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BUILDING AN INCLUSIVE DIGITAL SOCIETY  
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# Building an Inclusive Digital Society for Persons with Disabilities

## New Challenges and Future Potentials

edited by  
Carola Ricci



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# **Regulating e-Accessibility and Digital Equality in Europe from a Multilevel Perspective**

Lisa Waddington

## **1. Introduction**

This paper discusses means to promote equality and social inclusion of persons with disabilities from a multilevel perspective. In particular, it discusses international and European regulations relating to e-accessibility and digital equality, whilst also recognising that these regulations reach down to the national level. The paper begins by considering how international law, and specifically the UN Convention on the Rights of Persons with Disabilities (CRPD), addresses accessibility and equality from a digital perspective (section 1). The paper then proceeds to explore how EU law addresses equal access to digital products and services for people with disabilities (section 2). The EU has adopted a range of legal provisions addressing e-accessibility and digital equality, and there have been some important developments in 2018 and 2019. These EU rules are either directly applicable in all the Member States, or must be transposed into national law by the Member States. Moreover, the most recent EU instruments make explicit reference to the obligations in the CRPD. In this sense we can see an emerging multilevel regulation of e-accessibility and digital equality within Europe.

## **2. The UN Convention on the Rights of Persons with Disabilities**

The CRPD was adopted by the UN General Assembly in 2006 and came into force in 2008. It is one of the UN's nine core human rights treaties and it tailors the human rights everyone has to the specific situation of people with disabilities. The CRPD seeks to ensure that people with disabilities have access to human rights on an equal basis with others, and to promote their full and effective participation in society on an equal basis with others. The Convention has been ratified by all EU Member States and the EU itself.

The Convention is based on a number of general principles, including non-discrimination, equality of opportunity and accessibility (Article 3). Accessibility is also addressed in a free standing article in the Convention – Article 9 – and this is of particular relevance to e-accessibility and digital equality. Article 9 obliges State Parties to «take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to ...information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public ...». It also provides that these measures «shall include the identification and elimination of obstacles and barriers to accessibility» and apply to «information, communications and other services, including electronic services and emergency numbers». State Parties are to «promote the design, development, production and distribution of accessible information

and communication systems at an early stage, so that these technologies and systems become accessible at minimum cost».

The relevance of the CRPD to this area and its broad reach is reinforced by General Comment No. 2 of the CRPD Committee on Accessibility. This states that 'ICT' is an umbrella term which includes any information or communication device or application and its content. This includes television, radio, mobile phones, computers, fixed lines, network hardware and software. The General Comment further highlights the importance of ICT accessibility, as it is capable of «open[ing] up a wide range of services, transform[ing] existing services and creat[ing] greater demand for access to information». It provides that any [ICT] good, product or service which is provided to the general public must be accessible to all, no matter if it is provided by a public authority or private enterprise.

Access to information presented in a digital format was also addressed in Individual Communication No. 21/2014, where the Committee on the Rights of Persons with Disabilities held that live travel information presented in a visual form on digital information displays on tram lines should be provided to persons with visual impairments on an equal basis to persons without visual impairments through digital audio information.

In line with Article 9 CRPD and General Comment No. 2, State Parties are required to review and adopt new laws to ensure that inaccessible services become accessible. State Parties are to remove existing barriers and make sure that newly produced goods and services are accessible to everyone. Furthermore, denial of access to ICT constitutes a discriminatory act, prohibited by Article 5 CRPD (prohibition of discrimination).

