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**NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	7816/16 TELECOM 44 CONSOM 76 MI 214 CODEC 419
No. Cion doc.:	17344/12 TELECOM 250 CONSOM 155 MI 811 CODEC 2936
Subject:	Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites. - Preparation for the informal trilogue

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Following the second trialogue, held on 2 March 2016, four technical meetings as well as three meetings of the WP TELE on this Directive have taken place.

This has allowed the positions of the two institutions to become significantly closer on a significant number of subjects such as content exclusions, standards, additional measures, the monitoring and reporting, or the enforcement.

The Council has urged the European Parliament to delete the list of private entities covered by their text. The EP seems willing to accept the exclusions as demanded by the Council and will now further limit their list of private entities. The mandate proposed in the annex of this document takes into account comments made by delegations last week, as well as some of the latest comments made by the EP during the technical meeting of 15 April.

In view of the third dialogue, and in order to obtain a political agreement, the Presidency proposes to make the following additional compromises in addition to the potential inclusion of Mobile Applications:

- On the exclusion of intranet / extranet, the Council has convinced the EP to exclude them from the scope. The EP would like them to be included in the scope of this Directive as soon as they undergo a substantial revision, especially for education and employment. As this is not necessary to achieve the aim of this Directive, the Presidency proposes a compromise solution to the EP on the basis of an explicit exclusion (changes in Article 1(1) and 1(8)(g)), as well as updated text in recitals (13aa) and (13ab) to clarify that other laws might apply and that "reasonable accommodation" should be foreseen.
- On the exclusion of NGOs, the Presidency has clarified that not all NGOs should be excluded through amendments to Article 1(7)(b) and recitals (13b).
- On the exclusion of schools, nurseries and kindergartens, the Presidency proposes to encourage Member States to include more than just the enrolment process in recital (13ba), while limiting the text in the Article (1.7c) as discussed with the EP.
- Delegations have agreed that live-time based media should be considered, after a reasonable time, as pre-recorded time based-media, which are included in the scope of this Directive. Following the discussions in the WP TELE, the Presidency proposes to update recital (13ha) to define a reasonable delay of 14 days with some flexibility.
- On the issue of the undue burden (new Article 3a), the Presidency proposes to emphasise that the assessment made by public sector bodies can be challenged by the Member States, by slightly modifying paragraph 3 and adding a new recital (24ac). Paragraph 4 has also been modified to take into account the comments of some delegations which could not accept the reference to Article 6.
- On the issue of standards, article 4 and corresponding recital 21aa have been reviewed following discussion between the legal services of the three institutions.

- On the on-demand principle, and to avoid creating a significant additional burden, the Presidency proposes to include such a possibility through the feedback mechanism (Article 6(1.a) and new recital (24ad)).
- On the issue of monitoring and reporting, the Presidency proposes to add an explicit reference to the training and awareness raising activities, but more importantly asks the delegations to accept to include these elements not only in the first report, and in the subsequent reports in cases of substantial changes.
- On the issue of how Member States guarantee the monitoring, reporting and , the Presidency proposes to include the obligation for Member States to inform the Commission of who is performing the monitoring and reporting (Article 6), and the enforcement (Article 7a).
- On the enforcement, a reference has been added in Article 6(1)(b). Moreover recital 24ae has been added to clarify that the enforcement set out in Article 7a does not replace the possibility for legal action (e.g. the Courts).

The Presidency would also like delegations to take into account the fact that the European Parliament is still insisting on the following points:

- explicit inclusion of an on-demand system for old office files or pre-recorded time based media, as well as for heritage collection items and archives;
- inclusion of the associations of bodies governed by public law, and of some private entities covered by the annex proposed by the EP;
- refusal to consider a strong proportionality clause independently of the exclusions;
- use of a delegated act, instead of an implementing act to review the reference to the Standards in Article 4(3);
- a more aggressive timeline, especially because of the delayed adoption of the Council position, as well as the use of the advisory procedure for the definition of the model statement and the reporting modalities

Therefore the Presidency hopes that the COREPER could grant the following mandate, with additional flexibility on some of the key remaining issues.

Changes between this mandate and the previous one (Doc 6169/16 with amendments in Articles 1.7c, 1.7d and its corresponding recital) are marked in bold and strikethrough. Underlined text marks the main differences with the latest WP documents (7552/16 and 7816/16).

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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the accessibility of **the websites [and mobile applications] of public sector bodies**~~websites~~

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 (1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) *The trend towards a digital society provides users with new ways of accessing information and services. The providers of information and services, such as public sector bodies, rely increasingly on the Internet in order to produce, collect and provide a wide range of information and services online, which are essential to the public.*

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<sup>1</sup> OJ C 110/26 ,9.5.2006 / (COM(2005) 425 final).

