EDF feedback to European Commission's public consultation on the Digital Services Act

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Below are European Disability Forum's (EDF) recommendations in the context of European Commission's public consultation on the Digital Services Act. This document summarises our position on issues related to digital services and online platforms requiring an EU-level regulatory framework. It reinforces our answers to the survey questionnaire and should be view as integral part of our feedback to the consultation.

Who we are

We, the European Disability Forum (EDF), are an umbrella organization of persons with disabilities that defends the interests of over 100 million persons with disabilities in the EU. We are a unique platform run by persons with disabilities and their families, and a strong, united voice of persons with disabilities advocating for the implementation of the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) in the EU.

Introduction

As signatories to the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD), the European Union (EU) and all Member States are legally obliged to ensure right of access to information and communications, including information and communications technologies and systems, by persons with disabilities (Article 9 – accessibility).

Accessibility is a pre-requisite for persons with disabilities to fully enjoy other rights enshrined by the UN CRPD, such as freedom of expression and opinion, and access to information (Article 21), participation in political and public life

(Article 29), and participation in cultural life, recreation, leisure and sport (Article 30).

The EU and Member States are also obliged to ensure rights of persons with disabilities to equality and non-discrimination (Article 5), freedom from exploitation, violence and abuse (Article 16), as well as protect the integrity of persons with disabilities (Article 17).

Given growing importance of digital services and online platforms in the lives of all persons, the protection of the above-mentioned rights and freedoms is equally important in the online domain. As we get more dependent on digital technologies, their impact on Sustainable Development Goals concerning access to education, work, healthcare, social services, housing, transport and other spheres grows. Despite this, millions of persons with disabilities in the EU still face exclusion from online participation, which hinders their participation in mentioned areas of life. This is largely due to inaccessibility of online platforms and services, as well as hardware and software needed to access such platforms, but also due to online discrimination and hate speech experienced by many persons with disabilities.

Recent EU-initiatives such as the European Accessibility Act, the Web Accessibility Directive, Audiovisual Media Services Directive, and the European Electronic Communications Code have been important drivers for inclusion and participation of persons with disabilities in society, and have demonstrated that the EU is committed to meet its international human rights obligations under the UN CRPD. There are, however, still large gaps in EU accessibility and anti-discrimination legislation that would ensure full protection of rights of persons with disabilities. We highlight below four main conditions that are vital for making sure that the Digital Services Act adequately protects rights of persons with disabilities in relation to digital services and online platforms. Those are:

1. [Ensuring accessibility of digital platforms and services with a universal design approach](#)
2. [Preventing discriminatory content, including hate speech on online platforms and services](#)
3. [Ensuring right to privacy and protection of personal data](#)
4. [Putting in place strong enforcement mechanisms, including well-resourced EU and national regulatory authorities](#)

Ensuring accessibility of digital platforms and services with a universal design approach

Online platforms and digital services must comply with the same accessibility requirements of EU accessibility harmonised legislation, particularly the Web Accessibility Directive, and the European Accessibility Act. If authoring tools to create content are available to all users, they should also be accessible and allow users to generate accessible content.

Inaccessibility of online platforms is a major concern for persons with disabilities. Lack of accessibility leads to digital exclusion, lack of choice and lock-in effect for persons with disabilities.

To prevent digital exclusion, having a design process that prioritises universal design (design for all) is a major driver of accessibility and inclusion. The EU and Member States are in fact obliged by the UN CRPD "to undertake or promote research and development of universally designed goods, services, equipment and facilities."[1] Thus, digital services and online platforms should be encouraged to apply the necessary changes internally to address a wider range

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[1] Article 4.1 (f) - General obligations of Convention on the Rights of Persons with Disabilities (UN CRPD)

of users.[2] This includes involving potential users early and along the development process to ensure accessibility.

Compliance with existing digital accessibility requirements must be ensured by the upcoming Digital Services Act. To fulfil these, accessibility standards and guidelines are the key to ensure accessibility and interoperability with assistive technologies.[3] Therefore, new rules under the Digital Services Act must be consistent with existing accessibility requirements under other EU harmonisation legislation, particularly the Web Accessibility Directive, and the European Accessibility Act.