General Comment No. 7 of the CRPD Committee on participation with persons with disabilities in the implementation and monitoring of the Convention further emphasizes that in order to comply with the obligations under Article 4(3), *i.e.* to consult persons with disabilities through their representative organisations, State Parties must ensure «access to all relevant information, including the websites of public bodies, through accessible digital formats and reasonable accommodations when required». Moreover, as confirmed in Individual Communication No. 21/2014, «State Parties have the duty to provide accessibility before receiving an individual request to use a service». This Communication also confirmed that the «obligation to implement accessibility is unconditional» and may not be excused by «referring to the burden of providing access to people with disabilities». In its Concluding Observations on Bulgaria the CRPD Committee also emphasized the importance of European Union Public Sector Web Accessibility Directive (discussed further below) for the accessibility of websites when it stated that: «It [the Committee] is further concerned about insufficient implementation of the European Union Directive 2016/2012 on the accessibility of the websites and mobile applications of public sector bodies».

The CRPD clearly places great importance on e-accessibility and digital equality. However, the concept of accessibility is complex, as is Article 9 itself. The concept is not defined in the CRPD, but Stelios Charitakis<sup>1</sup> has argued that the term accessibility, as used in the Convention, covers five different elements:

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<sup>1</sup> Charitakis S., *Access Denied: The Role of the European Union in Ensuring Accessibility under the United Nations Convention on the Rights of Persons with Disabilities*, Cambridge-Antwerp: Intersentia, 2018.



Social or attitudinal accessibility – this involves combatting stigma and other negative behaviour and reactions that people with disabilities experience.

Economic accessibility or affordability – this involves ensuring that persons with disabilities can afford to purchase facilities, goods and services. It relates both to the price charged for those products and services, and the ability of persons with disabilities to generate the income needed to purchase those goods and services.

Physical accessibility – this relates to the accessibility of the physical environment, including the digital or online environment. It implies that facilities, goods and services should be useable by persons with disabilities without assistance and that persons with disabilities should be able to understand, navigate and interact with products and services. It implies that products and services should actually be available to persons with disabilities. Products or services should also be safe for use by persons with disabilities, and should be easy to use for persons with disabilities.

Information accessibility – this involves ensuring that persons with disabilities have access to information about facilities, goods and services, including information about the accessibility of the product. This concerns the content of the information.

Communication accessibility – this relates to the receipt of information in accessible forms, such as online text which can be recognised by software. This concerns the means by which the information is communicated.

All these elements of accessibility are relevant to e-accessibility and digital equality.

Having briefly explored how the CRPD addresses accessibility, including from a digital perspective, the paper will now proceed to examine how the EU addresses e-accessibility and digital equality. This discussion will take the different elements of accessibility identified by Charitakis into account. The EU is bound by the UN Convention, and some of the legal instruments which have been adopted recently explicitly refer to the UN Convention and the obligations regarding accessibility.

### **3. European Union Law**

A number of EU instruments address e-accessibility and digital equality. This has been a specific area of interest for the EU for a number of years and, as result, there is a broad ranging legislative package in this field. This paper does not seek to give a complete picture of all EU initiatives in the field. Rather the paper concentrates on three instruments which have been adopted or revised in 2018 and 2019, as well as another recent instrument dating from 2016. This section firstly discusses the revised Audiovisual Media Services Directive, which sets accessibility requirements for television programmes and programmes provided on demand. The paper then considers the Electronic Communications Code, which sets accessibility standards for telecommunications. Thirdly, the paper discusses the Public Sector Web Accessibility Directive, which was adopted in 2016. Lastly, this paper briefly discusses the European Accessibility Act, which provides for acces-

sibility of a wide range of digital services and products. Other than the Public Sector Web Accessibility Directive, all instruments were adopted within a 12-month period running from 2018 to 2019. All four instruments explicitly refer to the CRPD and are intended, at least partially, to implement the Convention.

However, it is important to not simply present the legal rules. The paper therefore also discusses means by which these rules can be complied with; this is important because, although the legal instruments require or encourage accessibility for persons with disabilities in various areas of the digital world, they do not actually explain what such accessibility involves, at least not in a technical or process oriented sense. Instead, this is an area where European standards have an important role to play. The paper therefore also considers how such standards can be used, in combination with some of the aforementioned legal instruments, to understand what is required to achieve accessibility with regard to the content placed on the Internet.