<sup>2</sup> OJ C 009, 11/01/2012 P. 0065 - 0070.

- (2) *For the purposes of this Directive, ~~Web~~ accessibility refers to principles and techniques to be observed when **designing, constructing, maintaining, and updating** websites **[and mobile applications]** in order to render the content of these ~~websites~~ more accessible to users, in particular ~~people with functional limitations, including~~ persons with disabilities.*
- (3) *The Commission's eGovernment Action Plan 2011-2015<sup>3</sup> calls for action to develop eGovernment services that ensure inclusiveness and accessibility.*
- (4) *In its Communication 'A Digital Agenda for Europe'<sup>4</sup> the Commission announced that public sector websites should be fully accessible by 2015.*
- (5) *The Framework Programme for Research, Technological Development and Demonstration<sup>5</sup> and the Competitiveness and Innovation Programme<sup>6</sup> support research on and the development of technological solutions to accessibility problems.*
- (6) *By ratifying the United Nations Convention on the Rights of Persons with Disabilities ('the UN Convention'), the majority of the Member States and the Union, by its conclusion, have committed themselves **"to taking appropriate measures to ensure to persons with disabilities access, on equal basis with others, to inter alia information and communication technologies and systems"** and **"to take appropriate measures [...] to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public as well as to promote access for persons with disabilities to new information and communications technologies and systems, including the Internet."***

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<sup>3</sup> COM(2010) 743 final – Not published in the Official Journal

<sup>4</sup> COM(2010) 245 final/2

<sup>5</sup> OJ L 412, 30.12.2006, p. 1–43.

<sup>6</sup> OJ L 310, 9.11.2006, p. 15 – 40.

*According to the UN Convention, persons with disabilities include those having long-term physical, mental, intellectual or sensory impairments which, may, in conjunction with other barriers, hinder their full and effective participation in society on an equal basis with others.*

- (7) *The European Disability Strategy 2010-2020<sup>7</sup> builds on the UN Convention and contains actions in several priority areas, including ~~web~~ **accessibility of information and communications technologies and systems**, with the objective ~~to~~ "to ensure accessibility to goods, ~~and~~ services including public services and assistive devices for people with disabilities."*
- (8) *The Council Regulation (EC) No 1081/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund<sup>8</sup> contains provisions on the accessibility of ICT. It does not, however, address specificities of ~~web~~ accessibility **of websites [or of mobile applications]**.*
- (9) *The fast growing ~~web accessibility~~ market **of making digital products and services more accessible** comprises a range of economic operators such as those developing websites or software tools to create, manage and test web pages **[or mobile applications]**, developing user agents such as web browsers and related assistive technologies, implementing certification services and training providers.*
- (10) *Several Member States have adopted measures based on internationally-used guidelines for the design of accessible websites, but the guidance provided often refers to different versions or compliancy levels of those guidelines, or technical variations at national level have been introduced.*

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<sup>7</sup> COM( 2010) 636 final - Not published in the Official Journal

<sup>8</sup> OJ L 210, 31.07.2006, p.25.

- (11) *Suppliers of web accessibility include a large number of small and medium-sized enterprises (SME). Suppliers and SME in particular are discouraged from entering business ventures outside their own domestic markets. Due to the differences in web accessibility specifications and regulations, their competitiveness and growth are hampered by the additional costs they would incur in the development and marketing of cross-border web accessibility related products and services.*
- (12) *Buyers of websites **[and mobile applications]** and ~~related~~ **relating** products and services are faced with high prices in service provision or dependence on a single supplier, due to limited competition. Suppliers often favour variations of proprietary 'standards', hindering later scope for interoperability of user agents, and Union-wide ubiquitous access to **the content of websites [and mobile applications]-contents**. Fragmentation among national regulations reduces the benefits that could result from sharing experiences with national and international peers in responding to societal and technological developments.*
- (13) *The approximation of national measures at Union level, based on an agreement on accessibility requirements for public sector bodies' websites **[and their mobile applications]**, is necessary in order to put an end to fragmentation. It would reduce uncertainty for ~~web-~~ developers and would foster interoperability. By using accessibility requirements which are technology neutral, innovation will not be hampered and may possibly even be stimulated.*



