



*Raising standards for consumers*



## **POSITION PAPER**

# **Standardisation and other aspects of the European Commission Proposal for a Directive on Accessibility of Public Sector Bodies' Websites**

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## 1. Executive Summary

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This position paper expresses ANEC's views on the standardisation and 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 2012<sup>1</sup>. In addition to our general comments on the proposal, the paper contains some suggestions on issues, which ANEC believes need to be further clarified.

In particular we call for the following aspects to be addressed by the proposed Directive:

- the scope should be enlarged to include public sector websites (and websites providing basic services to citizens) 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);
- the procedure to be followed for the referencing of Harmonised Standards in the Official Journal should be clarified according to the European Standardisation Regulation (article 4 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);
- 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).

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<sup>1</sup> <http://tinyurl.com/bodwbu4>

## 2. Background

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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.<sup>2</sup>

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 expect<sup>3</sup>. In July 2008, ANEC and EDF called on the European Commission to propose a Directive on web accessibility to concern public and private websites.<sup>4</sup> 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 legislation<sup>5</sup>. 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"<sup>6</sup>.

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

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<sup>2</sup> <http://tinyurl.com/d2o6p7g>

<sup>3</sup> Joint ANEC-EDF Position on eAccessibility, 2007

<sup>4</sup> Joint ANEC-EDF position on Web- and eAccessibility, 2008

<sup>5</sup> <http://tinyurl.com/d2o6p7g>

<sup>6</sup> <http://ec.europa.eu/digital-agenda/>

also believes that further clarification is needed on the scope, the standardisation parts, the enforcement mechanisms and the system of reporting and monitoring in the proposed Directive. Hence, this Position Paper provides ANEC's comments and suggestions on the proposed legislative act.

### 3. General Comments

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ANEC is pleased that the European Commission has recognised the need to act as the Internet is becoming a major channel for the provision of basic services to citizens and consumers. Inaccessible websites do not allow many consumers with disabilities and older consumers to reap the benefits of the digital society and pose barriers, which can increase the 'digital divide' and have a negative impact on European economies<sup>7</sup>.

Furthermore, ANEC welcomes that the Commission has recognised there are significant differences between law and measures across Member States, and that non-binding instruments and voluntary compliance with standards have failed to deliver accessible websites – as demonstrated by a number of studies and reports produced in the past several years. As stated in ANEC and its partners' campaign 'Access Denied' and a number of official position papers, and now recognised by the European Commission, the most effective way to deliver web-accessibility is through an EU binding horizontal legislative act.

Developing e-accessibility in general, and web accessibility in particular, is a win-win situation for all stakeholders – it supports social and economic inclusion of disabled and older persons and benefits consumers. In addition, it also supports the competitiveness and Internal Market objectives of the European Union.

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<sup>7</sup> As defined in the Explanatory Memorandum of the European Commission proposal of a Directive on accessibility of public sector web sites

## 4. Specific Comments

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### 4.1. Legal Basis (art. 1 of the Proposal)

The chosen legal basis for the directive corresponds to what ANEC has been calling for – an Internal Market legal basis (Article 114, TFEU).<sup>8</sup> The principal aim of the act is to foster harmonisation and thus guarantee a level playing field for economic operators who would be able to develop and commercialise websites and related services across all 27 European Union Member States.

At the same time, the Directive also makes explicit reference to other important policies and objectives of the European Union, which it is in line with, such as the obligations under the United Nations Convention on the Rights of Persons with Disabilities, the future European Accessibility Act (EAA) and the Digital Agenda for Europe.

### 4.2. Scope (art. 1 and Annex of the Proposal)

The proposed Directive only covers twelve types of public sector bodies' websites, which offer a number of services, such as social protection, employment, education, health, etc.<sup>9</sup> Moreover, these twelve types of websites are drawn from the E-government benchmarking exercise done in 2001, twelve years ago. Bearing in mind the pace of technological development and all the changes that the provision of public services went through in this period of time (eg: privatisation/liberalisation), we do not think that the list of the Annex is relevant anymore.