### ***3.1. The Audiovisual Media Services Directive***

The European Union adopted its first Audiovisual Media Services Directive in 1989 to regulate certain elements of those services.<sup>2</sup> That was replaced by a new Directive in 2010<sup>3</sup> and, in 2018, that Directive was amended.<sup>4</sup> Member States must ensure that all media service providers in their jurisdiction comply with the rules set out in the Directive. This applies to companies and public bodies which broadcast television programmes or provide programmes on-demand.

The 2010 Directive included an accessibility clause which encouraged Member States to impose disability accessibility requirements on providers of audiovisual media services. However, this was not an obligation. In 2012 the Commission published a report on the application of the Directive which found that although all Member States had introduced rules to improve accessibility of audiovisual media services for persons with visual or hearing impairments, some had only very general provisions, or limited the scope of accessibility obligations to public service broadcasters.<sup>5</sup> There was consequently clearly

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<sup>2</sup> Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, [1989] OJ L 298, p. 23 ss.

<sup>3</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), [2010] OJ L 95, p. 1 ss.

<sup>4</sup> Directive (EU) 2018/1808 of the European Parliament and the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, [2018] OJ L 303, p. 69 ss.

<sup>5</sup> First Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2010/13/EU 'Audiovisual Media Service Directive' Audiovisual Media Services and Connected Devices: Past and

room to strengthen accessibility obligations on providers of audiovisual media services in some Member States.

In 2018 the Directive was amended to reflect changing market realities. The amended Directive, which is already in force, includes an explicit reference to the CRPD and tightens up the requirement to make audiovisual media services accessible for persons with disabilities. Specifically, while Member States were previously simply encouraged to adopt provisions to impose disability accessibility requirements on providers of services, they are now obliged to.

Article 7(1) of the Directive provides:

Member States shall ensure, without undue delay, that services provided by media service providers under their jurisdiction are made continuously and progressively more accessible to persons with disabilities through proportionate measures.

Member States are also obliged to ensure that media service providers report on a regular basis to the national regulatory authority on the implementation of accessibility measures, and the Member States themselves are obliged to report to the Commission every three years from 2022. Member States are furthermore obliged to encourage media service providers to develop accessibility action plans. These should provide for continuously and progressively making their services more accessible to persons with disabilities. These action plans have to be communicated to national regulatory authorities. In addition, Member States must designate a single publicly available online point of contact for providing information and receiving complaints regarding any accessibility issues concerning audiovisual media services. This has to be easily accessible by persons with disabilities. Member States have to ensure that emergency information, including public communications and announcements in natural disaster situations, which is made available to the public through audiovisual media services, is provided in a manner which is accessible to persons with disabilities. Lastly, the Directive provides that audiovisual commercial communications shall not include or promote any discrimination based on disability.

These are quite wide ranging duties and, in the next few years, the results of these obligations should gradually become more apparent. However, it is interesting to note that the Commission originally proposed to delete all references to accessibility of audiovisual media services for persons with disabilities from the Directive,<sup>6</sup> since it was of the view

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Future Perspectives, COM(2012) 203 final. The Report states (section 2.3): «Accessibility of audiovisual media services for all EU citizens is a further key objective that the AVMSD pursues by requiring access for hearing and visually impaired people to improve over time. All Member States have introduced rules to that effect. The implementation of these rules, however, reflects the diversity of market conditions. While some Member States have very detailed statutory or self-regulatory rules, others have only very general provisions or limit the accessibility obligation to the services of public service broadcasters».

<sup>6</sup> Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM(2016) 287.

that the European Accessibility Act, which was then being discussed by European legislators, would cover the accessibility of audiovisual media services. European disability civil society organisations argued that it would be appropriate to address accessibility issues in both the Audiovisual Media Services Directive and the European Accessibility Act,<sup>7</sup> and proposed strengthening the respective provision in the former Directive.<sup>8</sup> This is in fact what has happened.<sup>9</sup>

In terms of the aspects of accessibility which the Directive addresses, the focus is primarily on physical accessibility of audiovisual media services. However, the Directive also addresses information accessibility, in that an accessible online information point must be established, and social or attitudinal accessibility, in that disability must not be portrayed in a discriminatory fashion in communications.