**(13aa)** ~~The web-accessibility requirements of this Directive are applicable to these websites [and mobile applications] of public sector bodies which are open to the public, including those requiring~~ **This includes websites [and mobile applications] that require registration or identification, as well as websites [and mobile applications] targeted to specific groups, but open to all citizens. The web accessibility requirements are not applicable to digital information content on intranets and extranets, which is only available to a closed group of people and not to the general public. Likewise the requirements of this Directive do not apply to the content exclusively on mobile devices or user agents for mobile devices which are developed for closed groups of users or for specific use within certain environments and which are not available to and used by large parts of the public. If the accessibility requirements of this Directive are not applicable, in accordance with Directive 2000/78/EC, the UN Convention, and other relevant legislation, the requirements of ‘reasonable accommodation’ still could apply and should be provided where needed, especially in the fields of employment and education.**

**(13ab) This Directive is without prejudice to Directive 2014/24/EU and in particular to Article 42 thereof, and Directive 2014/25/EU and in particular to article 60 thereof, which require that the technical specifications of all procurements which are intended for use by natural persons, whether general public or staff of a contracting authority, shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.**

**(13a)** ~~Given the lack of automatized or efficient and easy to implement means to make some types of already published content accessible, and in order to limit the scope of the directive to contents, and websites[, and mobile applications] really-effectively under the control of public sector bodies, this Directive foresees the temporary or permanent exclusion of some types of content, or websites[, or mobile applications] from web the accessibility requirements. These exclusions may be reconsidered in the context of the review of this Directive, in light of future technological developments.~~

*(13b) Some non governmental organisations (NGOs), which are voluntary self-governing bodies established to pursue essentially non-profit making objectives, provide services that are not essential to the public in general, such as services that are not directly contracted by State, regional or local authorities, or services that do not specifically addressing the needs of, nor are not meant for, persons with disabilities in particular, while being mostly financed by public sector bodies, and could therefore fall under the scope of this Directive. In order to avoid a difference of treatment between imposing a disproportionate burden on such NGOs receiving or not public funds, this Directive should not ever apply to them ~~websites of NGOs even if these organisations fall under the scope of the definition of public sector bodies.~~*

*(13ba) Essential online administrative functions of schools, kindergartens or nurseries, such as the enrolment process, should be made accessible. When that essential content is provided in an accessible manner via another website, such content does not need to be made accessible again on the facility's website. [Member States are encouraged to consider that content relating to the organisation of the studies, school year calendar or list of courses or the location of the establishment corresponds to essential administrative functions.]*

*(14a13c) Member States may in particular:—~~a.~~ extend the application of this Directive to other types of websites [and mobile applications] than those referred to in Article 1(2), in particular to intranet or extranet websites designed for and used by a limited number of persons in the workplace or in education, and —~~b.~~ extend the requirements set out in ~~Article 3~~ maintain or introduce measures in conformity with Union law which go beyond the minimum requirements for accessibility.*

*(13e) This Directive does not require Member States to make accessible archiveds websites [or mobile applications] if their content is no longer updated or edited and if it is not needed for the fulfilment of administrative processes or if the service in question is no longer provided. (...) For the purposes of this Directive, purely technical maintenance should not ~~to~~ be considered to be an update or an edit of a website [or mobile application].*

- (13f) Some ~~web~~ accessibility requirements **for websites [or mobile applications]** should still be respected in regard to the metadata linked to the reproduction of the heritage collections item.
- (13h) Office file formats refer to documents that are not intended primarily for use on the web and that are ~~embedded~~ **included** in web pages, such as Adobe Portable Document Format (PDF), Microsoft Office documents or their (open source) equivalents.
- (13ha) ***Live time-based media that are kept online or republished after the live broadcast have to be considered as pre-recorded time-based media within a reasonable period of time from the date of the initial broadcast of the live time-based media. A reasonable period of time would in principle not be longer than 14 days. It might be shorter in cases were a transcript is available during or right after the live broadcast, for instance a speech that is read out, or where the circumstances allow to make use of automated captioning or description in a manner that does not require much manual adjustment. The reasonable period of time might exceptionally be longer when the public sector body is required to launch a procurement procedure to obtain the services needed to make the media accessible . In any case, the time needed for making time-based media accessible should be as short as possible for essential information relating to health, welfare and safety of the public.***
- (13i) This Directive's, **while encouraging public sector bodies to make all content accessible** , is ~~intent~~ **not intended** ~~is not~~ to ~~prevent or~~ limit the content which public sector bodies place on their websites **[or in their mobile applications]** to accessible content alone. However, whenever non accessible content is added, public sector bodies should, to the extent **that it is reasonably possible**, add accessible ~~online~~ alternatives **on their websites [or in their mobile applications]**.