This could mean more specifically to refer to the accessibility requirements for services laid down in Section III of Annex I of the European Accessibility Act. Among them, for example:

> "making websites, including the related online applications, and mobile device-based services, including mobile applications, accessible in a consistent and adequate way by making them perceivable, operable, understandable and robust".

By means of using harmonised European Standards, such as the EN 301 549, online platforms and digital services will be able to prove compliance with the accessibility requirements set out in the legislation.

When it comes to the authoring tools used by users of digital services and online platforms to upload content, these must also be covered by the accessibility requirements, as there are widely acknowledged guidelines to make them

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[2] European Standard 17161 on Accessibility following a Design for all approach can be of use to embrace human diversity and achieve greater accessibility.
[3] (Harmonized) European Standard: Accessibility requirements for ICT products and services - EN 301 549 V3.1.1; Web Content Accessibility Guidelines (WCAG) 2.1

accessible.[4] The online platforms should also facilitate and encourage users to generate content which is accessible for persons with disabilities. For example, by adding alternative text on uploaded images or subtitles to video. It is essential to highlight that persons with disabilities are also creators and professionals, and not only passive users of platforms and services, therefore accessibility of authoring tools, management systems should be guaranteed.

Specifically, in relation to audiovisual content, current EU law, the Audiovisual Media Services Directive (AVMSD) obliges audiovisual media services provides to make their content progressively more accessible by means of adding access services. These access services are, among others, subtitles for the deaf and hard of hearing (SDH) or audio description. However, the AVMSD does not ensure accessibility of audiovisual content shared on video-sharing platforms and social media, nor on newspaper websites. Furthermore, given that the AVMSD focuses on content, it does not ensure the accessibility of the video-sharing platforms either. This legal gap needs to be filled with the coming Digital Services Act, which should ensure that accessibility requirements are applied to video-sharing platforms, as well as the audiovisual content shared by online media with editorial responsibility. As mentioned above, at minimum, it should oblige video-sharing platforms to ensure the possibility for users to generate and publish accessible content through making necessary online tools available free-of-charge. Legal persons using digital services and online platforms should be required to use these tools to create and share accessible content.

New development of online platforms and digital services should be accessible with a universal design approach, and new players in the market should enter on similar grounds when it comes to accessibility. This would ensure that

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[4] W3C Authoring Tools Accessibility Guidelines (ATAG)

persons with disabilities equally benefit from new digital services and solutions, instead of being further excluded and left behind from innovation and progress due to inaccessibility, which unfortunately still happens on even well-established digital platforms.[5]

Preventing discriminatory content, including hate speech on online platforms and services

Online platforms and services should take adequate measures to protect persons with disabilities from harmful, illegal content, including hate speech and cyberbullying.

Users of such services and platforms should be banned from sharing discriminatory, prejudiced, hateful content based on grounds such as disability, sex, race, ethnic, religious, cultural background, sexual orientation, identity and expression, sex characteristics, socio-economic, or any other ground which can be used to marginalize certain groups of society.

Persons with disabilities are often at risk of online cybercrime or abuse, discriminatory and misleading portray of disability, hate speech or cyber-bullying. As a matter of fact, the Council of Europe report on children with disabilities in the digital environment[6] proves that surveyed children with disabilities were unanimous in saying that they did not disclose their disability online, because of fear that doing so would lead to discrimination or rejection. Besides, some children also highlighted that their assistive technology is a somewhat unwelcome signifier of their disability. A more specific and well-known example was the cyberbullying against Greta Thunberg because of her disability.[7]

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[5] See how blind and deaf users were excluded due to inaccessibility of new social media features
[6] Council of Europe report: "Two clicks forward, and one click back".
[7] The Guardian: "Greta Thunberg responds to Asperger's critics: 'It's a superpower'"

Persons with intellectual and psychosocial disabilities are among the most exposed to harmful content and behaviours, as proven by the Inclusion Europe report BeSafe.[8] This set of case studies shows examples of unwanted publication of photos, unwanted contacts, privacy issues, identity theft, harassment, attempted abuse, money extortion, and blackmail following the sharing of intimate photos, among others.