ANEC is concerned that the proposed legal act does not cover a number of other basic services of public interest, such as network services (e.g. postal services, energy, transport, and water), and financial services (e.g. banking services). We believe that the scope of the Directive should be enlarged to include the above-mentioned services and the focus should be on the nature of the service provided rather than whether it is delivered by a public authority. Private websites and service providers will gain economic benefits from accessibility because people with disabilities and older people represent a large group of new consumers and this would increase the potential of the market for web-accessibility products and services.

In addition to a new list of websites in the Annex to be considered as examples only, we suggest that the Commission should be empowered to amend the Annex in order to adapt the list to technological developments and societal expectations.

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<sup>8</sup> ANEC-DFA-2011-G-041

<sup>9</sup> Listed in the Annex

The procedure of article 8 of the Proposal and article 290 TFEU (delegated acts designed to amend non-essential elements of this Directive) should be applied.

**Our suggestion:**

*"2.It lays down the rules according to which Member States shall make accessible the content of websites belonging to public sector bodies **and/or websites providing services directly to the public**, ~~the types of the examples of~~ which are specified in the Annex.*

***The Commission may, for the purposes of adapting it to technological and societal developments, amend the Annex on the list of public sector bodies' web-sites. The Commission shall be empowered to adopt delegated acts in accordance to article 8 to amend the Annex."***

### **4.3. Definitions (art. 2 of the Proposal)**

We are pleased that a clear definition of 'web accessibility' is also provided – "the principles and techniques to be observed when constructing websites, in order to render the content of these websites accessible to all users, in particular those with disabilities"<sup>10</sup>. However more explicit definitions may be needed to ensure that:

- websites designed for access via a handheld mobile device are included and they are accessible by any mobile application (e.g. Android, iOS, etc.);
- web content covers also electronic documents and forms downloadable from the websites (ensure interaction is possible with downloadable documents), as well as accessibility of security mechanisms (e.g. card readers for payments, random number generators, authentication systems, etc.);
- interaction with any social media channel (e.g. Facebook, Twitter, blogging, wikis, online forums, etc.) through these websites is accessible. Social Media channels are frequently used by public authorities for support services (e.g. online forums as helpdesks instead of helplines).

Moreover, despite the European Commission Impact Assessment<sup>11</sup> discarded the option of including in the scope of the proposal "authoring tools", their inclusion would increase the accessibility of the created web-content of websites. As the execution of Mandate 376 also covers the standardisation of functional specifications for authoring tools and W3C/WAI is developing Authoring Tool Accessibility Guidelines<sup>12</sup>, it seems feasible and reasonable to include "authoring tools" in the definition of "content of website" (art. 2.2).

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<sup>10</sup> As defined in the Explanatory memorandum

<sup>11</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SWD%3A2012%3A0401%3AFIN%3AEN%3APDF>

<sup>12</sup> ATAG 2.0



**Our suggestion:**

New wording paragraph 2 and new paragraphs 2bis and 3bis:

*"(2) 'Content of websites' means information to be communicated to the user, including mobile access and documents in off-line formats (such as .doc or .pdf) but available for download through websites, by means of a user agent or social media channels.*

*(2bis) (New) 'Social media' refers to the means of interactions among people in which they create, share, and exchange information and ideas in virtual communities and networks'.<sup>13</sup>*

*(3bis) (New) 'Authoring tool' means any software used to write the web such as web page authoring tools, software for directly editing source code or mark, software for converting to web content technologies".*

**4.5 Presumption of conformity with harmonised standards (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.

It might be worth it to clarify the procedure to be followed for the referencing of Harmonised Standards in the Official Journal, according to the European Standardisation Regulation<sup>14</sup>.