**(13j)** ~~For example, when a directional map is not accessible,~~ **When maps are intended for navigational use, as distinguished from geographical description, accessible information can be needed to help citizens that cannot use visual information or complex navigation functionalities properly, for instance to locate premises or areas where services are provided. the website could include a text** ~~An alternative should therefore be provided containing the such as postal addresses and nearby public transport stops. or the names of places or regions which are often already available for the public sector body in a simple and readable form for most users.~~

**(13k)** **Embedded content, such as embedded image or video, should be covered by this Directive. However, sometimes, web pages are created on which additional content will be later added, for example an email program, a blog, an article that allows users to add comments, or applications supporting user-contributed content. Another example would be a page, such as a portal or news site, composed of content aggregated from multiple contributors, or sites that automatically insert content from other sources over time, such as when advertisements are inserted dynamically. Such** ~~When~~ **third party content, provided that it is neither funded nor developed by the public sector body nor under its control is used, then it is excluded from the scope of this Directive. Such content should, in principle, not be used, if it hinders or decreases the functionality of the public service offered on these websites [or mobile applications]. Content of public sector bodies' websites [or mobile applications], whose purpose is to hold consultation or to organize forum discussion cannot be considered as third party content and should therefore be accessible except for user-contributed content not under the control of the public sector body.**

- (14) *A harmonised approach should also allow Union public sector bodies and enterprises to gain economic and social benefits from extending the provision of online **[or mobile ]** services to include more citizens and customers. This should increase the potential of the internal market for ~~web-accessibility~~ products and services **relating to accessibility of websites [and mobile applications]**. The resulting market growth should allow undertakings to contribute to economic growth and jobs creation within the Union. Strengthening the internal market should make investment in the Union more attractive. Governments should benefit from cheaper provision of ~~web-accessibility-related~~ **products and services**.*
- (15) *Citizens should benefit from wider access to ~~online~~ public sector services through **websites [and mobile applications]** and should receive services and information which will facilitate the enjoyment of their rights across the Union, notably their right to move and reside freely within the territory of the Union and their freedom of establishment and to provide services.*
- (16) *The ~~web-accessibility~~ requirements defined in this Directive are technology neutral. They only indicate which basic functionalities have to be fulfilled for the user to perceive, operate or understand a **website [, a mobile application,]** and ~~its~~ **relating** content. They do not specify how this has to be achieved or what technology should be selected for a particular **website**, online information or application. As such they do not hamper innovation.*

(16a) *The 4 principles of accessibility are: perceivability, meaning that information and user interface components must be presentable to users in ways they can perceive; operability, meaning that user interface components and navigation must be operable; understandability, meaning that information and the operation of user interface must be understandable; and robustness, meaning that content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies. ~~In this context, public sector bodies' websites [and their mobile applications] should provide alternate versions of non-text content which comply with these principles.~~ **These principles of accessibility are translated into testable success criteria such as those forming the basis of the European Standard EN 301 549 v1.1.2 (2015-04) via harmonised standards and a common methodology to test the conformance of content on websites [and mobile applications] to these principles.***

(16b) *~~Proportionate m~~ **Measures that would impose a disproportionate burden** refer to measures that ~~do not~~ **would** put an excessive organisational or financial burden on a body, or ~~do not~~ **would** jeopardise the body's capacity to either perform its purpose, or publish information needed for or relevant to its tasks and services, while taking into account the **likely** benefit or detriment **likely** to occur for citizens, **especially for persons with disabilities.***

(17) *Interoperability ~~related~~ **relating to web-accessibility** should be based on commonly adopted and used specifications that maximize the compatibility of the ~~web~~ content with current and future user agents and assistive technologies. More specifically, ~~web-content of websites [and mobile applications]~~ **should provide user agents with a common internal coding of natural language, structures, relations, and sequences, as well as data of any embedded user-interface components. Interoperability thus benefits the users, allowing them to employ their user agents ubiquitously to access websites [and mobile applications]: they might also benefit from greater choice and reduced prices across the Union. Interoperability would also benefit the suppliers and buyers of ~~web- products and services relating to accessibility related products and services of websites [and mobile applications].~~***

