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## **1. Executive summary**

The report is an overview of the recent developments in policy and legislation with regard to Design for All (DfA). The purpose of the report is to provide a conceptual framework and guidance for the understanding of policy related activities in the field, in order to help the promotion of accessibility and DfA in the Information Society.

The issues discussed are potentially relevant to the promotion of accessibility and for the applications of Design for All principles or assistive technologies. The main idea in the report is to identify those policy and legislative areas that in the present reality are relevant for the implementation of DfA. Consequently, the structure does not follow that of a full legal system. Only those areas have been discussed which appear to be relevant for the time being.

In addition to the general policy context, the report discusses non-discrimination, employment, Information and Communication Technologies, protection of privacy, public procurement, copyright, eServices and the provision of assistive technologies.

The report has been further developed through interactive activities on the message board as well as via the links and document pages of the Policy SIG in the EDeAN web portal. Information from other sources has also been used. The purpose of empirical information is to illuminate how policy and legislative measures can function in particular contexts.

It is recommended that the concepts of accessibility, eAccessibility, Design for All, assistive technologies and related concepts should be promoted and studied further in the context of the general idea of the Information Society, and specifically realised in everyday applications in various contexts, including policies and legislation.

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### 3. Introduction

This report is an overview of the recent developments in policy and legislation with regard to Design for All (DfA). Issues, problems and needs are discussed with regard to policy and legislative trends. It is not possible within the framework of this project to study these issues in depth, but instead the information is collected and analysed in a way that connects various issues in relationship to each other, with the aim of achieving an overview, with the possibility of highlighting new observations. The purpose of the report is to provide a conceptual framework and guidance for the understanding of policy related activities in the field, in order to help the promotion of accessibility and DfA in the Information Society.

The issues discussed below are potentially relevant for the promotion of accessibility and for the applications of Design for All principles or assistive technologies. The main idea in the report is to identify those policy and legislative areas which in the present reality are relevant for the implementation of DfA. Consequently, the structure does not follow that of a full legal system. Only those areas have been discussed which appear to be relevant for the time being. The areas discussed have identity in the empirical policy and legal world. However, the borders of these areas are not fixed. A certain issue can belong to different areas in the course of time, or in different countries. This, in fact, is obvious concerning disability issues themselves.

In the report, policy contexts are discussed generally. More specific discussion has been devoted to non-discrimination, employment, Information and Communication Technologies, protection of privacy, public procurement, copyright, eServices and the provision of assistive technologies. In principle other issues could also be chosen for a thematic discussion. In the course of time new important issues can emerge.

The report has been developed in interaction with activities in the message board as well as links and document areas of the Policy SIG in the EDeAN web portal. The numbering of the chapters in this report is the same as the numbering of the topics in the links and documents areas of the portal.

Empirical data has been collected in the activities carried out online through the EDeAN web portal, especially on the message board, and from some other sources. The availability of empirical information has been improved remarkably as the Country Profiles<sup>1</sup> provided by EU country representatives and the study on "Measuring Progress of eAccessibility in Europe (MeAC)"<sup>2</sup> have been recently published. Not all available information has been used and no assessment of the individual situation in each country has been made. The purpose of empirical information is to illuminate how policy and legislative measures can function in particular contexts.

The aim is to identify the key areas, messages and issues of policy developments. All issues have been described in length elsewhere. More details can be found via the links and document pages of the Policy SIG at [www.edean.org](http://www.edean.org) as well as from the original sources.

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<sup>1</sup> *Country Reports.*

<sup>2</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

## 4. General

In Europe, the present policy context of accessibility in the Information Society is the i2010 initiative. The Design for All principle is a way to achieve the goals of accessibility and inclusion.

The "i2010 – A European Information Society for growth and employment" initiative was launched by the Commission on 1 June 2005 as a framework for addressing the main challenges and developments in the information society and media sectors up to 2010. It promotes an open and competitive digital economy and emphasises ICT as a driver of inclusion and quality of life. The initiative contains a range of EU policy instruments to encourage the development of the digital economy such as regulatory instruments, research and partnerships with stakeholders.

One of the priorities is to foster inclusion, better public services and quality of life through the use of ICT. eInclusion, e-Accessibility, broadband/digital divide, e-Government, eHealth and Ageing/Ambient Assisted Living are some of the issues which are addressed under this priority.<sup>3</sup>

Recent important steps in policy development are the Riga Ministerial e-Inclusion Declaration, the Ageing Well in the Information Society Action Plan, and the Ambient Assisted Living research program.

In June 2007, the European Commission adopted a European Action Plan for "Ageing Well in the Information Society". The Action Plan aims at:

- overcoming technical and regulatory barriers to market development, through market assessments and by facilitating the exchange of best practice between Member States;
- raising awareness and building consensus via stakeholder cooperation in 2007 and the establishment of a best-practice internet portal,
- accelerating take-up through, for example, a set of pilot projects and a European award scheme for smart homes and independent living applications;
- boosting research and innovation by immediately supporting a joint public-private research programme dedicated to "ambient assisted living". It aims to foster the emergence of innovative ICT-based products, services and systems for Europe's ageing population.<sup>4</sup>

The policy process proceeds in several steps. One of the goals is a European Initiative on e-Inclusion in 2008. The Commission launched a public consultation in the summer of 2007, in preparation for the Initiative. In order to prepare for the Initiative, the Commission will also propose a comprehensive approach to e-Inclusion by the end of 2007 to support the achievement of the objectives of the Riga Ministerial Declaration.

