definitions of accessibility are also given in The EIDD Stockholm Declaration© “Good design enables, bad design disables” 2004.

5. Web accessibility legislation

5.1. Rationale for EU intervention in the field of web accessibility

ANEC and EDF believe that access to information is a vital element for the equal participation in society of people with disabilities. In the Information Society, information is provided in electronic format over the Internet. Web accessibility is therefore the key to effective inclusion. The advent of the Web 2.0, which brings new opportunities of interaction but also new technical challenges, reaffirms the need for more web accessibility.

This has already been recognised by the European Institutions and Member States as web accessibility has been high on the policy agenda since 2000. ANEC and EDF welcomed the Ministerial Declaration on eInclusion approved in Riga in June 2006 which placed achieving full accessibility of websites high on the priority list for future work. In particular, Ministers agreed to commit to a series of policy goals, including enhancing web accessibility and usability by fully implementing the existing EU legislation on eAccessibility, as well as reinforcing current legal provisions on eAccessibility. Ministers also agreed to advance inclusive eGovernment by “promoting and ensuring accessibility of all public websites by 2010, through compliance with the relevant W3C common web accessibility standards and guidelines”.

Despite the political commitments to harmonised action in the field of web accessibility, different national legislations and standards, especially in the framework of public procurement, have been approved. There is therefore the risk of fragmentation and further risks in terms of free-movement of products and services, not to mention access to information.

ANEC and EDF are convinced that action at the Community is needed to produce clear benefits in terms of its effectiveness and its scale.

5.2. Type of EU-level instrument

Non-binding instruments have already been used (Council Resolutions and Ministerial Declaration) and, if the “Riga dashboard” is anything to go by, web accessibility objectives might not be achieved.

ANEC and EDF ask for a reinforcement of legal web accessibility provisions and the adoption of binding legislation (directive) as evidence shows that consumers with disabilities face several barriers to using the Internet.

Although ANEC and EDF consider that only a European Directive in this field would deliver true benefits to consumers of all abilities and ages, we understand that the European Commission is currently considering different options. ANEC and EDF would like to stress that we do not consider the adoption of a simple Recommendation or Communication to be stringent enough to increase web accessibility in Europe.

5.3. Definition of the scope

When considering the scope of the proposed legislation, ANEC and EDF think that the Commission should try to answer the following question: which websites should not be made accessible? From which websites should consumers with disabilities be excluded?

We believe that the web accessibility legislation should concern accessibility of public, private and intranet websites¹⁰. People with disabilities should be able to access websites to the maximum extent and benefit from Internet as people without disabilities do. For each type of websites, different arguments reinforce this first statement. Public websites shall be accessible because the European and national institutions cannot exclude any of their citizens from accessing public services, all the more that citizens who make the maximum use of public services are people with disabilities. It is therefore in the interest of society and public agencies to make their web sites fully accessible because access to self-help systems on-line reduces the time needed for personal assistance. Private websites will benefit from accessible and online possibilities because people with disabilities represent numerous new consumers. Having accessible intranet websites also means access to work and normal life for people with disabilities, which is important for society.

ANEC and EDF would like to extend the definition of public websites to websites of entities that provide basic services for the public such as public transport operators, gas/electricity providers, banking, social security, etc.

To ensure accessibility of websites, and respecting availability of technologies, the proposed legislation shall cover authoring tools used by the developers and the user agents used by the consumer (including assistive technology tools and the browsers)¹¹. For example, there is the need for authoring tools to comply with Authoring Tool Accessibility Guidelines (aTAG) rules of W3C Web Accessibility Initiative (WAI).

As retrofitting of existing inaccessible websites could be considered as an excessive burden, ANEC and EDF consider that the proposed legislation should focus on new content and functionalities of websites, at the same time as it should encourage the existing entire websites to become more accessible. A clause about making available on request in accessible format old legacy content should be provided.