### ***3.2. The Electronic Communications Code***

The Electronic Communications Code is a Directive which was adopted at the end of 2018.<sup>10</sup> The Code aims to modernise EU telecoms rules and merges four existing telecoms Directives (Framework, Authorisation, Access and Universal Service Directives). It covers electronic communications networks, electronic communications services, associated facilities and associated services, and will enter into force in 2020. Whilst the Code is a very long instrument, it does pay some attention to the situation of persons with disabilities.

The Code states in its Preamble (recital 296):

In line with... the obligations enshrined in the United Nations Convention on the Rights of Persons with Disabilities, the regulatory framework should ensure that all end-users, including end-users with disabilities, older people, and users with special social needs, have easy and equivalent access to affordable high quality services regardless of their place of residence within the Union.

Consequently, a key aim of the Directive is to:

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<sup>7</sup> See, for example, EDF's statement on the Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities, COM(2016) 287. URL: <[http://cms.horus.be/files/99909/MediaArchive/ICT/Final\\_EDF\\_Position\\_AVMSD\\_Revision.pdf](http://cms.horus.be/files/99909/MediaArchive/ICT/Final_EDF_Position_AVMSD_Revision.pdf)> [accessed on 12/07/2019] and the European Union of the Deaf's position of the Audiovisual Media Services Directive. URL: <<https://www.eud.eu/news/policy/audiovisual-media-services/>> [accessed on 12/07/2019].

<sup>8</sup> See, European Disability Forum (2017), "EDF & Broadcasters draw up common proposal to improve access to audiovisual media services". URL: <<http://www.edf-feph.org/newsroom/news/edf-broadcasters-draw-common-proposal-improve-access-audiovisual-media-services>> [accessed on 12/07/2019].

<sup>9</sup> The European Accessibility Act also addresses aspects of accessibility regarding audiovisual media services. For example, it refers to electronic programme guides in recital 31.

<sup>10</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council establishing a European Electronic Communications Code (Recast), [2018] OJ L 321, p. 36 ss.

ensure the provision throughout the Union of good quality, affordable, publicly available services through effective competition and choice, to deal with circumstances in which the needs of end-users, including those with disabilities in order to access the services on an equal basis with others, are not satisfactorily met by the market and to lay down the necessary end-user rights. (Article 1(2)(b)).

The Directive therefore sets out rules intended to ensure that people with disabilities are able to access electronic communications, such as the telephone network and the Internet on an equal basis with others. The end goal is to achieve choice and equivalent access for users with disabilities (Article 3(2)(d)).

A number of obligations are imposed on Member States in this respect. They have to ensure that regulatory authorities take account of the views of users with disabilities (Article 24) and ensure that support is provided to persons with disabilities, so that equipment and services are available and affordable (Article 85(4)). National regulatory authorities may require providers of Internet services and of interpersonal communications services to publish information on measures taken to ensure equivalence in access for users with disabilities (Article 104(1)). Member States also have to ensure that access for persons with disabilities to emergency services is available and equivalent to that enjoyed by other end-users (Article 109(5)).

Article 111 explicitly addresses equivalent access and choice for end-users with disabilities. Paragraph 1 provides:

1. Member States shall ensure that the competent authorities specify requirements to be met by providers of publicly available electronic communications services to ensure that end-users with disabilities:

- (a) have access to electronic communications services, including the related contractual information ..., equivalent to that enjoyed by the majority of end-users; and
- (b) benefit from the choice of undertakings and services available to the majority of end-users.