In addition, Europe has seen a rise in violence against women, including online, and this is also affecting women and girls with disabilities.[9] Intersection of disability with other grounds, such as race, sexual orientation and identity, ethnic or cultural background, can exacerbate discrimination of persons with disabilities online, if adequate protective measures are not put in place to protect their right to non-discrimination and date privacy in the digital domain. This can have a severe impact on their mental health, but also affect their participation in online activities and engagement on social media platforms. It is therefore important that online platforms put in place adequate measures to ensure persons with disabilities are protected from cyberbullying and harmful (illegal) content.

Such measures and prohibition should apply to discriminatory, prejudiced content based on grounds such as disability, sex, race, ethnic, religious, cultural background, sexual orientation, identity and expression, sex characteristics, socio-economic or any other ground which can be used to marginalize certain groups of society. Example of such can be promoting segregated institutional care for persons with disabilities, advertisements based on outdated ideas on gender roles, fetishizing persons because of their skin-colour, fat-shaming, to name a few. In the meantime, clarifying the definition of harmful content and its

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[8] BeSafe project website.
[9] FRA report on Violence against women: an EU-wide survey

distinction from illegal content is important, to avoid arbitrary abuse against freedom of opinion and expression.

Platforms should make sure discretion of policies and measures is easy to find and understand, and accessible for users, avoiding long texts, complicated legal and technical terminology and acronyms. Information on how to seek remedies in cases of harmful content, hate speech and cyberbullying should also be accessible, easy to find, understand and use. Clear instructions and step by step guidance should be provided to users on how to report any harmful or illegal contact. Follow-up reporting by platforms should also be simple and straightforward.

In addition to accessibility, to ensure the understandability of these remedial procedures, the Digital Services Act must require that information is understandable, without exceeding a level of complexity superior to level B1 of the Council of Europe's Common European Framework of Reference for Languages, as well as important information to be provided on easy-to-read format.[10]

Ensuring right to privacy and protection of personal data of persons with disabilities

Strict rules should apply to prohibit online platforms and digital services from forcing users to give up their privacy rights and personal data to be able benefit from their services, including to disclose their disability or to benefit from data derived from the use of assistive technologies.

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[10] Easy to read format.

Even though users are asked for consent to share their data, they are not given the choice to reject and still use the platform. Essentially, they are being forced to buy the right to use what is presented as a free online service (e.g. online platform) by paying with their valuable personal data (e.g. name, contact information, list of contacts, location, etc.).

Many people are not well informed about how using online services and platforms is affecting their privacy. The General Data Protection Regulation (GDPR) provides stronger protection to individuals in relation to their personal data but few people have practical knowledge of these rights, let alone how to exercise them. With GDPR, the requirement to obtain consent to collect data should be upheld. What is happening now in effect, people are asked to choose between convenience and privacy.

Persons with disabilities need to get involved in debates so that they are sufficiently aware of what happens to their data and what steps they need to take to protect their privacy online. Data protection is especially a sensitive issue for many persons with disabilities, as information about individuals' chronic illness or disability can be used to discriminate against them. It is therefore vital that persons with disabilities are provided with accessible, easy to find, use, and understand information and mechanisms to control their personal data. These mechanisms should be accessible and understandable as mentioned above. Supported decision-making must also be considered.[11]

Besides, persons with disabilities may also be subject of surveillance by the use of their assistive technologies, such as screen readers.[12] With Artificial Intelligence powering many digital services, persons with disabilities are more at

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[11] Key Elements of a System for Supported Decision-Making, Inclusion Europe
[12] Detection of screen readers.

risk of privacy breach.[13]

Strong enforcement mechanisms, including well-resourced EU and national regulatory authorities

Given the cross-border nature of online platforms and digital services, as well as their immense political, cultural and societal importance for millions of persons in Europe, these services and platforms should be subject to strong regulatory oversight coordinated at EU-level.

