



Raising standards for consumers



POSITION PAPER

Standardisation aspects of Luxembourg Presidency of Council of the European Union Proposal for a Directive on Accessibility of Public Sector Bodies' Websites

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1. Executive Summary

This position paper expresses ANEC's views on the standardisation aspects of the proposal made in October 2015 by the Luxembourg Presidency of the Council of the European Union for a Directive on the accessibility of public sectors websites.

In the new article 4.2 of the proposal on Presumption of conformity with the web accessibility requirements, a mention is made of a specific standard¹ in case of absence of Harmonised Standards. However, in our opinion, this direct undated reference bears the risk to shift the "decision-making" power from the legislators to the European Standardisation Organisations which are not legitimate to do this. We therefore propose a different way of referencing (direct dated reference) as well as a mention of the ex-post control of Member States and European Parliament on Harmonised Standards (Formal Objection).

ANEC's views on the other consumer-relevant aspects of the European Commission proposal of a Directive on accessibility of public sector websites, published by the European Commission on 3 December 2012² were expressed in our Position Paper of March 2013³.

In addition to the above, we call for the following aspects to be addressed by the proposed Directive:

- the scope should be enlarged to include public sector websites ('public sector and organisations contracted to or acting on behalf of public sector agencies') and the focus should be on the nature of the service provided rather than whether it is delivered by a public authority (article 1 and Annex of the Proposal);
- the scope should also include Social Media channels as they are frequently used by public authorities for support services (e.g. online forums as helpdesks instead of helplines) and "authoring tools" (article 2 of the Proposal);
- consumers and citizens shall be informed about the accessibility of websites with reliable and trustworthy information (article 6 of the Proposal); they shall also be provided with the opportunity to submit a complaint against non-compliant websites (article 7 of the Proposal);
- an effective and robust surveillance and monitoring system shall be put in place by Member States (article 7 of the Proposal);

¹ EN 301 549: "Accessibility requirements suitable for public procurement of ICT products and services in Europe".

² <http://tinyurl.com/bodwbu4>

³ <http://www.anec.eu/attachments/ANEC-DFA-2013-G-001final.pdf>

- because of the rapid technological developments of both software and hardware as well as technologies convergence, it seems opportune that the European Commission shall rapidly assess whether the application of the proposed Directive reached its objectives and take appropriate action, as needed (article 11 of the Proposal).

2. Background

For several years now, ANEC and its partners Platform Europe AGE, European Blind Union (EBU) and European Disability Forum (EDF), have been calling for mandatory provisions on web-accessibility as many consumers with disabilities and older consumers are still excluded from accessing the Internet and on-line services.⁴

As early as 2007, we joined forces with EDF to suggest new measures to ensure eAccessibility. The publication of the Communication on the "European i2010 initiative on e-Inclusion – to be part of the information society in 2010" provided strong evidence that voluntary mainstreaming of accessibility in goods and services had not led to significant progress. Therefore, we decided to support the initiative by assessing whether the current European regulatory and policy framework is delivering the accessibility of ICT products and services that consumers expect⁵. In July 2008, ANEC and EDF called on the European Commission to propose a Directive on web accessibility to concern public and private websites.⁶ We considered that the non-binding instruments, such as the 2006 Riga "Ministerial Declaration on an inclusive information society", were not stringent enough to achieve the web accessibility objectives set by the European Union. Furthermore, we stressed the risk of market fragmentation due to the different legislations and standards across the EU, especially in the framework of public procurement.

In June 2011 at the European Digital Assembly, together with our additional partner organisations (EBU and AGE), we launched the 'Access Denied' campaign calling for web-accessibility legislation⁷. It accompanied our proposal for a legislative act, which outlined what we considered to be the key components of the necessary legislation. The Digital Agenda for Europe states that the 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"⁸.

Given our continuous efforts in defending the access to information society by older people and people with disabilities, we welcomed the long-awaited European Commission proposal for a Directive on the accessibility of public sector bodies' websites, published on 3 December 2012. We were delighted to see that

⁴ <http://tinyurl.com/d2o6p7g>

⁵ Joint ANEC-EDF Position on eAccessibility, 2007

⁶ Joint ANEC-EDF position on Web- and eAccessibility, 2008

⁷ <http://tinyurl.com/d2o6p7g>

⁸ <http://ec.europa.eu/digital-agenda/>

the Commission has taken on board our proposals on the use of standards to ensure harmonisation of web-accessibility in the Internal Market. Nevertheless, ANEC believed that further clarification were needed on the scope, the standardisation parts, the enforcement mechanisms and the system of reporting and monitoring in the proposed Directive. Hence, we issued in March 2013 a Position Paper providing ANEC's comments and suggestions on the proposed legislative act⁹.