**Our suggestion:**

New paragraph 2 in article 4:

**2. "Where a harmonised standard satisfies the requirements which it aims to cover and which are set out in article 3, the Commission shall publish a reference of such harmonised standard without delay in the Official Journal of the European Union."**

**4.6 Presumption of conformity with European or international standards (art. 5 of the Proposal)**

Although it is expected that the deliverables of M/376 on European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain will be released before the entry into force of the proposed Directive, article 5 allows for the use of European or international standards to provide presumption of conformity with the essential requirements of article 3 in the absence of harmonised standards.

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<sup>13</sup> [http://en.wikipedia.org/wiki/Social\\_media](http://en.wikipedia.org/wiki/Social_media)

<sup>14</sup> Art. 10.6 Regulation (EU) No 1025/2012 of 25 October 2012 on European Standardisation

However, as far as international standards are concerned, it should be noted that, according to the rules of procedures of the European Standardisation Organisation, once a project to develop a European standard (EN) has been accepted, National Standards Bodies shall put all national activity within the scope of the project on hold. This means that they are not to initiate new projects and existing national standards have to be withdrawn. This obligation is called 'standstill' and avoids the development of diverging national standards.

The "standstill principle" does not apply to International Standards as there is no obligation for the ISO/IEC members (NSBs) to implement an ISO/IEC standard, therefore there is no need to withdraw conflicting national standards.

Moreover, international and European standards can coexist separately or be developed in parallel. The latter happens if a decision has been taken by the responsible Technical Committee to apply the "Vienna Agreement" (between CEN and ISO) or "Dresden Agreement" (between IEC and CENELEC). These Agreements aim at avoiding duplication of work between the international and European levels through e.g. the adoption of existing international standards at the European level and/or the parallel development and adoption of identical EN and ISO/IEC standards. However, both standards still remain separate documents in ISO/IEC and CEN/CLC, and there are separate votes with sometimes different outcomes (e.g.: weighted vote procedure for approval of ENs might change results at the international level).

In general, reference to a specific standard is to be avoided in legislation as it risks quickly becoming outdated, once the standard is revised or superseded.

The entry into force in January 2013 of the European Standardisation Regulation now allows for the identification of ICT Technical Specifications that are not national, European or international standards, to be referenced in public procurement to enable interoperability<sup>15</sup>. As one of the requirements of article 3 of the proposed Directive is the facilitation of interoperability between websites and user agents and assistive technologies, it can be expected that the new provisions of the Standardisation Regulation could be applied.

The Regulation permits the recognition of certain ICT specifications, developed outside the European Standardisation System, meeting several criteria and after consultation of the "ICT Stakeholder Platform". ANEC is one of 67 stakeholder organisations member of the Platform and will be able to express the consumer view on any relevant candidate specification.

One of the criteria a candidate ICT specification has to fulfil is the "availability on reasonable terms (reasonable fee or free of charge)"<sup>16</sup>. The cost-benefit analysis

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<sup>15</sup> Art. 13 of Regulation (EU) No 1025/2012 of 25 October 2012 on European Standardisation.

<sup>16</sup> Annex II, 4, (b) of Regulation (EU) No 1025/2012 of 25 October 2012 on European Standardisation

in the Impact Assessment document accompanying the proposed Directive clearly demonstrates that the cost/benefit ratio resulting of the Directive leads to "large net positive for all actors, either on the short run...or in the mid-term by 2015 or longer term"<sup>17</sup>. Although it does not specifically mention the cost of the use of international or European standards for public administrations, these may be considered as negligible. Some National Standardisation Bodies, such as the British Standardisation Institute, have special membership fees for local authorities and institutions<sup>18</sup>.

The deliverables of M/376, resulting EN and TRs, will be under ETSI auspices, with triple logos and joint copyrights but available free of charge.