Law is an important tool for social change. In Hungary the Constitution (70/A paragraph) guarantees equal opportunities for the all members in the society, but these rights had come true only minimally for people with disabilities for a long time. The first real breakthrough in legislation came in 1998 and since then the legislation relevant to accessibility has been amended many times.

During an Expert workshop on Legislative and Regulatory Approaches to eAccessibility in Europe held in April 2007, horizontal legislation and regulation was discussed, as well as ICT specific legislation with relevance to eAccessibility. It was observed that there is a lack of commonly shared and comprehensive perspective about what eAccessibility encompasses and that there is a considerable variation across countries as regards the extent and nature of the attention being given to

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<sup>3</sup> *What is i2010? A comprehensive strategy for the information society 2005-2010.*

<sup>4</sup> *Press releases IP/07/831.*

eAccessibility. As high level issues and requisites for further policy development, the following were identified:

- a clear and comprehensive presentation of what eAccessibility practically means in relation to the various ICT domains and issues concerned
- a good conceptual and analytic presentation of the types of legislative and regulatory measures that can be invoked to address eAccessibility and of how the various approaches work in practice
- guidance on how to allocate eAccessibility within the legislative and policy making processes, with a view to directing the right legislative efforts to the right places
- implementation of a comprehensive set of measures to achieve truly European solutions (the universality of action was seen as a strong argument for EU-level intervention).<sup>5</sup>

Inclusion in the Information Society can be discussed also from an ethical viewpoint. In a workshop Ethical Aspects of Inclusion in the Information Society Simon Rogerson identified three approaches to ethics in this context: Rights/Justice, Care/Empathy and Community Good.<sup>6</sup>

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<sup>5</sup> *Expert Workshop.*

<sup>6</sup> Rogerson 2007.

## 5. Non-discrimination

The principle of non-discrimination applies to all sectors of society. It is a human right. A Council of Europe Convention, namely the Convention for the Protection of Human Rights and Fundamental Freedoms prohibits discrimination in Article 14:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any grounds such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

In 2000 the European Community enacted two Directives that prevent people in the European Union from being discriminated against on grounds of race and ethnic origin (in short: Racial Equality Directive), and on grounds of religion or belief, disability, age or sexual orientation (in short: Employment Framework Directive). Concerning disability, the European Union has recently adopted a strategy whose purpose is to mainstream disability issues into relevant Community policies and develop concrete actions in crucial areas to enhance the integration of people with disabilities.<sup>7</sup>

The goal of the European Union Disability Strategy is a society that is open and accessible to all. The barriers need to be identified and removed. This approach has been stimulated by the United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities. The European Union Disability Strategy has three main focuses: co-operation between the Commission and the Member States, full participation of people with disabilities, and mainstreaming disability in policy formulation.<sup>8</sup>

Mainstreaming, which is essential in the European Disability Strategy, is functioning along the same lines as DfA. Freely expressed, DfA is mainstreaming special requirements into ordinary products.

Non-discrimination is a general, cross-sector principle, which has relevance as a fundamental and complementing principle in several sectors.

Non-discrimination is one of the general principles of the Convention on the Rights of Persons with Disabilities. The Convention has been adopted by the United Nations General Assembly on 13 December 2006 and has been opened for signature on 30 March 2007. Several countries have already signed or as a next step ratified the Convention.<sup>9</sup>

There is general non-discrimination legislation in Member States as well as sector-specific legislation both at European and national levels.

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<sup>7</sup> *Action against discrimination, Civil Society.*

<sup>8</sup> *The European Union Disability Strategy.*

<sup>9</sup> *UN Enable.*

## 6. Work and Employment

Reasonable accommodation is a central concept not only for employment, but also generally for disability policy. Reasonable accommodation makes equipment and workplaces accessible in individual situations.

This obligation is expressed in Article 5 of the Council Directive 2000/78/EC of 27 November 2000, which establishes a general framework for equal treatment in employment and occupation:

In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.

Member States were due to transpose it into national law by the end of 2003.<sup>10</sup>

Employment policy is not only about the prohibition of discrimination. Positive measures that actively promote employment have also been used. Quotas for certain groups of people have been applied. Even more active measures can be used. These may include advisory services or reimbursement for assistive devices.

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<sup>10</sup> *Disability Issues.*

## 7. Information and Communication Technologies

### 7.1. Policy context

Design for All and assistive technologies promote eAccessibility and e-Inclusion. E-inclusion is explained in the Information Society Thematic Portal<sup>11</sup> as follows:

E-inclusion ('e' standing for electronic) aims to prevent the risks of 'digital exclusion', that is to ensure that disadvantaged people are not left behind and to avoid new forms of exclusion due to lack of digital literacy or of Internet access.

At the same time e-inclusion also means tapping new 'digital opportunities' for the inclusion of socially disadvantaged people and less-favoured areas. The Information Society has the potential to distribute more equally knowledge resources and to offer new job opportunities, also by overcoming the traditional barriers to mobility and geographic distance.<sup>12</sup>

eAccessibility is a more specific concept:

eAccessibility is one of the focuses of e-Inclusion. While accessibility is a wide concept, e-Accessibility deals mainly with aspects linked to the Information Society. It encompasses the practises that empower people to fully benefit from ICT and information society. eAccessibility problems concern specifically persons with disabilities and ageing people, but also anybody in specific environmental or social situations who experiences difficulties in accessing these new technologies and services, as some barriers can be inadvertently created by the Information Society itself.<sup>13</sup>

Technologies, which are relevant for e-inclusion, are many, but, traditionally, telecommunications is the most central one. In 2002, the European Union adopted a new regulatory framework for electronic communications networks and services, covering all forms of fixed and wireless telecoms, data transmission and broadcasting. From a DfA perspective, the most important Directives are Directive (2002/21/EC) on a common regulatory framework and Directive (2002/22/EC) on universal service and users' rights relating to electronic communications networks and services.

