

Web Directive:

public consultation response

European Disability Forum Position Paper

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# Executive Summary

EDF has worked on the Web Accessibility Directive for over a decade, from the pre-legislative stage through to its adoption in 2016. We provided a toolkit[[1]](#footnote-1) to support our members with transposition of the Directive in Member States and actively contributed to the development of harmonised standards. We also delivered training for our members and regularly contributed to debates on the Directive, both at EU and national level.

In this paper, submitted as an annex to the online questionnaire from the European Commission’s public consultation, we outline our key asks with regards to the forthcoming review of the Directive:

* A widened scope that includes authoring tools, as well as digital software and other IT tools used by public administration staff;
* The removal of all current exemptions in the Directive;
* Reliable and easy-to-find accessibility statements, with information that is easy to understand and helpful for users with disabilities;
* A strategy to address the existing web accessibility skills’ shortage that leads to poor advice and inadequate solutions;
* Robust enforcement that acts as a deterrent, coupled with well-functioning feedback mechanisms and effective complaints mechanisms;
* Clear guidance to address poor interpretation of the Directive’s provision on third-party content and disproportionate burden;
* Better involvement of persons with disabilities and their representative organisations in the implementation and monitoring of the Directive.

# Consultation response

## Introduction

This is an annex to our response to the EC public consultation questionnaire on the Web Accessibility Directive. It provides further comments on some of the key issues raised in the consultation, as well as key points and examples highlighted by our members and network of experts to illustrate issues that we would like the review to address.

According to Eurostat, some 90% of EU household are now connected to the Internet[[2]](#footnote-2), while 80% use it on a daily basis[[3]](#footnote-3). However, many people with disabilities still experience accessibility barriers to access web content on an equal basis with others. In our 2020 survey[[4]](#footnote-4), almost 80% of respondents told us they had problems achieving what they wanted to achieve or accessing the information they needed on a website.

We welcome the fact that the European Commission provided an easy-to-read version of the consultation’s questionnaire. Many persons with disabilities opted to use this format to circumvent issues with the authentication process, which required creation or an EUlogin account with a CAPTCHA to solve, or because they found navigation in the main online survey too difficult to navigate with assistive technology. We would like to stress that the easy-to-read format benefits everyone; it is used by people with and without disabilities and on this it made responding to the online consultation far easier for a wide range of people. We therefore hope that the European Commission will provide easy-to-read, easy to access questionnaires in all consultations from now on.

## Scope and exemptions

We were strongly opposed to the current exemptions in the Directive as we knew these would severely impact persons with disabilities. This was demonstrated during the COVID pandemic when everyone suddenly had to rely on online services much more than hitherto.

For example, public broadcasting played a critical role in informing citizens about public health messages. Public broadcasting media is consumed by all citizens, whether it is watching news on their phone, TV shows on a computer or catching up with the latest information on a website. Unfortunately, because public broadcasters’ websites were exempt, important information wasn't communicated to the disability community due to inaccessible content on inaccessible websites. Time-critical information wasn’t conveyed appropriately. In a crisis, access to information is essential and public broadcasting websites are a key part of the media – for many it is the go-to platform to get the reliable information they need.

For the same reasons, excluding intranet/extranet, nurseries, kindergartens, schools and some NGOs’ websites turned out to be a major problem – and this was also highlighted during the pandemic.

In addition, wording in the Directive regarding most of the exemptions also caused problems as it was interpreted in different ways by different Member States: NGOs providing ‘essential services’ to persons with disabilities can be any NGO. For example, an NGO supporting women experiencing violence is providing an essential service to all women, including women with disabilities. So it was disappointing to see some Member States limit web accessibility requirements to NGOs providing services solely dedicated to persons with disabilities.

With regards to schools, as we had warned, it was very important to ensure all their websites’ features were accessible, including bespoke online learning platforms and not just a limited set of administrative features. This was demonstrated when all of the teaching had to move online, leading to further exclusion for many, including students with disabilities.