Therefore, the telecommunications regulatory authorities have to establish specific requirements relating to accessibility for persons with disabilities and service providers have to comply with these. The regulatory authorities can also require the service providers to report on what they are doing to ensure equivalent access for people with disabilities – although they do not have to do this. The European disability movement has described the new rules established by the Code as «encouraging».<sup>11</sup> In terms of aspects of accessibility, the Code addresses physical accessibility, but also communication accessibility and economic accessibility or affordability.

The Electronic Communications Code covers service providers, and requires that the services they provide are accessible – however it does not cover content at all. That means it does not establish accessibility requirements for what is placed on the Internet. Howev-

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<sup>11</sup> European Disability Forum (2018), “Encouraging European Communications Code adopted by the European Parliament”. URL: <<http://www.edf-feph.org/newsroom/news/encouraging-european-electronic-communications-code-approved-european-parliament>> [accessed on 12/07/2019].

er, two further EU instruments address e-accessibility of the content of the Internet: the Public Sector Web Accessibility Directive and the European Accessibility Act.

### ***3.3. Public Sector Web Accessibility Directive***

This Directive, which was adopted in 2016,<sup>12</sup> establishes mandatory accessibility requirements for websites and mobile applications of public sector bodies. It aims to ensure that the websites and mobile applications of public sector bodies are made accessible on the basis of common accessibility requirements (recital 9). The Directive contains a general definition of accessibility, which:

should be understood as principles and techniques to be observed when designing, constructing, maintaining, and updating websites and mobile applications in order to make them more accessible to users, in particular persons with disabilities. (Preamble, recital 2).

Article 4 of the Directive provides:

Member States shall ensure that public sector bodies take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust.

These four concepts are found in Web Content Accessibility Guidelines 2.1. (or WCAG 2.1).<sup>13</sup> These are international guidelines which include a wide range of recommendations for making web content more accessible. They have been produced by the World Wide Web Consortium, which is an international community which develops web standards.

Siteimprove, a multinational company that provides tools and services for website governance, has defined the four concepts in the following way:<sup>14</sup> ‘perceivable’ means that Web content can be perceived by the user’s brain regardless of the senses they can use; ‘operable’ means that web content can be accessed and navigated regardless of the user’s devices; ‘understandable’ means that web content can be understood as easily as possible through simple language and contextual information; and ‘robust’ means that web content can be accessed regardless of the user’s operating system, browser, and browser version, including with the use of assistive technologies.

The Public Sector Web Accessibility Directive itself also addresses the meaning of these four terms in recital 37 of its preamble. It explains them in the following way: ‘perceivability’, meaning that information and user interface components must be presentable to users in ways they can perceive; ‘operable’, meaning that user interface components

<sup>12</sup> Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies, [2016] OJ L 327, p. 1 ss.

<sup>13</sup> URL: <<http://www.w3.org/TR/WCAG21/>> [accessed on 12/07/2019].

<sup>14</sup> Siteimprove (2019), “Democracy, Digital Accessibility, and the EU Member Parliament Websites”, p. 7. URL: <<https://siteimprove.com/media/5009/accessible-report-eu-democracy.pdf>> [accessed on 12/07/2019].

and navigation must be operable; ‘understandable’, meaning that information and the operation of the user interface must be understandable; and ‘robust’, meaning that content must be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies.

Whilst the Directive establishes a duty to provide accessibility, that duty is removed if making the website or application accessible would result in a disproportionate burden for the public sector body (Article 5).

Member States are to promote and facilitate training related to accessibility of websites and applications for relevant stakeholders and staff of public sector bodies (Article 7(4)) and raise awareness about accessibility requirements (Article 7(5)). They are also to monitor the compliance of websites and mobile applications of public sector bodies with the accessibility requirements (Article 8(1)) and put in place adequate and effective enforcement procedures (Article 9(1)). The Directive provides for phased transposition between September 2019 and June 2021 (Article 12).