According to the framework Directive, the National Regulatory Authority shall, among other tasks, promote the interests of consumers by, among other things, addressing the needs of specific social groups, in particular disabled users.

In November 2007, the Commission adopted proposals for the review of the telecoms regulatory framework. They aim at more competition, better regulation, strengthening the internal market and protecting consumers better.<sup>14</sup>

A recent Ministerial Debate reports that by including more people in our economy and society there is a triple benefit: a better life for individuals, reduced costs for society and increased economic and business opportunities.(footnote)

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<sup>11</sup> *Europe's information Society Portal.*

<sup>12</sup> *What is e-Inclusion.*

<sup>13</sup> *Focus: eAccessibility.*

<sup>14</sup> *Reforming the current telecom rules.*

This argumentation shows how there are many interests involved in Design for All and in eInclusion. It is possible to achieve a balance between them, and even more: a success. The question remains whether this requires binding measures, in other words legislation.<sup>15</sup>

## 7.2. Universal service

When voice telephony was liberalized in 1998 to complete the overall liberalization of the telecommunications sector, it was agreed to maintain a safety net to ensure that a set of basic telecommunication services would always be available at a determined quality and at an affordable price, even if the market would not provide it. This set of basic services was called 'universal service'. With the 1999 review of the regulatory framework, it was decided to maintain the universal service and to update it to include a minimum speed connection to the Internet.

The basic principles of universal service are determined by Directive 2002/22/EC on Universal Service and Users' rights. According to Article 7,

1. Member States shall, where appropriate, take specific measures for disabled end-users in order to ensure access to and affordability of publicly available telephone services, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.
2. Member States may take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.

Universal service means the provision of a defined set of services to all end-users regardless of their geographical location and, in light of specific national conditions, at an affordable price. The universal service incorporates the right of connection to the public telephone network at a fixed location; the right of access to publicly available telephone services; the right of availability of a directory information service; the right of availability of public pay telephones; the right of facilities for disabled users and those with special social needs. Some of these measures could include, by way of example, making public pay telephones accessible to the disabled, providing public text telephones for deaf or speech-impaired people, providing directory enquiry services (or an equivalent) free of charge for blind people, etc.<sup>16</sup>

Denmark has more detailed legislation on telecommunications and accessibility. Public responsibility for meeting the needs of disabled persons in the telecommunications area is placed on the telecommunications authorities (the Ministry of Science, Technology and Innovation and the National IT and Telecom Agency) and is primarily implemented via the universal service obligation (USO), under which special telecommunications services must be made available to certain defined groups of disabled persons (Consolidated Act No. 784 of 28 July 2005 on Competitive Conditions and Consumer Interests in the Telecommunications Market, section 16(2), no. 4). TDC Solutions A/S (referred to as TDC in the following) has been appointed by the National IT and Telecom Agency as USO provider for the period 1 January 1998 to 31 December 2007 and thus has the obligation to provide the special telecommunications services for disabled persons. Besides the USO regulation, requirements have been laid down in telecommunications legislation for all owners of telecommunications networks and providers of voice telephony services to ensure access to making calls to the public emergency service (112) and to the USO provider's text telephone service and to the

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<sup>15</sup> *Ministerial Debate on e-Inclusion.*

<sup>16</sup> *Universal service.*

emergency call number of that service (Executive Order No. 368 of 20 June 2005 on Provision of Electronic Communications Networks and Services, section 3).<sup>17</sup>

As in many countries, programs are important in Finland with regard to Information Society. A national action programme towards barrier-free communication is specific to telecommunication. It includes objectives and areas of priority: broadband, digital television, accessible websites, emergency services and positioning, directory services, easy-to-use-terminals.

In Spain, Law 51/2003 on Equal Opportunities, non Discrimination and Universal Accessibility for Persons with Disabilities establishes the framework for future legislation with regards to persons with disabilities, with the telecommunications and the information society one of the areas specifically dealt with in the law. To further develop the criteria set forth in this law, on 12 November 2007 the Royal Decree 1494/2007 on the Basic Conditions for the Access of Persons with Disabilities to Technologies, Products and Services related with the Information Society and the Social Media was published.

Telecommunications services enhance accessibility in many ways. In Greece, a special telephone helpline that services people with hearing impairments is in operation. The service offers support for booking an appointment with doctors or passes messages to friends or other people related to the person with hearing impairments. This is a text telephone relay service, the kind that is found in a number of European countries.<sup>18</sup>

In Sweden PTS, the national post and telecom agency has procured six electronic communication services to address the particular needs of disabled users. These include: free directory services; a relay service for text telephony; a relay service for video telephony; a relay service for voice, speech and language impaired; a health care information service for text telephony users and a database service for deaf-blind users.<sup>19</sup>

With regard to television services, the main accessibility issues are subtitling, sign language programs and audio description. Digital television, as compared to analogue television, can create new accessibility problems, but also creates new opportunities for the enhancement of accessibility, such as the conversion of subtitling to speech. Access to audiovisual content should be further analyzed.<sup>20</sup>

### 7.3. Terminal equipment

Another potentially relevant piece of legislation is Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment, and the mutual recognition of their conformity.