### **Our suggestion:**

New wording paragraph 3:

*"3. As long as the references of the European standards referred to in paragraph 1 have not yet been determined, the websites concerned **that meet the relevant international standards** ~~the parts of the ISO/IEC 40500: 2012 covering the Success Criteria and Conformance Requirements for Level AA conformance,~~ shall be presumed to be in conformity with the web-accessibility requirements set out in Article 3."*

## **4.6 Additional Measures (art. 6 of the Proposal)**

It is essential that consumers are provided with relevant and trustworthy information to enable them to know whether the website they are about to access is indeed accessible.

Web accessibility levels can be assessed either by a self-declaration of conformity or by a Third Party Declaration against relevant standards (e.g.: Web Content Accessibility Guidelines of W3C). In 2010, Middlesex University research Office, UK, tested on behalf of ANEC, 100 websites as part of a web accessibility ANEC Research & Testing study, "Declaring conformance on web accessibility"<sup>19</sup>.

Many of the tested websites, especially commercial ones, failed to meet accessibility guidelines. These included basic issues affecting perception such as text equivalence and operability such as keyboard only input with a total of five or less failures identified. Therefore, consumers and public authorities cannot completely trust claims about website accessibility for people with disabilities.

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<sup>17</sup> [SWD \(2012\) 401 final](#), p. 43

<sup>18</sup> <http://shop.bsigroup.com/en/Navigate-by/Membership/Join-BSI-today/Membership-types/>

<sup>19</sup> The study is available on the ANEC website at the following link: <http://www.anec.eu/attachments/ANEC-R&T-2011-ICT-002finalrev2.pdf>

**Our suggestion:**

New wording paragraph 1:

*"1. Member States **shall ensure** that web-sites concerned provide a statement on their accessibility, in particular on their compliance with this Directive and with possibly additional accessibility information in support to users".*

**4.7 Verifying and Supervising Compliance (art. 7 of the Proposal)**

ANEC is pleased that our proposals to include in the legislative act mechanisms for oversight in Member States and at the EU level and a regular monitoring and reporting to the Commission on the implementation of the legislation have been considered.

It is however important to explicitly mention the obligations of Member States to establish a surveillance and monitoring systems to enable non-compliant websites to be identified and made accessible. It should also act as a deterrent.

Equally important is that the national surveillance and monitoring systems provide consumers with the possibility of submitting complaints to the competent authorities on non-compliant websites and any other problems they might encounter in accessing the relevant websites.

We believe that the results of the national reports should be made publicly available by the European Commission and the Member States in order to increase the 'peer pressure' with regards to web accessibility.

The Directive proposes a methodology for the monitoring of conformity of the websites concerned with the requirements by way of implementing acts<sup>20</sup>.

The ANEC Research & Testing study, "Declaring conformance on web accessibility" carried out by Middlesex University research Office, UK, was commissioned by ANEC to examine how many websites, both self-declaring their conformity and declaring their conformity through an assessment by an independent third party, were in reality complying with web accessibility standards. Although while testing the 100 websites a true commitment to accessibility was noted, several failures including basic issues affecting perception were identified. Only 3 websites out of 76 government and public body websites certified by a third-party were accessible, while none of the commercial websites out of 24 that had self-declared could be considered accessible.

We therefore welcome the proposal to develop a methodology for monitoring conformity of websites with accessibility requirements. It will be the task of this methodology to identify the best suited model for conformity assessment which we know is often a rather controversial issue.

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<sup>20</sup> Article 7

**Our suggestion:**

New text paragraph 1 and new paragraph 2:

**"1. Member States shall ensure that relevant public authorities comply with their obligations under this Directive in such a way that the relevant websites are accessible. Member State shall establish or nominate authorities competent to monitor on a continuous basis the compliance of websites with ~~Member States shall monitor the compliance of the websites concerned with~~ the requirements for web-accessibility, using the methodology provided for in paragraph 4. Member States shall arrange for such authorities to have and use the necessary powers to take the appropriate measures incumbent upon them according to this Directive.**