The need for rules to regulate the accessibility of public sector websites is revealed by a recent analysis of the accessibility of the official websites of Parliaments of the 28 Member States and the website of the European Parliament carried out by the organisation Siteimprove. The report “Democracy, Digital Accessibility and the European Union”<sup>15</sup> found that of the 28 Member State Parliaments, 25 had websites which scored poorly in terms of accessibility. Only the Parliaments in the Netherlands and Denmark had websites providing good accessibility. The Parliament which received the lowest score was the European Parliament, which had itself voted for the Web Accessibility Directive in 2016. The assessments were made using WCAG 2.1, which defines how to make web content accessibility, and, as noted above, refers to the same four categories as mentioned in the Public Sector Web Accessibility Directive. Common problems identified by Siteimprove concerned inaccessible pdf files, image contents that were not correctly tagged, links identified only by colour, generic link texts and forms which were inaccessible.

This raises the question of how to achieve accessibility of web content. The Public Sector Web Accessibility Directive provides rather generic information on accessibility and does not refer, for example, to WCAG 2.1. In fact, it says:

Several Member States have adopted measures based on internationally used guidelines for the design of accessible websites, but those measures often relate to different versions or compliance levels of those guidelines, or have introduced technical differences in respect of accessible websites at national level (recital 5).

This seems to indicate a view that such international guidelines are not appropriate in an EU context. This paper will shortly return to the Directive’s view of how to achieve accessibility, and specifically what technical standards to follow; however, the paper will firstly briefly address the European Accessibility Act.

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<sup>15</sup> *Ibidem*.



### 3.4. *European Accessibility Act*

In 2015 the Commission adopted a proposal<sup>16</sup> for a Directive on accessibility requirements for products and services or, as it is more commonly known, the European Accessibility Act. After 3 years of inter-institutional negotiations, the Act<sup>17</sup> was adopted by the European Parliament in March 2019 and by the Council in April 2019. The Act regulates the accessibility of key products and services in the internal market, such as computers, smartphones, tablets, TV sets, banking ATMs and services, payment terminals, e-books and e-readers, e-commerce websites and mobile applications and ticketing machines. The European disability movement hailed the Directive as «an important step» that improves the accessibility of these kinds of products and services.<sup>18</sup>

While the Public Sector Web Accessibility Directive regulates the accessibility of websites of public organisations, the European Accessibility Act regulates *inter alia* the accessibility of e-commerce websites (Article 2(2)(f)), as well as the websites and applications of certain air, bus, rail and waterborne passenger transport services (Article 2(2)(c)). The Directive defines e-commerce services as services provided at a distance, through websites and mobile device-based services, by electronic means and at the individual request of a consumer with a view to concluding a consumer contract (Article 3(30)).

In some ways the overall approach in the European Accessibility Act is similar to that found in the Public Sector Web Accessibility Directive. Service providers are to ensure that they design and provide services in accordance with the accessibility requirements of the Directive (Article 13(1)), subject to a fundamental alteration or disproportionate burden test (Article 14). In terms of the websites which are covered by the European Accessibility Act, the same four principles referred to in the Public Sector Web Accessibility Directive are stated to be relevant: perceivability, operability, being understandable and robustness (recital 47). Annexes to the Directive provide some information on general accessibility requirements, but do not set out technical standards.<sup>19</sup> In contrast, such Annexes are not found in the Public Sector Web Accessibility Directive. Nevertheless, both Directives address physical accessibility of web sites.

### 3.5. *European Standards Concerning Accessibility*

While the Public Sector Web Accessibility Directive and the European Accessibility Act

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<sup>16</sup> Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services, COM(2015) 615.

<sup>17</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (European Accessibility Act), [2019] OJ L 151, p. 70 ss.

<sup>18</sup> See the European Disability Forum (2019), “European Accessibility Act: A Big Step Forward on a Long Journey”. URL: <<http://www.edf-feph.org/newsroom/news/european-accessibility-act-big-step-forward-long-journey>> [accessed on 13/07/2019].