The R&TTE Directive is the main legal tool to regulate the sector in order to ensure that R&TTE is safe and does not disturb radio services or other equipment. In addition to these core objectives, other issues currently being addressed include requirements on functional safety, the potential health effects of mobile telephony, anti-theft requirements for cellular phones and non-regulatory ways to prevent this, interoperability for 3rd generation mobile equipment, and accessibility, in order to ensure that elderly people and people with special needs have access to telecommunications services.<sup>21</sup>

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<sup>17</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

<sup>18</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

<sup>19</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

<sup>20</sup> *Regulatory Framework*.

<sup>21</sup> *Radio and Telecommunications Terminal Equipment (R&TTE)*.

The Directive determines essential requirements, which apply to all apparatus. Based on article 3.3 of the R&TTE Directive the Commission may decide that apparatus within certain equipment classes or apparatus of particular types shall also fulfil additional essential requirements. These could include certain features in order to facilitate its use by users with a disability, but the Commission has been very restrictive in using this power and this kind of requirement has not so far been posed.

## 8. Protection of Privacy

The relationship between design and privacy is not necessarily obvious. The result of design is public, but even Design for All is, at the end, Design for somebody. Modern technology, which is a result of design, can collect a lot of personal information. The person in question has an interest that information is correct and that it is used properly. The person may want to keep something confidential and have access to the information that has been collected. In other words, privacy is desired.

Privacy can be discussed, for example, from a philosophical, historical, psychological or sociological perspective. There is also a legal tradition in this respect.

According to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), all persons have the right of respect for their private and family life, their home and their correspondence. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The European Union Charter of Fundamental Rights, as a compilation of the whole range of civil, political, economic and social rights, states the main principles of the protection of personal data, in its Article 8:

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.<sup>22</sup>

Hence, the main idea is that private life is protected and exceptions must be justified.

The analysis of the European Commission in the field of Information Society can be shortened as follows:

Privacy can be described as the power to control what others can come to know about you and to determine the entry rules for your own private space. As technological possibilities to collect, store, analyze and distribute information about virtually every aspect of an individual's life have become almost unlimited, this power risks being greatly diminished. Especially in today's public communication networks, that include not only fixed telephone networks but also mobile networks and the Internet, personal information can be transferred with great ease and even largely invisibly. An intrusion in your home will in most cases entail a risk and an effort for the perpetrator and leave traces such as a broken window or lock. Gaining access to your PC or mobile communicator once it is connected to the Internet is fairly easy and poses little risk for anyone with a motive and can remain largely undetected unless you are a computer expert.

However, while advanced technology creates problems for the protection of privacy, it can also provide a large part of the solutions. Networks, hardware and software can and should be designed, or redesigned, to put the user in control of his own personal information and his private sphere. But given the considerable commercial and state interests in the collection of personal data, this will only happen with a clear, enforceable legal framework that guarantees the individual's right to privacy and regulates the measures to achieve it.

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<sup>22</sup> *Charter of the Fundamental Rights of the European Union.*

Within Europe, the individual's right to privacy is firmly embedded in the European Convention on Human Rights and Fundamental Freedoms of 1950. From there it has found its way into the constitutions of European States. The operational measures to put the right to privacy into practice were left to the individual States.

However, with the development of large scale automatic data processing systems, the need to address the treatment of personal data within such systems became apparent. In 1981 the Council of Europe adopted the Convention for the protection of individuals with regard to the processing of personal data and in 1995 the EU adopted Directive 95/46/EC on the processing of personal data. This Directive established the basic principles for the collection, storage and use of personal data that should be respected by governments, businesses and any other organizations or individuals engaged in handling personal data.

In 1997 the EU adopted a specific Directive 97/66/EC on the protection of privacy and the processing of personal data in the telecommunications sector, translating the principles of the General Data Protection Directive for a number of specific privacy issues related to public telecommunication networks and services. This Directive is no longer in force.

As part of the new regulatory framework for the electronic communications sector, the 1997 Directive has been updated to take account of technological developments and to ensure that the same level of privacy protection will be granted for all communications over public networks regardless of the technology used. The new Directive 2002/58/EC on the processing of personal data and the protection of privacy in the electronic communications sector includes provisions on the security of networks and services, confidentiality of communications, access to information stored on terminal equipment, processing of traffic and location data, calling line identification, public subscriber directories and unsolicited commercial communications. The Directive had to be transposed in national law by 31 October 2003 at the latest.

The European Commission has adopted on 21 September 2005 a proposal for a Directive on the retention of communications traffic data. The proposal provides for an EU-wide harmonisation of the obligations on providers of publicly available electronic communications, or a public telecommunications network, to retain data related to mobile and fixed telephony for a period of one year, and internet communication data, for six months. The Directive adopted by the European Parliament and the Council on 15 March 2006 provides for the principle of a retention period between six months and two years.<sup>23</sup>

There are both threats and opportunities. Some of the threats have been discussed in "Towards an inclusive future", published by a COST219ter project, as well as in the project SWAMI where dark scenarios have been analyzed in depth.<sup>24</sup> The opportunities include the possibility to customize one's user profile, and select and organize services which one will be using.