- (17a) Mobile Applications are available from a variety of sources, including private application stores. Information, regarding the accessibility of the mobile applications of public sector bodies downloaded from third party sources, should be provided alongside the description of the mobile application users are presented with prior to download the app. This clause does not require major platform providers to change their application distribution mechanisms - but instead places the requirement on the public sector body to make the statement available using existing or future technologies.**
- (18) As underlined in the Digital Agenda for Europe, public authorities should play their part in promoting markets for online content. Governments can stimulate content markets by making public sector information available under transparent, effective and non-discriminatory conditions. This is an important source of potential growth of innovative online services.**
- (18aa) Member States should take accompanying measures to raise awareness and to promote ~~web~~ ~~accessibility~~ training programmes, relating to the accessibility of websites [and mobile applications], for relevant stakeholders, including in particular staff responsible for ~~web~~ accessibility of websites [or mobile applications]. Relevant social partners should be consulted or involved in preparing the content of the disability-related training and awareness raising schemes.**
- (18b) It is of importance that Member States, in close cooperation with the Commission, promote the use of authoring tools, that allow better implementation of the accessibility requirements set out in this Directive. That promotion could take passive forms, such as publishing a list of compatible authoring tools, ~~after consulting with the Commission,~~ without a requirement to use those tools, or that promotion could take active forms, such as the requirement to use compatible authoring tools or to fund their development.**

- (18c) *In order to ensure the proper implementation of this Directive, **and in particular the implementation of conformity ~~of~~ to accessibility requirements**, it is of the utmost importance for the Commission and the Member States to consult with relevant stakeholders on a regular basis. Relevant stakeholders **within the meaning of this Directive ~~ever~~ should be understood as, ~~among others~~ inter alia**, organisations representing the interests of persons with disabilities and of the elderly, social partners, industry involved in the creation of ~~web~~ accessibility software **relating to websites [and mobile applications]** and civil society.*
- (19) *The Directive should aim at ensuring that **the websites [and mobile applications] of public sector bodies'**~~websites~~ are made more accessible according to common requirements.*
- (20) *This Directive lays down ~~web~~-accessibility requirements for **the websites [and mobile applications] of public sector bodies'**~~websites~~. In order to facilitate the conformity of websites **[and mobile applications]** concerned with those requirements it is necessary to provide presumption of conformity for the websites concerned that meet harmonised standards that are drawn up and published in accordance with Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European Standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Decision 87/95/EEC and Decision No 1673/2006/EC, for the purpose of expressing detailed technical specifications for those requirements. Pursuant to this Regulation, Member States and the European Parliament shall be able to object to the harmonised standards which they consider that do not entirely satisfy the ~~web~~-accessibility requirements laid down in this Directive.*



(21) *A harmonised standard that would provide presumption of conformity with the web accessibility requirements laid down in this Directive should be built upon chapter 9 of the European Standard EN 301 549 ‘Accessibility requirements suitable for public procurement of ICT products and services in Europe’, on the international standard ISO/IEC 40500:2012 or on future versions of these standards. **The European Standardisation Organisations adopted European standards EN 301 549 ‘Accessibility requirements suitable for public procurement of ICT products and services in Europe’, 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 built upon In the absence of publication of harmonised standards (or of parts thereof) or in the absence of common technical specifications established by the Commission, compliance with clause 9 of the European standards EN 301 549 V1.1.2 (2015-04) for websites and with clause **10 and 11** for mobile applications, might be regarded by Member States as sufficient basis for conformity regarding the accessibility requirements set out in this Directive to be presumed. This presumption for websites or mobile applications should cease to be valid one year after the publication of the relevant references of harmonised standards in the Official Journal of the European Union or one year after the adoption of relevant common technical specifications. **In particular, technical specifications adopted on the basis of this Directive should further detail European standards EN 301 549 V1.1.2 (2015-04) in relation to mobile applications.***

(21aa) *The **Common** technical specifications and the standards developed in relation to the accessibility requirements set out in this Directive should moreover take into account the specificities of ~~the~~ mobile devices, conceptually and technically.*

(24) *The conformity with ~~web~~ **the** accessibility requirements **set out in this Directive** should be ~~continuously~~ **regularly** monitored ~~from the initial construction of the website for mobile application/ of the public sector bodies' website to all subsequent updates of its content.~~ A harmonised monitoring methodology would cover a way of verifying, on a uniform basis in all Member States, the degree of compliance ~~of the website~~ with the **accessibility** requirements ~~for web accessibility~~, the collection of representative samples and the periodicity of the monitoring. Member States should report periodically on the outcome of the monitoring and **at least once** ~~more generally~~ on the list of actions taken in application of this Directive.*

(24aa) *In order not to hinder innovation on how to measure the accessibility of websites [and mobile applications], and as long as it does not hinder the comparability of data across the EU, Member States may ~~adopt~~ **use**, based on the methodology established by the Commission, more advanced monitoring technologies methodologies relying on the latest technical developments. To improve comparability the methodology developed by the Commission should describe in which way the outcome of different tests need to be or can be presented.*