<sup>19</sup> General accessibility requirements related to all services covered by Article 2(2) of the Directive are addressed in Annex I, Section III.



establish requirements to provide accessibility of certain websites and applications, they provide little detail about how to do this. This nevertheless remains a legal obligation for providers of these services. The means by which to achieve such accessibility are at least partially addressed through European standards. Both Directives establish a presumption of compatibility (Article 6 Public Sector Web Accessibility Directive and Article 15 European Accessibility Act), which provides that if websites or applications comply with certain harmonised standards, which have been adopted by European Standardisation Organisations and published in the Official Journal of the EU, there will be a presumption that they meet the accessibility requirements set in the Directives. In practice this is a strong presumption, and it is unlikely that a website which met these standards would be regarded as inaccessible.

The relevant standards have been developed by the European Standardisation Organisations, which consist of national standardisation bodies from all the Member States. Three such Organisations exist, CEN, CENELEC and ETSI, each covering different fields. The bodies do not necessarily develop standards on their own initiative; instead the European Commission can issue them with mandates, or official requests, requesting that they develop standards on a particular topic and provides funding for them to develop the standard. The actual development of the standard is a long process which involves a lot of consultation. An EU regulation on standardisation confirms that European standards must be compliant with the CRPD and that Disabled Peoples Organisations, as well as other stakeholders, must be involved actively in the process of setting standards.<sup>20</sup>

The Standardisation Organisations have developed standards which are relevant in the context of web accessibility and the two Directives. The standard “Accessibility requirements for ICT products and services” was adopted by all three European Standardisation Organisations in combination. It is a highly technical standard and is 152 pages long. It defines accessibility as the:

extent to which products, systems, services, environments and facilities can be used by people from a population with the widest range of characteristics and capabilities, to achieve a specified goal in a specified context of use (section 3.1, p. 13).<sup>21</sup>

Work on this standard was first prompted by the Commission Mandate 376<sup>22</sup> which was issued to the European Standardisation Organisations in 2005. It initially resulted in European standards on e-accessibility to be used in public procurement which were

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<sup>20</sup> Regulation (EU) No. 1025/2012 of the European Parliament and of the Council on European Standardisation, [2012] OJ L 316, p. 12 ss.

<sup>21</sup> Accessibility requirements for ICT products and services, EN 301 549 V2.1.2 (2018-08), ETSI, CEN, CENELEC. URL: <[https://www.etsi.org/deliver/etsi\\_en/301500\\_301599/301549/02.01.02\\_60/en\\_301549v020102p.pdf](https://www.etsi.org/deliver/etsi_en/301500_301599/301549/02.01.02_60/en_301549v020102p.pdf)> [accessed on 13/07/2019].

<sup>22</sup> Standardisation Mandate to CEN, CENELEC and ETSI in support of European Accessibility Requirements for Public Procurement of Products and Services in the ICT Domain, M 376 EN, Brussels 7 December 2005.

adopted in 2014,<sup>23</sup> and an implementation toolkit was published shortly thereafter.<sup>24</sup> However, in light of the Public Sector Web Accessibility Directive, the Commission issued a second mandate, Mandate 554, which asked the European Standardisation Organisations to revise the standard and make it a harmonised standard which was not confined to public procurement.<sup>25</sup>

As noted above, this has now been adopted and the standard specifies the functional accessibility requirements for ICT products and services, including web content.<sup>26</sup> It translates the four principles of accessibility set out in both Directives into testable success criteria<sup>27</sup> and establishes a common methodology to test the conformity of the content of websites and mobile applications with those principles. The standard sets out technical requirements and provides the detail on accessibility which is not contained in the EU Directives. Consequently this is the standard which applies to assess accessibility of websites for both the Public Sector Web Accessibility Directive<sup>28</sup> and the European Accessibility Act.<sup>29</sup>