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<sup>23</sup> *Privacy Protection.*

<sup>24</sup> *Ethical and legislative Issues with regard to Ambient Intelligence.*

## 9. Public Procurement

Public procurement is an important economic force. Total public procurement in the EU – i.e. the purchases of goods, services and public works by governments and public utilities - is estimated at about 16% of the Union's GDP or €1500 billion in 2002. Its importance varies significantly between Member States ranging between 11% and 20% of GDP. The legislative package of public procurement Directives, approved in 2004 by the European Parliament and the EU's Council of Ministers, will help simplify and modernise procurement procedures.<sup>25</sup>

The new directives make it possible to take accessibility needs into account at several stages of a procurement process. The two important passages in the directives are:

In Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors

### Article 34

#### Technical specifications

1. Technical specifications as defined in point 1 of Annex XXI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

and in

Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts

### Article 23

#### Technical specifications

1. The technical specifications as defined in point 1 of Annex VI shall be set out in the contract documentation, such as contract notices, contract documents or additional documents. Whenever possible these technical specifications should be defined so as to take into account accessibility criteria for people with disabilities or design for all users.

It is obvious that it is most convenient to refer to standards when making technical specifications. There are already many CEN, ETSI and ITU standards which can be used for this purpose and many sources which can be useful in practice. Many standards have been presented at the Tiresias website.<sup>26</sup>

Also guidelines, like the WAI guidelines, for example, or national guidelines have been used.

In the future it will be easier to find suitable standards. Mandate M/376 has been given by the European Commission to the European Standardisation Organisations CEN, CENELEC and ETSI, to come up with a solution for common requirements and conformance assessment. In order to implement this mandate, a new working group has been created: CEN/BT/WG 185 eAccessibility.

Professor McCrudden has analysed public procurement procedures in a wider perspective, in the context of “social justice” and the rights of persons with disabilities.<sup>27</sup>

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<sup>25</sup> *Public Procurement.*

<sup>26</sup> Hodgkinson 2007.

<sup>27</sup> McCrudden 2007a,b.

The Norwegian government has made it mandatory to take DfA into account in all public procurement since January 1<sup>st</sup> 2007. The Delta centre has published general guidelines for DfA in public procurement.<sup>28</sup>

Tools have been developed in many countries in order to help procurers to include accessibility requirements in the procurement process, for example

- in Canada (<http://www.apr.gc.ca/DListProdsE.asp?Id=1>),
- in the USA by the U.S. Access Board Buy Accessible Wizard (<http://app.buyaccessible.gov/baw/>),
- in Denmark ([www.oio.dk/tilgaengelighed](http://www.oio.dk/tilgaengelighed)),
- in Ireland (See Marc Magennis The Purpose and Design of an Irish Accessibility ICT Procurement Toolkit (<http://www.t4p.no/t4p.no/conference/programme/workshop/workshop-1>),
- in Sweden (see Clas Thorén: Public Procurement as a vehicle for achieving eAccessibility, <http://www.einclusion-eu.org/Document.asp?MenuID=267>), and
- in the United Kingdom ([www.bsonline.bsi-global.com](http://www.bsonline.bsi-global.com)).

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<sup>28</sup> *Universell utforming I offentlige ansakffelser.*

## 10. Copyright

All products are not accessible for persons with disabilities. Blind persons cannot see the text. Audio output or text in Braille can provide helpful alternatives. In producing audio books, or certain other accessible works, an additional copy is created. Copyright can be a problem in this situation. On the other hand copyright is an essential part of the sustainability of a creative society. This conflict of interests must be solved somehow in order to keep the Information Society as a Society for All.

There is international and European legislation in this field. The objectives of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) are to adapt legislation on copyright and related rights to reflect technological developments and to transpose into Community law the main international obligations arising from the two treaties on copyright and related rights adopted within the framework of the World Intellectual Property Organisation (WIPO) in December 1996. It is an essential building block for the Information Society. The final text is a result of over three years of thorough discussion and an example of co-decision making where the European Parliament, the Council and the Commission have all had a decisive input.<sup>29</sup>

The core of copyright is reproduction right. It is expressed in the Directive as follows:

### Article 2

#### Reproduction right

Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;
- (b) for performers, of fixations of their performances;
- (c) for phonogram producers, of their phonograms;
- (d) for the producers of the first fixations of films, in respect of the original and copies of their films;
- (e) for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

The Directive permits certain exceptions for the reproduction right, including for the benefit of persons with disabilities:

### Article 5

#### Exceptions and limitations

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3. Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

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- (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;

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<sup>29</sup> *Copyright in the Information Society.*

However, it requires legislation to be enacted in Member States. Many Member States have this kind of legislation, but not all. It would be needed in all countries in order to have possibilities to present information in accessible forms.

For example, the Austria Copyright Act (2003) *Urhheberrechtgesetz 42d UrhG* regulates the right of disabled people to make copies for non-commercial use, which was not allowed before.<sup>30</sup>

In Estonia Copyright Act makes special provisions for free use of works for scientific, educational, informational and judicial purposes for the disabled people. Use must be for a non-commercial purpose. According to the Copyright Act (1992, last amended 2006) it is permitted without the authorisation of the author and without payment of remuneration if mention is made of the name of the author of the work, if it appears thereon, the name of the work and the source publication, the reproduction, distribution and communication to the public of a lawfully published work in the interests of disabled persons in a manner which is directly related to their disability on the condition that such use is not carried out for commercial purposes. Works created especially for disabled persons may not be reproduced, distributed and made available without the authorisation of the author.

