



Raising standards for consumers European Disability Forum

ANEC/EDF Answer to the BEREC public consultation on Electronic Communications Services: Ensuring Equivalence in Access and Choice for Disabled End-Users

(ANEC-DFA-2010-G-058final)

“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 § 3 of the United Nations Convention on the Rights of Persons with Disabilities

Consultation Question 1: Are there additional legal provisions, other than those listed in Section 2, currently in place in Member States with respect to end-users with disabilities regarding electronic communications? If yes, please detail the provisions and the organisation responsible for implementing or monitoring these provisions.

Answer

ANEC and EDF would like to draw the attention of BEREC on the measures listed in the study “MeAC - Measuring Progress of E-Accessibility in Europe, Assessment of the Status of E-Accessibility in Europe”¹, and in particular to the section on telephony (pp. 19-38), which can be relevant to better know the existing measures in place in the Member States.

Consultation Question 2: Do you agree that the factors listed in sections 3.1.1 and 3.1.2 are important to consider when assessing equivalent access? Are there other factors which should be considered? Are some factors more important than others?

Answer

In order to deliver access to and use of e-communications to persons with disabilities, on an equal basis with others, a holistic approach is required. An end-to-end connectivity between the e-communication products, networks and services as well as interoperability between mainstream accessible and assistive technologies are required. Moreover, affordability of terminal equipment, connection to the network and services as well as of assistive technologies software and hardware must also be taken into consideration.

Therefore, we welcome the approach taken by BEREC to deliver equivalent access. However, several other aspects should be taken into account:

- 1) We believe that e-communication products and services should be designed for all users, including those with disabilities, according to the concept of universal design². But, persons with disabilities, who

¹ The MeAC Study is available online in PDF and word format by clicking [here](#).

² In the article 2 of the United Nations Convention on the Rights of Persons with Disabilities, “ ‘Universal design’ means the design of products, environments, programmes and services to be usable

are a very heterogeneous group, may still need in some specific cases special goods or services.

Therefore, not only the availability of accessible terminal equipment, but also the availability of assistive technologies to access and use e-communication terminal equipments should be one of the factors. It could for instance be the availability of text-to-speech software in the national language. Interoperability between mainstream terminal equipments and assistive technologies should also be looked at.

Finally, we notice that sometimes the provisions of e-communication products and services for persons with disabilities are temporary or are specific solutions based on projects. This leads to the unavailability of the provisions after a while or under certain conditions only. For instance, access to certain specific services for disabled people are not available on weekends, or only if the person with a disability has registered in advance. Thus, to define availability of accessible e-communications, the mainstreaming of specific solutions for persons with disabilities in the provisions of e-communications as well as their permanent implementation should also be taken into account.

- 2) Moreover, we consider that the services associated with the use of an e-communication service are evolving with the rapid developments of technology itself, and it could be different from one Member State to another depending on national situation. So, rather than defining an exhaustive list of such services that could be rapidly technologically overtaken, it would make sense to let the possibility for the NRAs to include other services that they think are important to ensure equivalent access. The price of such associated services, which should be the same as for non-disabled customer, is another factor that should be taken into account.
- 3) Besides, despite the fact that the BEREC public consultation does not address the provisions listed in article 26(4) on equivalent access to emergency services, we consider that access to emergency services is part of the services associated with the use of landline e-communication services. In practice, it would also be difficult to

by all people, to the greatest extent possible, without the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed."

separate the implementation of both provisions. So, we would like to suggest to, at least, make a link between the actions being taken in order to provide equivalent access to emergency services for citizens with disabilities.

- 4) Special service for consumers with disabilities or older consumers: service providers should ensure that complaints are accepted via different avenues and in different formats³. For instance call centres are not the best choice for persons with hearing impairments, who may need to send their complaints via electronic mail or post.
- 5) Right of withdrawal if service is not accessible and/or not compatible with the most commonly used assistive technologies, but advertised as such: in most cases' depending on national law provisions, consumers are entitled to withdraw from a contract if the terms of that contract are not fulfilled by the other party. This 'right of withdrawal' (and the related, potential right to be compensated for any resulting loss or damage), should cover services which turn out not to be accessible, if this is what was promised at the pre-contractual stage.

Consultation Question 3: Do you agree that the factors listed above (section 3.2.1 and 3.2.2) are important to consider when assessing equivalent choice? Are there other factors which should be considered? Are some factors more important than others?

Answer

ANEC and EDF think that the approach taken by BEREC to deliver equivalent choice for persons with disabilities is going into the right direction. However, article 23a (1)(b) has been partly interpreted only. Indeed, the article requires that disabled end-users benefit from "the choice of **undertakings and services** available to the majority of end-users".