(24ab) *The monitoring methodology shall be transparent, transferable, comparable and reproducible. The reproducibility of the monitoring methodology should be maximized while taking into account the fact that human factors, such as testing by users, might have an influence on that reproducibility.*

(24ac) *Only legitimate reasons should be taken into account when assessing to which extent the requirements cannot be met on the basis that they would impose a disproportionate burden. Lack of priority, time or knowledge are not deemed to be legitimate reasons. Likewise, there are not supposed to be any legitimate reasons for not procuring or developing software systems to manage content on websites [and mobile applications] in an accessible manner, since sufficient advisory techniques to make those systems accessible are available to meet the requirements.*

**(24ad) The statement on the compliance of websites [and mobile applications] should include, where appropriate, the alternatives provided for. By using the feedback mechanism, which is linked to the enforcement procedure, it should be possible to ask for the needed services, products or information to be delivered in an adequate and appropriate manner within a reasonable period of time by the public sector body. Such requests could also concern content that is excluded on the basis of Article 1(8) or 3a. Except live time-based media, that cannot be made accessible on request, and online maps and mapping services, reproductions of heritage collections and third party content, that are excluded because the public sector body cannot make these fully accessible, information in the office file formats, pre-recorded time-based media and on websites [and mobile applications] qualified as archives, could need to be provided in an adequate and appropriate manner by the public sector body within a reasonable period of time on the basis of a legitimate and reasonable request.**

**(24ae) The right to have recourse to an adequate and effective procedure to ensure compliance with this Directive is without prejudice to the right to an effective remedy as set out in Article 47 of the Charter of Fundamental Rights. That procedure should be understood to include the right to submit complaints to any existing national authority competent to adjudicate upon these complaints.**

(25) *In a harmonised framework, the web [and mobile applications] developers industry should face fewer barriers to operate in the internal market, while costs for governments and others procuring ~~web-accessibility~~ products and services **relating to the accessibility of websites and mobile applications** should be reduced.*

(25a) *In order not to divert resources from the tasks of making content more accessible, the monitoring methodology should be easy to use.*

- (27) *In order to ensure uniform conditions for the implementation of the relevant provisions of this Directive, implementing powers should be conferred to the Commission. The examination procedure should be used **in order to establish technical specifications for the accessibility requirements**, ~~for the definition of~~ **to define** the methodology that Member States should use for monitoring the conformity of the websites **[and mobile applications]** concerned with those requirements, **to establish a model statement on accessibility**, **and to establish the arrangements for reporting by Member States to the Commission on the outcome of the monitoring**. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.*
- (28) *Since the objective of this Directive, namely, the establishment of a harmonised market for the accessibility of **the websites and mobile applications of public sector bodies**~~websites~~, cannot be sufficiently achieved by the Member States, because it requires the harmonisation of different rules currently existing in their respective legal systems and can, therefore, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective,*

HAVE ADOPTED THIS DIRECTIVE:

## Article 1

### Subject matter and scope

1. In order to improve the functioning of the internal market, this Directive aims at approximating the laws, regulations and administrative provisions of the Member States related to the accessibility requirements of public sector bodies' websites **[and their mobile applications]** ~~open to the public~~, thereby enabling those websites **[and mobile applications]** to be more accessible to users, in particular to persons with disabilities.
2. This Directive lays down the rules according to which Member States shall ensure that websites **[and mobile applications]** of public sector bodies meet, ~~independently of the device used for access~~, the accessibility requirements as set out in Article 3.
3. (DELETED)
- ~~4. This Directive is without prejudice to 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).~~
5. This Directive is without prejudice to national laws regarding freedom of the press and freedom of expression in other media.
6. (DELETED)
7. The following websites **[and mobile applications]** are excluded from the scope of this Directive :
  - a. Websites held **[and mobile applications controlled]** by public service broadcasters and their subsidiaries, and by other bodies or their subsidiaries for the fulfilment of a public service broadcasting remit;

- b. Websites [**and mobile applications**] of Non-governmental organisations (NGOs)-**that do not provide services that are essential to the public, in particular or services specifically addressing the needs of, or meant for, persons with disabilities**;
- c. Websites [**and mobile applications**] managed or edited directly by schools, kindergartens, or nurseries except for the content relating to essential online administrative functions, such as the enrolment process, if that content is already provided exclusively online via these websites [**and mobile applications**];
- d. ~~Websites that can qualify as archives, meaning that their content is neither needed for active administrative processes, nor updated or edited after the date defined in Article 10 paragraph 1(a)i.~~

8. **The following content [of websites and mobile applications] is excluded from the scope of this Directive:**