Intranet and extranet should also be accessible because inaccessible systems can act as a barrier to employment of persons with disabilities[[5]](#footnote-5). It is important in this context to reference provisions in the EU framework directive on equal treatment in employment as well as in the EU public procurement directive: Member States must ensure they comply with all their existing obligations in these policy areas too.

Disappointingly, most Member States made extensive use of the exemptions, focusing on what they did not have to do, as opposed to what they should be doing to be as inclusive and accessible as possible, in line with their obligations under the UN Convention on the rights of persons with disabilities. A revised Web Accessibility Directive will hopefully see the end of all exemptions currently in place.

The scope of the Directive should be widened to tackle emerging issues that create new barriers, such as **authentication** processes. Unfortunately, there is poor understanding about the barriers to access that many multifactor authentication systems now being brought in generate, for example on many university sites and services, as well as banks and finance services. These systems create new barriers for many users with disabilities[[6]](#footnote-6); we would therefore like to stress the need to ensure that the 3 principles of accessibility, security and privacy should be at the forefront of service development – security should not trump accessibility.

Lastly, as an ever-growing proportion of online content is user-generated, the scope of the revised Directive must also include **authoring tools** – these must be accessible by default to ensure that persons with disabilities can create content, including if this is part of their job in the public sector.

We want the future scope to cover digital tools used in the public sector: not just public-facing tools, but also software and other IT tools used by public sector staff. These should comply with the same accessibility requirements. This is technically possible as current harmonized standard EN 301 549 version 3.2.1 includes accessibility requirements for web, digital content and software. Such a comprehensive scope would ensure end-to-end accessibility in the EU public sector, as well as remove significant barriers to employment.

## Accessibility statements

We are concerned about the fact that many websites or apps in scope still do not have an accessibility statement at all. In our 2020 survey[[7]](#footnote-7), 61% of respondents told us they had found public sector websites without accessibility statements. We are also concerned about the fact that some accessibility statements are of poor quality and/or drafted in technical language that most end users will not be familiar with. As a result, users don’t know what to expect on the website or from the app.

Some public sector bodies do not understand that accessibility statements are meant to support users with disabilities. This is made worse when the statement is hard to find – another frequent issue. We would therefore recommend harmonising the location of the accessibility statement, so that people know where to look for it. Furthermore, some statements are not providing an easy way to report an issue or contact the public sector body to get the issue addressed.

We are concerned about the fact that many accessibility statements still show a very low level of compliance with web accessibility standards[[8]](#footnote-8).

Accessibility statements should be regularly reviewed, and it would be helpful to have an indicative timeframe showing when the issues identified will be addressed. Unless this is done, our concern is that the accessibility statement will continue to be seen by some as just another ‘tick box’ exercise.

Another concern is variation in the way compliance or partial compliance is assessed – an issue that was raised in several Member States - so additional guidance may be required in this area. In addition, we have also had reports of some Member States setting objectives below the minimum legal requirement in the Directive[[9]](#footnote-9) – this is not acceptable, and we hope this will be addressed by the Commission during the review period.

Worryingly, accessibility statements may be seen by some as a ‘get out of jail free’ card – a way to record that some parts of the website aren’t accessible, not backed by a meaningful plan of action to address the accessibility issues identified.

Public sector bodies **must** take responsibility for accessibility issues on their websites and see the accessibility statement as the starting point on a journey, where the objective should be to achieve a high degree of accessibility.

## Poor advice and skills shortage leading to inadequate solutions:

Many of our members have raised the fact that web developers generally do not have adequate knowledge of web accessibility, and unfortunately many do not understand the core issues persons with disabilities face when trying to access web content. The lack of involvement of persons with disabilities and their organisations is a contributing factor here so more involvement throughout the project cycle could help public sector bodies develop better products. However, there is clearly a shortage of developers with the required skills to develop accessible websites and no framework to assess how competencies in this area can be checked or certified so that public sector bodies can rely on professionals that will deliver accessible products and services[[10]](#footnote-10).

The current skills shortage also impacts the ability of Member States to monitor and enforce the Directive. Addressing this must be part of the European digital skills building agenda: digital skills building is not only about supporting individual citizens to be digitally savvy, but also about creating a larger pool of digital accessibility experts, as identified by the European Commission in its communication on ‘Europe’s Digital Decade’[[11]](#footnote-11).