**2. (new) Member States shall ensure that consumers and other interested parties are given an opportunity to submit complaints to the competent authorities on non-compliant websites and any other problems they might encounter in accessing the relevant websites. Member States shall ensure that these complaints are followed. They shall also inform consumers and other interested parties of the procedures established to that end and make the public aware of the existence, responsibilities, identity and contact details of national competent authorities.**

**"3 (2). Member States report annually on the outcome of the monitoring carried out according to paragraph 4 including the measurement data and, where appropriate the list of websites referred to in article 1(3). The report should be publicly available."**

**4.8 Delegated powers (art. 8 of the Proposal)**

In order to reflect the new power of the Commission to amend the list of websites in the Annex that we suggest in article 1.2, article 8 should be modified to include article 1 as referring a new power to the Commission.

**Our suggestion:**

1. The powers to adopt the delegated acts shall be conferred on the Commission subject to the conditions laid down in this Article.

2. The powers to adopt the delegated acts referred to **in Article 1**, Article 3 and 5 shall be conferred for an indeterminate period of time from the date of entry into force of this Directive.

3. The delegation of power referred to in **in Article 1**, Article 3 and 5 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following that of the publication of the decision in the Official Journal of the European Union or on a later date, specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to **Article 1**, Article 3 and 5 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

#### **4.9 Transposition (article 10 of the Proposal)**

Within their transposition activities, we think that Member States should adopt provisions about the non-respect of obligations of the Directive and inform the Commission about it.

##### **Our suggestion:**

New paragraph in article 10:

***"3. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take the measures necessary to ensure they are implemented. The penalties foreseen shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by end 2014 and shall also notify, without delay, any amendment affecting them".***

#### **4.10 Review and evaluation (article 11 of the Proposal)**

Because of the rapid technological developments of both software and hardware as well as technologies convergence, it seems opportune that the review of the proposed Directive foreseen in article 11 focuses on these aspects and the reaching of the Directive's objectives (e.g.: increased accessibility of websites).

##### **Our suggestion:**

New wording for article 11:

***"No later than three two after the date of entry into force, the Commission shall assess the application of this Directive and transmit an evaluation report to the European Parliament and the Council. This report shall assess if this Directive achieved its objectives, in particular with regard to enhancing the accessibility of websites, taking into account the convergence of technologies and the use of other technologies and devices to access on-line content".***



#### 4.11 Types of public sector bodies' websites (Annex of Proposal)

As more and more services are delivered online, inaccessible websites continue to hamper access to public services for consumers who use assistive technology to access the Internet. We call for all online public services provided by local, regional and national authorities, as well as basic services to citizens, network services (e.g. postal services, energy, transport, water) to be included in the Annex.

##### **Our suggestion:**

##### **New title: Examples of web-sites concerned**

- (1) *Income taxes: **information provision**, declaration, notification of assessment*
- (2) *Job search services by labour offices*
- (3) *Social-security benefits: **information provision and services about unemployment benefits, child allowances, medical costs (reimbursement or direct settlement), student grants.***
- (4) *Personal documents: **information provision and services about** passports or driving license*
- (5) ***Information provision and services about** car registration*
- (6) ***Information provision and services about** application for building permission*
- (7) *Declaration to police, e.g. in case of theft*
- (8) *Public libraries, e.g. **information provision**, catalogues and search tools*
- (9) *Request and delivery of birth or marriage certificates*
- (10) ***Information provision about and** enrolment in higher education or university*
- (11) *Notification of change of residence*
- (12) *Health-related services: **information provision**, interactive advice on the availability of services, online services for patients, appointments.*
- (13) ***Transport related services: information provision of timetables, itineraries and prices, purchase of tickets and subscriptions, online services for travellers with special needs.***
- (14) ***Network related services (e.g. postal services, energy, transport, water): information provision of offers and prices, subscriptions and terminations.***

## About ANEC

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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.



***Raising standards for consumers***

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