- a. Office file formats published before the date defined in Article 10 paragraph 1, unless they are ~~essential to~~ **needed for** the active administrative processes of the tasks performed by the public sector body.
- b. Pre-recorded time-based media published before the date defined in Article 10.1a**2**.ii;
- c. Live time-based media;
- d. Online maps and mapping services, **as long as essential information is provided in an accessible digital manner for maps intended for navigational use.**
- e. Reproductions of heritage collections items that can not be made fully accessible because of **either**:

- ~~either~~ the incompatibility of accessibility requirements with either the preservation of the item or the authenticity of the reproduction (e.g. contrast); **or**
  - ~~or~~ the unavailability of automated and cost-friendly solutions that would easily extract the text of manuscripts or other heritage collection items into content compatible with the ~~web~~ accessibility requirements.
- f. **Third party** ~~Content incorporated in public sector bodies' websites~~ that is ~~not~~ **neither funded nor developed by, nor under the control of**, the public sector body.
- g. **Content of extranets and intranets, which are websites that are only available for a closed group of people and not to the general public as such.**
- h. **Content of the W**~~websites [and mobile applications] that can~~ **qualify** as archives, meaning that ~~their~~ **these websites only contain** content **that** is neither needed for active administrative processes, nor updated or edited after the date defined in Article 10 paragraph 1~~(a)~~**2.i.**

*Article 1a*

Minimum harmonisation

Member States may maintain or introduce measures in conformity with Union law which go beyond the minimum requirements for web accessibility **of websites [and mobile applications]** established by this Directive.

*Article 2*  
Definitions

For the purposes of this Directive, the following definitions shall apply:

~~(1) — (DELETED)~~

~~(2) — (DELETED).~~

~~(3) — (DELETED).~~

(4) ‘Standard’ means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory as defined in Article 2(1) of Regulation (EU) No 1025/2012.

~~(5) — (DELETED)~~

(6) ‘European standard’ means a standard adopted by a European standardisation organisation as defined in Article 2(1)(b) of Regulation (EU) No 1025/2012;

(7) ‘Harmonised standard’ means a European standard adopted on the basis of a request made by the Commission for the application of Union harmonisation legislation as defined in Article 2(1)(c) of Regulation (EU) No 1025/2012.

(8) ‘Public sector body’ means the State, regional or local authorities, **or** bodies governed by public law as defined in Article 2(1) subparagraph 4 of Directive 2014/24/EU.

(9) Time-based media means media of the following types: audio-only, video-only, audio-video, audio and/or video combined with interaction.

(10) Heritage collections items means privately or publicly owned goods presenting a historical, artistic, archaeological, aesthetical, scientific or technical interest and that are part of collections preserved by cultural institutions such as libraries, archives and museums.



- (11) 'Measurement data' is the quantified results of the monitoring activity carried out in order to verify the compliance of public sector bodies' websites **[and of their mobile applications]** with the ~~web~~-accessibility requirements set out in Article 3. Measurement data covers both quantitative information about the sample of websites **[and mobile applications]** tested (number of websites **[and applications]** with potentially their number of visitors **[or users]**,...) and quantitative information about the level of accessibility.
- (12) **Mobile applications, for the purpose of this Directive, refer to application software designed and developed, by or on behalf of public sector bodies, for use on mobile devices, such as smartphones and tablets. They do not include software that controls these devices or computer hardware themselves (mobile operating systems).**

*Article 3*

Requirements for ~~web~~ **the accessibility of websites [and mobile applications]**

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

*Article 3a*

**Disproportionate Burden**

1. **Member States shall ensure that public sector bodies apply the accessibility requirements referred to in Article 3 to the extent that they do not impose a disproportionate burden on the public sector bodies for the purposes of that Article.**

2. In order to assess the extent to which compliance with the accessibility requirements referred to in Article 3 imposes a disproportionate burden, Member States shall ensure that the public sector bodies concerned take account of relevant circumstances, including the following:
  - a. the size, resources and nature of the public sector body concerned;
  - b. the ~~estimated-appraised~~ costs and benefits for the public sector body concerned in relation to the ~~estimated-appraised~~ benefits for persons with disabilities, taking into account the frequency and duration of use of the specific website or mobile application.
3. Without prejudice to paragraph 1, the assessment of the extent to which compliance with accessibility requirements referred to in Article 3 imposes a disproportionate burden shall be performed by the public sector bodies concerned.
4. Where a public sector body has used the exception provided for in paragraphs 1, 2 and 3 for a specific website [or mobile application] it shall explain, ~~in the statement referred to in Article 6,~~ the parts of the requirements that could not be complied with and, where appropriate, the alternatives provided ~~for persons with disabilities.~~