As the number of suitably qualified web accessibility experts is low, we are concerned about the fact that public sector bodies are given poor advice. Some services providers clearly do not fully understand the provisions in the Directive, for example how the exemptions work or how to write an accessibility statement and test accessibility. The lack of certification to ensure the quality of advice is an issue as it means that some public sector bodies could unwittingly be making decisions based on poor or inaccurate advice.

Worryingly, the skills shortage also affects government public procurement bodies who are responsible for purchasing digital accessibility products and services[[12]](#footnote-12). Some enforcement bodies do not have suitably qualified personnel who understand the technical aspect of complaints, so the system does not work for people with disabilities. If those enforcing the Directive or buying IT services are not competent enough to understand how serious reported issues are, then the system is failing. Again, awareness of the needs is critical for the Directive to be effective. It is incredibly frustrating for persons with disabilities to have to do the teaching or be required to repeatedly explain the accessibility barriers they face to staff who are unable to understand the technical issues and how these can be addressed.

Another issue is the increased use of **accessibility overlays** by some public sector bodies. These can be plugins, toolbars or widgets often sold by companies with the promise that they will make a website accessible. We want to be clear that these tools will not make a website magically comply with web accessibility standards because they do not alter the source code of a website. These tools may be useful for some users but can also very negatively impact a website’s accessibility for people with other disabilities, as highlighted by many web accessibility experts and persons with disabilities using assistive technology[[13]](#footnote-13).

We are particularly concerned about the fact that these tools may be seen as an ‘easy way’ to comply with the Directive by some public authorities in a range of countries[[14]](#footnote-14). Accessibility overlays are not going to fix known accessibility issues on an inaccessible website, yet some public sector bodies may be purchasing these products thinking that they will ‘solve’ the accessibility problems on their website. We have even seen these products promoted by government websites and other public authorities, which further highlights the skills shortage mentioned above.

We would like the European Commission to provide clear guidance for public sector bodies in this area.

## Enforcement

We need robust enforcement that acts as an effective deterrent, coupled with well-functioning feedback mechanisms and complaints mechanisms. This requires suitably qualified staff in enforcement bodies, who have the appropriate skills to process complaints. Many of our members have raised concerns about the skills shortage in this area. Further concerns have been raised in some Member States about the fact that it was difficult for stakeholders (e.g. accessibility experts and organisations of persons with disabilities) to identify the ministry or department ultimately responsible for overseeing the implementation of the Directive. As a result, major accessibility issues can be very difficult to fix.

Legislation cannot be effective if it is not effectively enforced. Not complying with the law must have consequences. In countries where penalties exist, concerns were raised[[15]](#footnote-15) about the fact that penalties for noncompliance may not be used at all.

We have also been told that some enforcement bodies[[16]](#footnote-16) have inaccessible websites, so persons with disabilities cannot complain independently.

## Feedback and complaint mechanisms

There is a need to improve feedback and complaint mechanisms. In our 2020 survey[[17]](#footnote-17), 68% of respondents were unhappy about their experience with the feedback mechanism. Among the minority of respondents that went on to complain to the enforcement body in their country, 61% were unhappy about the outcome. When they provide feedback to a public authority about the inaccessibility of a website, some persons with disabilities do not hear back from the public authority. This must be addressed. It would be helpful to improve feedback loops and also provide transparency about the issues raised and how they have been - or will be - addressed.

The feedback mechanism is based on the premise that all websites and apps have an accessibility statement. Unfortunately, this is not always the case. In practice, when there is no accessibility statement, then there is no feedback mechanism.

Furthermore, when the feedback mechanism only mentions a general phone number and a generic e-mail address, users have not guarantee that their feedback is passed on to the responsible persons/department. It would be helpful to strengthen relevant provisions in the Directive, but also develop guidance and publish best practice in this area.