In Finland *Tekijänoikeuslaki* (Copyright Act 1998, amended 14.10.2005/821), grants exemption of the copyright for the benefit of visually impaired persons.<sup>31</sup>

Legislation addressing the reproduction of works of intellectual property has been enacted as of 24 October 2007 (as published in the Newspaper of the Greek Government, issue nr. 2065) in Greece. The new legislation, explicitly states that works of intellectual property may be freely reproduced and distributed (for non-commercial use) in accessible formats so that they can be made available to people with disabilities. It sets out the obligation for publishers to provide content in digital format and also defines the legal entities entitled to reproduce and make available such content, namely: non profit organizations, end-user organizations, academic institutions, providing specialized services directly or indirectly related to the education and training of people with disabilities.

In Hungary the Copyright Law LXXVI of 1999, paragraph 41, stipulates that the copyright of publications for disabled people is free as long as the publication is not profit-oriented and is used solely for the purpose of people with disabilities. The Copyright Law specifically mentions the free usage of CD-ROM publications for the benefit of the blind or visually impaired.<sup>32</sup>

The Copyright Directive, 2001/29/EC is transposed into Latvian “Copyright Law (*Autortiesību likums*)”, which allows reproduction and distribution for visually and hearing impaired people. Also in Malta the Copyright Act, 2000, facilitates access to published works by persons with a disability.<sup>33</sup>

In Norway the intellectual property protection law grants visually impaired people the right to copy and convert printed material into Braille or Daisy format as long as it is not for commercial use.

These are some examples of copyright legislation in Europe. The impression is that during the last ten years new legislation that permits reproduction for disabled users with certain restrictions has been enacted in many countries. Thus, there is progress towards eAccessibility.

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<sup>30</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

<sup>31</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

<sup>32</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

<sup>33</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

## 11. E-Services

Technology is there to help people. Sometimes a person uses technology directly as a tool, but often technology is mediated through services.

Among other challenges, accessibility is a key requirement. It is a necessary requirement also for web based services, which seem to increase at a rapid pace. It is obvious that standardisation is an area where it is natural to look for accessibility solutions. The Web Accessibility Guidelines (WAI) of the World Wide Web Consortium (W3C) have become a famous de facto standard.

In the legal framework services can be classified as private or public services, and are often a mixture of both. Accessibility is a common requirement, but possible policy and legal measures are different because of different legal frameworks. However, non-discrimination applies to both spheres.

i2010 is also a context for eGovernment policy and the eGovernment Action Plan. One of the main objectives of the Action Plan is that no citizen is left behind: advancing inclusion through eGovernment so that by 2010 all citizens will benefit from trusted, innovative services, characterised by easy access for all, independently of the great diversity (in culture, geographical location, language, socio-economic status, skill, physical ability) that exist among the citizens and businesses.<sup>34</sup>

In promoting web accessibility, some countries focus on legislation, other countries use policy or other methods, or a combination of them.

For example in Austria, the E-government Act requires barrier free access to public websites for all. By January 1, 2008 the design of such online services has to conform to international standards of accessibility.<sup>35</sup>

In Czech Republic by amendment of Act No. 365/2000 Coll. on the public administration information systems, an obligation has been imposed on all central and local government institutions to ensure an accessible (barrier-free) web in line with WAI (Country Reports).<sup>36</sup>

In Denmark there is no single act or strategy that directly addresses eInclusion, but all documents describing the building of the Information Society in Denmark recognize the need to address the special needs of excluded people (Country Reports).<sup>37</sup>

In Estonia there is not any separate strategy for the promotion of eInclusion, which is rather seen as a horizontal policy realised through different sector strategies. The Estonian Information Society Strategy 2013 was completed in 2006. In Estonian Information Society Strategy 2013 one of the objectives is by 2010 to make all public sector websites comply with WAI quality criteria. (Country Reports).<sup>38</sup>

In Finland discrimination on the basis of disability is explicitly prohibited by the Finnish Constitution. There are several programs promoting a barrier-free Information Society. Finland implements soft-law measures to promote the accessibility of public web sites. The Recommendation JHS 129 concerns the accessibility of public websites (Country Reports). Like in many countries, there is a portal for public sector services in Finland, where accessibility has been addressed.<sup>39</sup>

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<sup>34</sup> *eGovernment Policy*.

<sup>35</sup> *Country Reports*.

<sup>36</sup> *Country Reports*.

<sup>37</sup> *Country Reports*.

<sup>38</sup> *Country Reports*.