On 26 February 2014, the European Parliament plenary voted on the Directive on the Accessibility of Public Sector Bodies' Websites. The Parliament's report was adopted and introduced significant improvements to the proposal in line with our demands.

Since then, the Council of Ministers has been discussing the draft Directive.

In January 2014, ANEC welcomed the adoption of EN 301 549 "Accessibility requirements suitable for public procurement of ICT products and services in the Europe" and a series of supporting Technical Reports. The standard was drafted by the CEN/CENELEC/ETSI Joint Working Group, 'eAccessibility under Mandate M/376' as part of Phase II of the mandate to which ANEC participated. The set of functional European accessibility requirements for the procurement of products and services in the ICT domain will create incentives for manufacturers to develop and offer accessible devices, so benefitting consumers with disabilities and older consumers. It will also aid harmonisation of e-accessibility in the internal market when the directive on the accessibility of the websites of public sector bodies will be adopted¹⁰.

⁹ <http://www.anec.eu/attachments/ANEC-DFA-2013-G-001final.pdf>

¹⁰ <http://www.etsi.org/technologies-clusters/technologies/human-factors?tab=2>

3. Specific Comments

Presumption of conformity with the accessibility requirements (art. 4 of the Proposal)

ANEC welcomes that our suggestions on the use of web-accessibility standards to ensure harmonisation of the Internal Market have been taken into account and are now stipulated in the proposed Directive.

The new article 4.2 allows for the use of EN 301 549 to provide presumption of conformity with the essential requirements of article 4 in the absence of Harmonised Standards. While we understand the need to refer to existing standards in the absence of Harmonised Standards, we express concerns at the direct undated referencing made.

In order to follow the latest technical developments, standards must be regularly reviewed, generally every five years¹¹. Accordingly, legislation making use of standards to support legislation should take this into account and choose a legislative option allowing to avoid having to adapt the whole legal act every time a standard is revised.

The proposed article 4.2 allows the use of subsequent revised versions of the same standard. However the question arises as to what will happen if the revised versions of the standard are entirely different or based on a different consensus.

There is the risk that the legislators lose their position as the 'decision-makers' and shift their authority for reference to standards organisations, which are private organisations and are not legitimised for this.

In this particular case and for the reasons mentioned above, we suggest to make a dated direct reference to the present version of the standard:

Our suggestion:

New wording paragraph 2:

“2. As long as the references of the harmonised standards referred to in Article 4 have not been published, websites that meet Chapter 9 of European standards EN 301 549 **VI.1.2 (2015-04)**¹² shall be presumed to be in conformity with the web accessibility requirements, set out in Article 3”.

¹¹ CEN/CENELEC Internal Regulation, Part 2.

¹² EN 301 549 VI.1.2 (2015-04): "Accessibility requirements suitable for public procurement of ICT products and services in Europe".

For the same reasons of maintaining the “decision-making power” in the hands of the legislators, we suggest that explicit reference is made to the “ex- post control” for the Harmonised Standards (Formal Objection). Unlike in the case of direct referencing (mentioned above), an ex-ante control of the technical work by the legislators does not take place for Harmonised Standards. The European legislators delegate to the European Commission the power to request the European Standardisation Organisations to develop standards in line with the principles of Regulation 1025/2012 (consensus, coherence, transparency, openness, independence of special interests, efficiency)¹³. However this freedom to develop standards is counterbalanced by the possibility of the European Parliament and Member States of raising Formal Objections against a harmonised European standard in case of non-conformity with the legal essential requirements¹⁴.

Because of the proposed Directive is different from a typical “New Approach” Directive, we suggest to make an explicit reference to the applicability of article 11 of the Standardisation Regulation about the ex-post control of the conformity of a Harmonised European standard with the legal requirements defined by the Directive.

Our suggestion:

New paragraph in article 4:

‘2(bis) The provisions of article 11 of Regulation (EU) No 1025/2012 are directly applicable to the Harmonised Standards referred to in paragraph 1’.

ENDS.

¹³ Art. 10 Regulation (EU) No 1025/2012 of 25 October 2012 on European Standardisation; SWD(2015) 205 final of 27/10/2015, Vademecum on European standardisation in support of Union legislation and policies, http://ec.europa.eu/growth/single-market/european-standards/notification-system/index_en.htm

¹⁴ Art. 11 Regulation (EU) No 1025/2012 of 25 October 2012 on European Standardisation.

About ANEC

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 is open to the representation of national consumer organisations in 33 countries.

ANEC is funded by the European Union and EFTA, with national consumer organisations contributing in kind. Its Secretariat is based in Brussels.



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