There are many examples of organisations of persons with disabilities struggling to get accessibility improved on public websites. At the end of 2020, the Czech Central Booking System for COVID-19 vaccination was launched as a web-based application. However, it was not accessible. The booking system was developed under great time pressure and immediately after the launch, many issues were identified, such as insufficient server capacity, unclear ways of processing personal data, but also serious accessibility problems, such as a graphical CAPTCHA. Representatives of SONS, the Czech organisation of blind people, looked for a competent person in the health department who could address the identified problems but found the process extremely difficult[[18]](#footnote-18).

We do not yet have data about the number of complaints made, but it should not be assumed that a low number of complaints means that there are no issues on a website. It could be that the feedback mechanism is difficult to locate or that the person does not have the energy to complain, especially if they are not encouraged to do so by previous experience. But another issue may be that there is a lack of awareness about the complaint process in some Member States and that people are not aware of their rights.

## Third-party content: incorrect interpretation of the Directive

Users with disabilities should be able to complete a process online from beginning to end. This also applies to public services. It could include a payment or authentication process. This is where external service may be required. Public authorities can control what providers they use to design their online processes. They also have public procurement responsibilities, which they should use as a lever to deliver accessible services.

In Belgium, a mobile app called ‘itsme’[[19]](#footnote-19) can be used as a digital ID to log in, share ID data or sign documents using a smartphone. That application is widely used but not accessible. If the public sector is using a third-party app to allow citizens to authenticate, then they should make sure that this process is accessible. Equally, in Estonia, despite promises made, the new COVID vaccination appointment booking system isn’t accessible, effectively preventing some persons with disabilities from getting vaccinated.

Furthermore, some governments use the fact that third-party features on their websites are inaccessible to exempt them. This shows a lack of awareness about their responsibility to make services accessible and poor understanding of the requirements in the Directive. Public sector bodies **choose** their third-party providers, so they **have** control over them. Potentially unlawful exemptions of third-party content have been reported[[20]](#footnote-20) and this needs to be addressed.

Last, but not least, public sector bodies should use their collective public purchasing power to get the accessible services they need. Public procurement is a major lever for accessibility, and it should be used. This will drive innovation for accessible services where none are currently available.

## Disproportionate burden

Predictably, there has been extensive use of the ‘disproportionate burden’ clause, with little evidence to support the claim of ‘disproportionate burden’. As we had anticipated, the disproportionate burden clause is being used by some as a ‘get out of jail free’ card, a way for some public authorities to avoid taking responsibility for accessibility issues and instead labelling tasks as impossible for the public sector body to undertake[[21]](#footnote-21).

Use of the ‘disproportionate burden’ clause appears to be a delaying tactic, effectively a way to kick the decision-making down the road instead of developing a strategy to deal with the accessibility issues identified.

## Involvement of persons with disabilities

While there may be pockets of good practice in this area, there is still a very long way to go to ensure actual involvement of persons with disabilities in developing websites and apps.

Our motto is “Nothing about us without us”, yet many examples of poor practice in this paper highlight poor communication from public sector bodies and a failure to engage with organisations of persons with disabilities. Connecting with groups impacted by poor web accessibility is essential to ensure successful implementation of the Directive. It is also a legal requirement set out in the UN Convention on the Rights of Persons with Disabilities that all Member States, as well as the European Union have ratified.

# About us

We are an umbrella organisation of persons with disabilities representing over 100 million persons with disabilities in Europe. 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 UN Convention on the Rights of Persons with Disabilities (CRPD) in the EU. Our motto is “Nothing about us without us”.