<sup>39</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

In France Law n° 2005-102 of 11 February 2005 (Article 47) - "Loi pour l'égalité des droits et des chances, la participation et la citoyenneté des personnes handicapées" requires that public digital communication services (public Web sites in particular, but also phone and TV services) must be accessible to people with disabilities according to the international standards. Concerning technical specifications, the only official technical reference concerning eAccessibility in France is the « Référentiel accessibilité des services Internet de l'administration française ». This document has been published by the ADAE (Agence pour le Développement de l'Administration Electronique) in February 2004. This document intended to provide a technical, methodological and organisational framework on French administration sites and services accessibility on Internet and Intranet. It was comprised of two parts: one dedicated to the presentation of accessibility criteria and the second one on usability criteria. It is based on AccessiWeb criteria from the BrailleNet Association, with a clear coverage of the WCAG1.0.<sup>40</sup>

In Germany BGG, § (Section) 11 stipulates an obligatory requirement on federal public bodies to make their websites accessible to people with disabilities by the end of 2005. This legislation has been implemented by a "Federal Decree on Barrier-free Information Technology", the so-called BITV. Guidelines are provided on how to make public web sites accessible to disabled users (based on WAICAG 1.0 guidelines).<sup>41</sup>

Hungary has several relevant general laws and strategies. They include Act XXVI of 1998 on the rights and the promoting of equal opportunities of people with disabilities and the attached Government Resolution on the Government provisions for the creation of a barrier-free environment for all.<sup>42</sup>

In Ireland there is a clear legal basis for accessible services. The Disability Act came into effect on 31 December, 2005. It is a positive action measure which provides a statutory basis for making public services accessible. It places responsibilities on public agencies to ensure that their services are accessible to people with disabilities, with the direct obligation being placed on the head of each public agency covered. It does not specifically mention web services, but these fall within the scope of the Act in a number of ways.<sup>43</sup> As part of the Act the Irish Government established the Centre for Excellence in Universal design that specifically focuses on inclusive design for ICT as well as for general design and the built environment.

Italy has explicit legislation that requires accessibility of Public Administration services and services of public interest (Law no. 4, 2004). Technical requirements and technical methodologies to verify the different levels of accessibility have been published in a Regulation.<sup>44</sup>

In Latvia there are several laws and programs which provide a framework for the Information Society. A knowledge Society is also one of the priorities of Lithuania and there are several relevant programs and strategies. In the Netherlands there are also several relevant programs (Country Reports).

A combination of legislation and guidelines has also been used in Malta. The FITA Accessibility guidelines have an 'official' status in that Government websites are required to pass FITA accessibility check at a pre-launch stage. The Equal Opportunities Act (Disabled Persons) of 2000 is the legal basis

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<sup>40</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

<sup>41</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

<sup>42</sup> *Country Reports.*

<sup>43</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

<sup>44</sup> *Country Reports.*

for this requirement. FITA is a quasi-NGO, whose core funding is provided by MITTS (Malta Information Technology and Technical Services - MITTS Ltd).<sup>45</sup>

Programs are important also in Norway. In December 2006 the Government forwarded a White Paper on ICT, called "An information society for all". eInclusion is one of the six target areas for ICTY-policy. The White paper identifies important challenges and actions. The Government is also preparing an act of non-discrimination and accessibility.<sup>46</sup>

In Poland there are also several strategies and programs that include the element of eInclusion, including ePoland Strategy.<sup>47</sup>

The measures implemented in Portugal include a citizen's portal - a single point of entry to all Public Administration-, and Resolution 97/99 on the e-Accessibility of websites from Public Administration (central and local).<sup>48</sup>

In Spain both programs and legislation are implemented. The program "Plan Avanza", Plan for the Development of Information Society (2006-2010), was approved in 2005. Relevant legislation with regard to accessibility includes Law 51/2003 on Equal Opportunities, non-Discrimination and Universal Accessibility for Citizens with Special Needs, Law 34/2002 on Information Society Services and Electronic Commerce and Law 32/2003 on Telecommunications, and the Royal Decree 424/2005 for the Regulation on conditions for the provision of electronic communication services, universal service and users' protection.<sup>49</sup>

The strategy published by the Government in the United Kingdom is called Transformational Government, Enabled by Technology. The strategy sets out a vision for 21<sup>st</sup> century government. The legislation includes the Communications Act, which requires, among other things, subtitling for analogue and digital channels, the Disability Discrimination Act 2005 (DDA) and the Disability Duty 2006. The Publicly Available Specification (PAS) 2006 provides a comprehensive set of guidelines for all public and private organisations who wish to observe good practice when commissioning public-facing web sites and web-based services.<sup>50</sup>

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<sup>45</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

<sup>46</sup> *Country Reports.*

<sup>47</sup> *Country Reports.*

<sup>48</sup> *Country Reports.*

<sup>49</sup> *Country Reports.*

<sup>50</sup> *Country Reports.*

## 12. Provision of Assistive Technologies

As a technology all areas described in this report can in principle be relevant for the development of assistive technologies. However, as regards to actual services and the provision of assistive technologies, we have to speak about a specific sector, or sectors. Typically the provision of assistive technologies is the responsibility of the social and health sector, or the school or employment sector.

The financing systems vary in Europe. It is typical that there are several systems even within one country. The funding can be public, insurance based, or through products purchased by individuals.

For example, in Austria there are a lot of regulations, which are very different and depend also on the purpose of the assistive technology (at work, education, everyday life etc.). On one side, the allowances for assistive technologies are a responsibility of the provinces, or local institutions (Fond Soziales Wien) but there are also some federal regulations (Federal Social Office- Bundessozialamt). The result is that in an individual case, access to AT is supported / regulated by different institutions.<sup>51</sup>

In Cyprus, for example, there is a specific scheme for the employment sector: a scheme for the reimbursement of costs to employers for ergonomic and other arrangements for the employment of severely disabled persons. Under this scheme employers are entitled to reimbursement of costs involved in providing to newly employed disabled persons - facilities like ramps, ergonomic alterations to machinery etc.<sup>52</sup>

In Estonia Social Welfare Act (1995, last amendments 2006) prescribes that persons who are in need of prosthetic, orthopaedic or other appliances due to illness, advanced age or disability have the right to receive the appropriate appliances. According to the Act a list of such appliances provided at a discount and the conditions and procedure for receipt thereof will be established by the Minister of Social Affairs. In Labour Market Services and Benefits Act (2005, last amendments 2007) it is stated that the disabled person or the employer of the disabled person has a right to obtain from local labour market office for using free of charge a technical device necessary for work without which, due to a person's disability, the person is unable to perform his or her duties (§ 21).