A second standard is also worth mentioning in this context. That is the standard “Design for All – Accessibility following a Design for All approach in products, goods and

<sup>23</sup> Accessibility requirements suitable for public procurement of ICT products and service in Europe, EN 301 549 V1.1.1 (2014-05), ETSI, CEN, CENELEC. URL: <[https://www.etsi.org/deliver/etsi\\_en/301500\\_301599/301549/01.01.01\\_60/en\\_301549v010101p.pdf](https://www.etsi.org/deliver/etsi_en/301500_301599/301549/01.01.01_60/en_301549v010101p.pdf)> [accessed on 13/07/2019].

<sup>24</sup> URL: <<http://mandate376.standards.eu/>> [accessed on 12/07/2019].

<sup>25</sup> Commission implementing Decision (EU) 2018/2048 of 20 December 2018 on the harmonised standard for websites and mobile applications in support of Directive (EU) 2016/2102 of the European Parliament and of the Council, [2018] OJ L 327, p. 84 ss. The implementing Decision adopts European standard EN 301 549 V2.1.2 (2018-08), Accessibility requirements for ICT products and services, and resulted in its publication in the Official Journal of the EU, as required by the Public Sector Web Accessibility Directive.

<sup>26</sup> The Public Sector Web Accessibility Directive provides: «The European standardisation organisations have adopted European standard EN 301 549 V1.1.2 (2015-04), specifying the functional accessibility requirements for ICT products and services, including web content, which could be used in public procurement or to support other policies and legislation. The presumption of conformity with the accessibility requirements laid down in this Directive should be based on clauses 9, 10 and 11 of European standard EN 301 549 V1.1.2 (2015-04). Technical specifications adopted on the basis of this Directive should further detail European standard EN 301 549 V1.1.2 (2015-04) in relation to mobile applications» (recital 42).

<sup>27</sup> Public Sector Web Accessibility Directive (recital 37).

<sup>28</sup> Two additional implementing decisions in support of the Web Accessibility Directive have been adopted by the Commission: Commission implementing Decision 2018/1523 establishing a model accessibility statement in accordance with Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies, [2018] OJ L 256, p. 103 ss., and Commission implementing Decision 2018/1524 establishing a monitoring methodology and the arrangements for reporting by Member States in accordance with Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies, [2018] OJ L 256, p. 108 ss.

<sup>29</sup> The European Accessibility Act explicitly states that «The accessibility requirements of this Directive should be aligned to the requirements of Directive (EU) 2016/2102» (recital 46). For the purposes of the European Accessibility Act the Commission has also issued a number of other standardisation requests to the European Standardisation Organisations on Accessibility, such as standardisation mandates M/376, M/473 and M/420, which are relevant for the preparation of harmonised standards (recital 74).

services – Extending the range of users”.<sup>30</sup> The Commission issued Mandate 473 in 2010<sup>31</sup> requesting that the European Standardisation Organisations develop such a standard. The standard was approved in late 2017 and finally published in March 2019. This is a process oriented standard in that it sets out requirements and recommendations to enable an organisation to design, develop and offer goods and services so that they can be understood and used by the widest range of users. It is intended to apply across all goods and services. Unlike the ICT standard, this standard is not publicly available, and must be purchased from the National Standardisation Bodies.

This standard is not mentioned in either the Public Sector Web Accessibility Directive or the European Accessibility Act, although “Design for All” is referred to in the Preamble to both Directives. Therefore, in terms of web accessibility, the standard on “Accessibility requirements for ICT products and services” is most relevant, while the “Design for All” standard has a more general application.

#### 4. Conclusion

The EU has taken a number of steps in the field of e-accessibility and digital equality. All recently adopted legal instruments in this area refer to the CRPD and are intended to implement that, and the CRPD must also be taken into account in developing European standards. These instruments and related standards are impacting the national level, and we can see regulation occurring at multiple levels and being influenced by different regulatory regimes.

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