5.4. Timeframe for achieving accessibility

In ANEC and EDF's opinion, the timeframe for implementing accessibility requirements could be different for old and new content and functionalities of existing websites. Having an ambitious timeframe for the new websites in order to make them accessible from the beginning is important in order to avoid the costs of retrofitting. Of course, all public web sites, new but also existing ones, should be made accessible as soon as possible as they usually are the only points of information for people with disabilities.

¹⁰ Art. 9 of UN Convention on Rights of persons with disabilities, 2007, stresses this point.

¹¹ Web accessibility in context, an investigation into standardisation issues, ANEC-R&T-2007-DFA-006final

5.5. Standards and conformance assessment

As W3C web accessibility standards and guidelines do not address accessibility for older people and for people with intellectual disabilities, ANEC and EDF stress the need to complement those guidelines with additional rules regarding the provision of alternative content accessible to persons with limited abilities to read and understand text.

In addition, ANEC and EDF would like to invite the Commission and the standardisation bodies to begin investigations on the possibility to develop an evaluation and assessment methodology and conformity assessment methods, to complement the WAI guidelines, and to provide consumers with reliable information about the accessibility of website they access. The use of automatic testing and human testing elements should also be systematically considered. When looking at external evaluations of websites, it must be made very clear that self-declaration of accessibility is not the best solution. The system put in place to judge the compliance to accessibility standards should be made of a mixed group of experts, coming from consumers, web designers and industry representatives.

5.6. National web accessibility contact points

ANEC and EDF suggest setting up a system similar to the European Consumer Centres Network (ECC-Net)¹². This network of consumer advice centres helps consumers specifically with cross-border disputes. It was set up in January 2005 by the European Commission in cooperation with the national authorities. The centres give information and advice on problems with shopping across borders and intervene when problems arise. The European Consumer Centres Network is designed to promote consumer confidence by advising citizens on their rights as consumers and providing easy access to redress, particularly in cases where the consumer has made a cross-border purchase.

A system similar to “Solvit: Problem solving in the single market” could also be considered¹³. Solvit is an online problem-solving network in which the EU countries work together to solve problems caused by the misapplication of single market rules by public authorities. The network deals with cases which include non-recognition of professional qualifications in another country, problems with car registration, residence permits or market access of products. Companies could for example seek advice on how to comply with web accessibility guidelines.

5.7. Monitoring and reporting

ANEC and EDF welcome any commitment to report on the implementation of regulatory acts. Member States should inform the Commission 18 months before the publication of

¹² http://ec.europa.eu/consumers/redress_cons/index_en.htm

¹³ http://ec.europa.eu/solvit/site/index_en.htm

this legislation in the Official Journal of the European Union of actions taken in response to its content.

The Commission should provide a report to the European Parliament and the Council every two years on the implementation of this legislation and its impact on economic operators and consumers. This report should be publicly available.

5.8. Costs and benefits

The general view that web accessibility should not require excessive resources that result in product or service costs beyond what society in general is willing to bear needs to be challenged. Clearly, consumers with disabilities have a right to access information on-line, all the more if this information is essential to their civil rights (e.g.: electronic voting). Any cost-benefits analysis should take into account the costs of social exclusion, which are often difficult to quantify and demonstrate.

For public authorities, web accessibility means less public spending on operating alternative channels of communication and interaction with citizens with disabilities. Accessible Intranets result in better productivity of disabled employees, less need for special adaptation and in the end less spending on social welfare for people excluded from employment. ANEC and EDF would also like to remind that accessible websites mean new consumers and new markets not taken into account before and less support/assistance services and that the potential improvements firstly designed for people with disabilities may be revealed themselves useful to everyone.