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# Document credits

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1. EDF toolkit on the Web Accessibility Directive (2017): <https://www.edf-feph.org/content/uploads/2020/12/final_edf_web_and_apps_directive_toolkit_may_2017_0.pdf> [↑](#footnote-ref-1)
2. See 2019 figures <https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics_-_households_and_individuals> [↑](#footnote-ref-2)
3. See 2020 figures<https://www.statista.com/statistics/377697/internet-usage-at-home-european-countries/> [↑](#footnote-ref-3)
4. EDF 2020 small online survey: self-selected sample of 90 individuals from 19 out of 27 Member States. More information [PDF] <https://ec.europa.eu/newsroom/dae/redirection/document/78800> [↑](#footnote-ref-4)
5. For example, in Spain, software used by the justice system is not accessible. [↑](#footnote-ref-5)
6. See this blogpost from Dr E.A. Draffan highlighting the challenges of multifactor authentication tasks for people with physical, sensory, cognitive and learning disabilities <https://www.lexdis.org.uk/2021/08/multifactor-authentication-challenges-for-nlive/> [↑](#footnote-ref-6)
7. EDF 2020 small online survey: self-selected sample of 90 individuals from 19 out of 27 Member States. More information [PDF] <https://ec.europa.eu/newsroom/dae/redirection/document/78800> [↑](#footnote-ref-7)
8. In UK research carried out by George Rhodes (<https://www.allable.co.uk/research> ), it was found that less than 50 out of the 400 colleges had a compliant statement. In his research George Rhodes found that many large organizations that are in the scope of the Directive do not have any accessibility statement. But for those that do and comply with the statement format, 96% of were either claiming partial or non-compliance with the standard. Only really 3% were actually fully complying or at least claimed to fully comply with the regulations. In this context, much more should be done to ensure that there is progress towards a much higher level of compliance with the standards. [↑](#footnote-ref-8)
9. See French government note requesting 80% of the 250 most used administrative tasks of public services are made accessible - defined as 75% conformity with their national ‘RGAA’ standard -instead of all public websites <https://ccn.unistra.fr/websites/ccn/documentation/Sante-Ethique-Handicap/cir_45053.pdf> (NB PDF is not accessible) [↑](#footnote-ref-9)
10. See EU-funded ‘Impact Access’ project to develop common curricula <https://impact-access.eu/> [↑](#footnote-ref-10)
11. See Europe’s Digital Decade – 2030 digital targets <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12900-Europe%E2%80%99s-digital-decade-2030-digital-targets_en> [↑](#footnote-ref-11)
12. For example, this [tender from Union des Groupements d’Achats Publics (France)](https://koena.net/app/uploads/2021/02/20U004_Lot3_CCTP_V1.pdf) – article 3, paragraph 4 -requests ‘alternative’ web accessibility solutions that do not alter a website’s source code [↑](#footnote-ref-12)
13. See list of articles compiled by Lainey Feingold <https://www.lflegal.com/2020/08/quick-fix/> [↑](#footnote-ref-13)
14. We have seen examples of this in Spain, France and the UK [↑](#footnote-ref-14)
15. E.g. Sweden, France [↑](#footnote-ref-15)
16. E.g <https://www.defenseurdesdroits.fr/> [↑](#footnote-ref-16)
17. EDF 2020 small online survey: self-selected sample of 90 individuals from 19 out of 27 Member States. More information [PDF] <https://ec.europa.eu/newsroom/dae/redirection/document/78800> [↑](#footnote-ref-17)
18. Unfortunately, there was no accessibility statement on the website. Attempts were made to connect with support contacts provided in different parts of the website – to no avail. SONS then contacted the Ministry of Health and the Ministry for Accessibility. This did not help. SONS therefore published the most significant accessibility issues in an international reporting system dedicated to the accessibility of COVID-19-related websites and also reported it to the Czech State Watchdog. They also publicized it on social media and contacted the Czech ombudsman before considering an official complaint to the Ministry of Home Affairs. [↑](#footnote-ref-18)
19. <https://www.itsme.be/en/> [↑](#footnote-ref-19)
20. See the article from Association Valentin Huys [Petits et gros arrangements avec le RGAA – des audits de conformité difficiles à obtenir et bien peu conformes - Dossiers thématiques - CERTAM (certam-avh.com)](https://certam-avh.com/fr/dossiers-thematiques/petits-et-gros-arrangements-avec-le-rgaa-des-audits-de-conformite-difficiles) [↑](#footnote-ref-20)
21. The French website hosting all primary and secondary legislation cites disproportionate burden for failing to provide accessible content <https://www.legifrance.gouv.fr/contenu/pied-de-page/accessibilite> “Le site Légifrance propose de nombreux contenus inaccessibles qui pour différentes raisons ne peuvent pas être repris et corrigés.” [↑](#footnote-ref-21)