Therefore, persons with disabilities should be able to make a choice among a range of accessible services but also among a range of undertakings providing these services. So, the factors should not only address the range of service providers but also the fact that disabled consumers can

³ See, for example, ISO 10002:2004 'Guidelines for complaints handling in organisations'.

effectively choose between accessible services. For instance, a deaf consumer wants to use a new landline phone. S-He should be able to choose between real-time text telephone or video-telephone according to his-her preferences in using written text or sign language, and then between a range of undertakings, if any, providing these services.

Consultation Question 4: In your view, should the obligations currently in place under USO, for end-users with disabilities, be placed on all service providers? If no, what types of service providers, considering factors such as financial impact (cost), should the obligations be placed on? What is your view in relation to alternative mechanisms for funding?

Answer

The obligations currently in place under USO for end-users with disabilities are access to and affordability of directory enquiry services and directories as well as access to and affordability of public pay phones and other public voice telephony access points. In that respect, we would like to reaffirm the importance of delivering such services to persons with disabilities, because other means, which could deliver equivalent effects in terms of access and affordability, are not accessible and/or affordable for users with disabilities. For instance, mobile phone terminal equipments and services, which are not covered under the USO, have very limited accessibility functions and are not affordable, so accessible public telephone booths might be the only alternative for persons with disabilities on the move. Other reasons include lack of affordable and accessible e-communications, lack of support and lack of training of users with disabilities.

Consultation Question 5: In what form should the information provided by service providers to inform end-users with disabilities of details of products and services designed for them and information regarding pricing and contracts be provided in?

Answer

Alternative accessible format means that information should be provided using text, audio, video, and/or digital means so as to be accessible to all consumers, including users with disabilities. Accessible formats include, but are not limited to:

- Large print
- Braille version

- Easy-to-read version
- Audio format such as tapes, CDs or MP3s
- Video format like DVDs, including sign language interpretation and for people with cognitive disabilities
- Digital format (including accessible website)

Consultation Question 6: Do you consider it appropriate that NRAs have a role in encouraging the availability of terminal equipment, in accordance with Article 23 (a) (2)? If yes, what do you consider that NRAs could do to achieve this?

Answer

As the availability of terminal equipment is one of the factor to implement article 23a (1), we think that the NRAs should support their respective Member States in delivering such a provision. Several actions can be undertaken by NRAs at national level:

- Raise awareness about what accessibility of terminal equipment for users with disabilities means.
- Make use of the possibility provided by Article 3.3.f of the R&TTE Directive (1999/5/EC) which allows the Commission to require certain products within the scope of the Directive to support certain features in order to facilitate their use by consumers with a disability.
- Consult persons with disabilities, and their representative organisations, in order to understand the needs of disabled users to access and use e-communications.
- Consumer tests such as users with disabilities testing accessibility of e-communications could be promoted.

Consultation Question 7: In addition to the services, features and types of terminal equipment listed are there any others which you consider necessary to ensure equivalent access.

Answer

ANEC and EDF think that the establishment of equivalent access and choice for persons with disabilities obligations by NRAs will also entail the setting of specific requirements on the quality of the connection offered. In order

to implement quality of service requirements, the elaboration of standards may be needed.

Consultation Question 8: Where services, features or terminal equipment suitable for end-users with disabilities have been provided voluntarily, has there been encouragement from NRAs Government or other parties, or does it appear that the market is delivering and will continue to deliver of its own accord?

Answer

ANEC and EDF would like to remind the results of the study “MeAC - Measuring Progress of E-Accessibility in Europe, Assessment of the Status of E-Accessibility in Europe”, according to which the advancement of accessibility of information and communication technologies, including e-communications, for persons with disabilities is directly linked with legislative and incentive measures from the Member States.

We also consider that the market has not answered the requirements of persons with disabilities to use e-communications so far and that incentives from Member States are crucial. In that respect, the European Commission has also decided to consider drafting a European Accessibility Act, as part of the Disability Strategy 2010-2020.

Consultation Question 9: What consideration should be given to NRAs mandating undertakings to provide services, features or terminal equipments for end-users with disabilities as part of the standard services and packages they offer?

Answer

ANEC and EDF understand the article 23a (1) as follows: NRAs should mandate private enterprises to provide accessibility of services, features and terminal equipments for persons with disabilities as part of their mainstream e-communication technologies. Indeed, we consider that public intervention is required to deliver equivalent access and choices for persons with disabilities because the market is still failing in delivering

accessibility of e-communications⁴. Besides, design for all solutions should be supported, instead of specific designed ones for persons with disabilities.