6. Horizontal eAccessibility legislation

6.1. Rationale for a horizontal approach

Following the results of the European Commission's study on "Measuring Progress of eAccessibility in Europe" ('MeAC' study), ANEC and EDF conclude that a coherent policy system does not yet exist to deliver the accessibility of ICT products and services that consumers expect. Although we agree that new or existing sector-specific legislation on eAccessibility might be proposed or implemented whenever justified, we believe that a general eAccessibility Directive should address the areas that are not covered by specific legislation and ensure that eAccessibility is not forgotten amidst rapid technological developments such as Voice over IP or Mobile TV. The convergence of different technologies such as the Web, digital television and mobile communications shows that any legislation based on today's technological divisions will soon become superseded as the technologies themselves might no longer exist in the near future. Moreover, manufacturers and service providers operate across national borders in Europe and beyond, having a binding legislation would give these companies clear and consistent rules to adhere to. If each European country chooses its own way of working towards accessibility in the ICT field, it will hinder the definition and creation

of clear and measurable targets for accessibility for the commercial players. Finally, a horizontal approach for eAccessibility is all the more required that the proposal for a non-discrimination directive based on article 13 of the European Community Treaty does not address eAccessibility issues.

The European Commission Communication on "European i2010 initiative on eInclusion - to be part of the information society" highlights that the eAccessibility situation is better in countries with strong regulation, and regulation does not constitute a barrier to a competitive market. On the contrary, legal requirements on eAccessibility have set a level playing field for companies and led to new business opportunities.

6.2. Definition of the scope

ANEC and EDF call on the European Institutions and Member States to introduce a horizontal legislative framework addressing the accessibility of ICT products and services not covered by sectoral legislation. Such a framework should make use of the comitology procedure and be complemented by a stakeholder review process. The framework could then be underpinned by formal standardisation.

ANEC and EDF call for the implementation of a Committee Procedure (Comitology with scrutiny) in order to allow for flexible adjustments of the Directive by detailing essential requirements. It is necessary to have a procedure in place to adapt the requirements of the directive quickly to new developments, without having to go through the whole co-decision process and without having to rely on standardisation procedures, which are not adequate for certain issues, e.g. for the setting of limit values of accessibility degrees.

6.3. Verifying compliance with accessibility obligations

Among the different conformance schemes, ANEC and EDF believe that consumers should be informed about whether the accessibility mark is given by an external conformity assessment or not. It is a more transparent procedure that will correctly inform consumers on the quality of products as having sufficient and adequate information about the accessibility features of the ICT products or services consumers intend to buy, is an essential consumer need. Information should be reliable, understandable and transparent.

6.4. Appropriate mechanism

The creation of a Community mechanism, in the form of an independent Agency or Working Party, supervising the compliance of Member States and stakeholders with their obligations on eAccessibility appears essential. ANEC and EDF are convinced that, in order for any regulatory measures or standards to have a real practical impact, strong market surveillance mechanisms should be put in place. Such an Agency should have authority to take executive decisions and be accountable to the European

Parliament. Another option would be for a motivation to be provided in the case that its recommendations were not followed.

It would be responsible for suggesting European eAccessibility policies under the supervision of a committee composed of regulators, consumers and industry representatives. It would also be in charge of enforcing measures and of ensuring collaboration with international partners.

Using the example of the Working Party for the protection of individuals with regard to the processing of personal data, ANEC and EDF suggest the creation of a Working Party addressing eAccessibility with similar functions, structure and processing.

7. Acknowledgements

This position paper has been prepared in consultation with EDF and ANEC membership.

EDF and ANEC would like to thank all those that have more actively contributed to the drafting of this paper.

8. Appendix – About ANEC & EDF

8.1. About ANEC

ANEC is the European consumer voice in standardisation, representing and defending consumer interests in the process of standardisation and certification, also in policy and legislation related to standardisation. Our aim is a high level of consumer protection. ANEC was set up in 1995 as an international non-profit association under Belgian law. It represents consumer organisations from the European Union Member States and the European Free Trade Association (EFTA) countries. Our General Assembly is composed of one national member per country, nominated jointly by the national consumer organisations in their country. The European Commission and EFTA fund ANEC, while national consumer organisations contribute in kind.

8.2. About EDF

European Disability Forum (EDF) is a European umbrella organization with democratic structure, representing the interests of over 50 million persons with different types of disabilities in all EU/EEA countries. 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. Working towards accessible, user needs-

based and affordable telecommunications solutions for persons with disabilities is one of the highest priorities for EDF and its member organizations.

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