Competent authorities must have high degree of independence and sufficient human and financial resources to exercise their mandates effectively. Standards for equality bodies or national data protection authorities can serve as inspiration to define the minimum standards as regards to independence, powers and resources of national regulatory authorities or bodies tasked to enforce the Digital Services Act. These authorities should be equipped with necessary means and expertise to also check compliance of online platforms with minimum accessibility requirements mentioned above. Finally, these authorities should be able to make enforceable binding decisions.

Under the European Accessibility Act, in case of non-compliance, market surveillance authorities can require the relevant economic operator to take appropriate corrective action to ensure the product meets the accessibility requirements of the Act. If this fails, they will oblige the operator to withdraw the product from the market. When one EU country demands the withdrawal of a product from the EU market for lack of accessibility, other countries must do the same. This principle should be applied to the Digital Services Act, to ensure

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[13] See Why privacy is particularly crucial for people with disabilities, 4 December 2019 EDRi; and How to design AI that eliminates disability bias, Alicia Clegg, 27 January 2020, Financial Times

consistency in EU law and given the cross-border characteristic of digital services and online platforms.

Cooperation of regulatory authorities that will be tasked to enforce the Digital Services Act with national equality bodies, other competent authorities (e.g. market surveillance authorities under the European Accessibility Act, national regulatory and other bodies under the Audiovisual Media Services Directive, European Electronic Communications Code), national and European civil society organisation, such as organisations of persons with disabilities is also very important.

Finally, for consumers it is important to know how competent authorities can help them remedy any harm and protect their rights as consumers of services offered by online platforms, including right to non-discrimination and freedom from online abuse and violence. This information needs to be provided in accessible, easy to find and understandable manner (see recommendations above).

Useful resources:

EDF Resources

- EDF report "Plug and Pray - A disability perspective on artificial intelligence, automated decision-making and emerging technologies"
- EDF feedback to public consultation on the European Commission's White Paper on Artificial Intelligence
- EDF response to Draft Ethics Guidelines for Trustworthy AI (doc) | EDF response to Draft Ethics Guidelines for Trustworthy AI (pdf)
- EDF toolkit on transposition of the Audiovisual Media Services Directive
- EDF recourses on the European Accessibility Act

Accessibility standards and guidelines

- European Standard on Accessibility requirements for ICT products and services (EN 301 549 V3.1.1 (2019-11))
- European Standard EN 17161:2019 'Design for All - Accessibility following a Design for All approach in products, goods and services - Extending the range of users'
- Web Content Accessibility Guidelines (WCAG) 2.1
- W3C Authoring Tools Accessibility Guidelines (ATAG)

External resources

- Council of Europe "Two clicks forward, and one click back" report on online experience of children with disabilities
- EDRi Recommendations for a Fundamental Rights-based Artificial Intelligence Regulation
- EDRi demands an open, safe and accountable internet – will you join us?
- EDRi response to the European Commission's open public consultation on the Digital Services Act package
- FRA report on Violence against women: an EU-wide survey
- Inclusion Europe BeSafe Project on Online safety for people with intellectual disabilities
- Inclusion Europe Resources on Easy-to-Read
- Public consultation on the Digital Services Act package, Answering Guide for civil society organisations and individuals, EDRi

Relevant Media Reports and blog posts

- "Detecting Screen Readers – No" by Dennis on WebAxe.org, March 1, 2014
- "Greta Thunberg responds to Asperger's critics: 'It's a superpower'", by Alison Rourke on TheGuardia.com, September 2, 2019
- "How to design AI that eliminates disability bias", by Alicia Clegg, 27 January 2020, Financial Times
- "Twitter Apologized for Launching Voice Feature That Wasn't Accessible to Disabled Users" by Samantha Mannis on TheMighty.com, June 19, 2020
- "When Things Go Wrong for Blind Users on Facebook, They Go Really Wrong" by April Glaser on Slate.com, November 20, 2019
- "Why privacy is particularly crucial for people with disabilities", by Shadi Abou-Zahra on EDRi.org, December 4, 2019

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