Consultation Question 10: What is the role for public procurement of accessible terminal equipment, as it is likely that NRAs may have no powers with respect to design or supply?

Answer

ANEC and EDF consider that public procurement represents a useful lever to ensure the creation and development of mainstream accessible terminal equipments for persons with disabilities. Indeed, public procurement in the EU amounts to € 1.500 billion or 16% of the Union's Growth Domestic Product (2002 data)⁵ and, for instance, such an approach has been successful in the USA⁶. It is widely recognised that public procurement has the potential to stimulate innovation and encourage organisations and individuals to meet certain requirements⁷. Furthermore, we believe that the role of European standards in defining accessibility requirements in public procurement contracts offers a vital opportunity for mainstreaming accessibility such as in the case of standardisation Mandate 376 on ICT accessibility requirements in public procurement.

Consultation Question 11: Where a subsidy is available for services, features or terminal equipment needed for disabled end-users is the uptake as expected and are there any barriers to take-up? If yes, what are the barriers?

Answer

⁴ For more details, please refer to the study "MeAC - Measuring Progress of E-Accessibility in Europe, Assessment of the Status of E-Accessibility in Europe" available online in word and PDF format by clicking [here](#).

⁵ For further details, please refer to the information available online by clicking [here](#).

⁶ Information about the section 508 of Rehabilitation Act and Architectural Barriers Act is available online at: <http://www.section508.gov/>.

⁷ 2003 European Commission Report on the Use of Equality and Diversity Considerations in Public Procurement.

ANEC and EDF consider that answering this question is dependant on the availability of terminal equipment, features and services accessible to persons with disabilities, which are limited for the moment. Moreover, it will also depend on the national funding schemes.

Besides, in order to provide a European perspective, we would like to draw the attention of BEREC to the 2 following ongoing studies funded by the European Commission:

- Study on economic assessment for improving eAccessibility services and products⁸
- Internal market for inclusive and assistive ICT, targeted market analysis and legislative aspects⁹

Consultation Question 12: If funding is provided to facilitate equivalent access for disabled people, is it best targeted at purchase of equipment, discounts on tariffs, by subsidising special services such as relay services or by direct payment to the user?

Answer

ANEC and EDF consider that the situation in countries outside the EU could be of some inspiration. In the United-States of America (USA), the Telecommunications Relay Services Fund, which is separate from the Universal Services Fund, has been established in order to fund all relay services for persons with disabilities. All telecommunications companies operating in the USA must contribute to the fund via a "contribution factor". A third party company operates the fund and pay the relay-services providers on the basis of the number of interpreted minutes. Thus, deaf and hard of hearing persons are not excluded from using phone services and can choose between several service providers, ensuring competition and innovation in the market.

Consultation Question 13: Are there any details available on the cost per user of implementing any of the measures mentioned in the report?

⁸ More information is available online by clicking [here](#).

⁹ More information is available online by clicking [here](#).

Answer

ANEC and EDF consider that not only the cost of accessibility of such measures should be taken into account, but also the cost of exclusion of persons with disabilities from access to and use of e-communications and, as such, of access to participate in the economic growth.

Consultation Question 14: Are you in agreement that the steps, as proposed above, are appropriate for NRAs to consider when preparing to implement Article 23a? Are there any additional factors that should be considered?

Answer

As reaffirmed under article 4(3) of the United Nations Convention on the Rights of Persons with Disabilities, signed and ratified or in the process of being ratified by all EU Member States and the EU itself, ANEC and EDF consider that an active participation and involvement of persons with disabilities and organisations representing them in all decision-making processes concerning them is crucial. Therefore, we will recommend that a clear system and/process is put in place to ensure that this happens at any stage of the approach NRAs will follow to achieve equivalent access and choice.

1 APPENDIX

A.1. EDF Position on the Telecoms Package, February 2009

It is available on EDF website in word format by clicking [here](#).

A.2. EDF Position Paper on the Review of the EU Regulatory Framework for Electronic Communications (the "Telecoms Package"), April 2008

It is available on EDF website in word format by clicking [here](#).

A.3. Joint ANEC - EDF Reply to the Public Consultation on Universal Service Principles in E-Communications, November 2009

It is available on EDF website in word format by clicking [here](#).

A.4 ANEC position on revision of EU electronic communications regulatory framework, May 2008

It is available on ANEC website in word format by clicking [here](#).

A.4. Contact Persons

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