The German assistive technology (AT) legislation (SGB IX) relates to the work place.<sup>53</sup> (MeAC)

Provision of assistive technology can be regulated in details. In Norway, people with disabilities are granted rights to assistive technology according to the law on social security. The main rule is that anyone with a lasting disability (more than 3-4 months) has the right to assistive technology from the State. Assistive technology covering shorter periods shall be supplied from the municipals. There are a few limitations as to whom this right applies to: For example there are criteria for the level of visual impairment, there are also certain medical diagnoses that must be met, for instance dyslexia, and not simply general reading and writing difficulties. Definitions of what types of equipment can be regarded as assistive technology vary over time depending on the change in mainstream technology.

In the UK, the financial support arrangements are complex, with a range of state and voluntary sector agencies responsible for direct and indirect funding and provision of assistive ICT. Support may be direct (ear-marked specifically for equipment) or indirect (general financial support for the applicant). It is often partial and an applicant may have to access several sources, or use personal funds. With regard to what are the main public services (e.g. by local authorities) that help disabled people to get assistive technology for everyday life, generally, notwithstanding any legal provisions and

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<sup>51</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

<sup>52</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

<sup>53</sup> *Measuring Progress of eAccessibility in Europe (MeAC).*

regulations, the types of services provided vary from one local authority to another and depend upon funding. Also, arrangements differ between England, Scotland, Wales and Northern Ireland.<sup>54</sup>

In Spain, the new Law 39/2006 of Promotion of the Personal Autonomy and Attention to the People in a Situation of Dependency has created the legal and practical basis for the provision of assistive products and personal assistance for persons with disabilities.<sup>55</sup>

Rune Halvorsen summarizes the challenges in Nordic countries as follows:

- growing public expenditures on assistive technologies are a common concern to all five countries,
- the technology development is accelerating and technological devices are becoming more common in daily life, requiring constant reconsideration of what products citizens can have and can afford,
- responsibilities for the provision of assistive technology are distributed in different agencies and there is a risk that the claimant will become a shuttlecock in the system.<sup>56</sup>

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<sup>54</sup> *Measuring Progress of eAccessibility in Europe (MeAC)*.

<sup>55</sup> *Sistema para la Autonomía y Atención a la Dependencia*.

<sup>56</sup> Halvorsen 2007.

### 13. Conclusion and Recommendation

The issue of Design for All has relationships to several areas of policy and legislation. Some of these have been discussed here, but reality is "open" and there can be or can emerge other issues which deserve special attention. In these areas there are, or have been, or can be, activities to promote accessibility.

European and national legislation is binding. Also "soft law" measures, like recommendations, can be applied. Other measures, like awareness raising, can also be effective. But, because of the complex nature of reality, it is not always clear which action should be taken. For example, because of different interests, agreement on measures might sometimes be difficult to achieve. Concerning the real outcome, the effects of specified measures cannot always be known in advance.

However, success in the promotion of accessibility exists. Concerning the infrastructure, lower prices of services and equipments have enabled products which enhance accessibility. Many innovations have been made and implemented.

But the promotion of accessibility with policy and legislative measures is challenging. In addition to above mentioned consideration on the general types of measures, interesting observations can be made on the basis of the analysis in this report. It is important to analyse how the link between the EU law and national legislation can be made, and how it works.

These observations indicate that the Copyright Directive has been successful in the promotion legal infrastructure of accessibility. The exemption made to copyright may look rather modest by appearance, but its effect can be strong. This can be characterized as enabling legislation.

Universal Service Directive also includes enabling legislation as regards to specific measures for disabled users. But its effects look diverse. Also the technology and market has developed and diversified a lot during recent years. This suggests that a more detailed attention should be paid to the consideration which measures would be possible and useful in the field of telecommunications.

New public procurement directives include partly mandatory, but also enabling elements in clarifying the possibility for accessibility conditions. New standardisation activity is an important link between law and reality, and it should be strongly promoted.

Mainstreaming is an important principle. It gives responsibilities to all. But in the worst case it can mean that nobody is doing anything. In order to avoid this outcome, and to get real progress, it should be specified explicitly what accessibility means and what is required in particular contexts. In other words, *explicit mainstreaming is recommended*.

On the basis of this over-sector analysis, it would be immature to propose further activities in those fields, without taking into account the actual situation in the field.

Instead, another kind of assessment can be made. In this report, accessibility and Design for All have been discussed and developed as a meta-concept, or an "umbrella-concept" in the context of the Information Society. This kind of discussion should show that the notion of the Information Society has power of life. This, as well as related concepts, like eAccessibility, and related activities and structures, can give systemic support to sector based and other specifications and activities, which, at the end, make the Information Society real.

Hence, the recommendation on the basis of this discussion and assessment is that

*The concepts of accessibility, eAccessibility, Design for All, assistive technologies and related concepts should be promoted and studied further*

- *in the context of a general idea of the Information Society,*
- *and specified into everyday life applications in various contexts, including policies and legislation.*

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