#### Article 4

Presumption of conformity with the ~~web~~-accessibility requirements **for websites [and mobile applications]**

1. **Content of ~~W~~websites [and mobile applications]** that meets harmonised standards or parts thereof the references of which have been ~~drawn up and~~ published by the Commission in the Official Journal of the European Union, in accordance with Regulation (EU) No 1025/2012, shall be presumed to be in conformity with the ~~web~~ accessibility requirements **covered by those standards or parts thereof**, set out in Article 3.
2. **Where no references of the harmonised standards referred to in Article 4 paragraph 1 have been published, Content of websites and mobile applications which is in conformity with the CTS technical specifications referred to in the first subparagraph or parts thereof shall be presumed to be in conformity with the accessibility requirements set out in Article 3, covered by those CTS technical specifications or parts thereof.**

The Commission shall adopt implementing acts establishing ~~common~~ the technical specifications ('CTS') referred to in subparagraph 1. Those technical specifications shall meet for the accessibility requirements set out in Article 3 and shall ensure at least an equivalent ~~That implementing act shall not result in a lowering of the~~ level of accessibility to that ensured achieved on the basis of by European Standards EN 301 549 V1.1.2 (2015-04).

~~and~~ Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(3) of this Directive. The first of those implementing acts shall be adopted, where no references of the harmonised standards referred to in paragraph 1 have been published, within [24] months following the entry into force of this Directive.

3. ~~As long as the~~ **Where no** references of the harmonised standard referred to in ~~Article 4~~ paragraph 1 have not been published, **and in the absence of ~~common~~ the technical specifications referred to in Article 4 paragraph 2**, content of websites [**and mobile applications**] that fulfils the relevant requirements **or parts thereof** of European standards EN 301 549 V1.1.2 (2015-04), **or of any subsequent standard revising or replacing** EN 301 549 designated in ~~an~~ **implementing acts** adopted by the Commission, acting in accordance with the examination procedure referred to in Article 9(3) of this Directive, shall be presumed to be in conformity with the web accessibility requirements, set out in Article 3. **Those implementing acts shall indicate on what date the superseded standard ceases to confer a presumption of conformity.**

*Article 5*

*(DELETED)*

*Article 6*

Additional measures

1. a) **Member States shall ensure that public sector bodies' websites shall provide and regularly update** a detailed, comprehensive and clear statement on their compliance **of their websites [and mobile applications]** with this Directive. ~~in general, including an accessible explanation on parts of the content that are not accessible, and the reasons for that inaccessibility.~~

~~That information~~ **For websites, the statement** shall be provided in an accessible format, using a **the** model statement referred to in paragraph 1a, **and shall be published on the relevant website. [and provided to users before they install the mobile application]**

**For mobile applications, the statement shall be provided in an accessible format, using a the model statement referred to in paragraph 1a, and shall be available on the website of the public sector body that developed the mobile application, or alongside other information available when downloading the application.**

~~b)~~ This statement shall include :

a) **an explanation on the parts of the content that are not accessible, and the reasons for that inaccessibility and where appropriate, the alternatives; and**

b) a description of and a link to a feedback mechanism to enable any person to notify ~~to~~ the public sector ~~bodies~~ **body concerned** of any failures of the website **[or mobile application]** to comply with the requirements set out in Article 3, **as well as a link to an escalation mechanism the enforcement procedure as set out in Article 7a, to which recourse may be made in the event of an unsatisfactory response to the feedback.**

c) **Member States shall ensure that p**Public sector bodies ~~shall~~ give an adequate reply ~~to~~ **on** the feedback within a reasonable **period of** time ~~to the person~~.

- 1a. **By two years after the entry into force of this Directive**, the Commission shall establish a model statement on accessibility by means of implementing acts. Those implementing acts shall be adopted in accordance with the **advisory examination** procedure referred to in Article 9(~~23~~).
2. Member States shall take measures to facilitate the application of the ~~web~~ accessibility requirements **set out in Article 3** to other types of websites **[or mobile applications]** than those referred to in Article 1(2), in particular, to websites **[or mobile applications]** covered by existing national laws on ~~web~~ accessibility.

2a. Member States shall promote and facilitate ~~web accessibility~~ training programmes, *relating to the accessibility of websites [and mobile applications]*, for relevant stakeholders, including staff of public sector bodies, to create, manage and update accessible content of websites **[and mobile applications]**.

2b. Member States shall take the necessary measures to raise awareness of the ~~web~~ accessibility requirements set out in Article 3(1), their benefits to users and ~~to website owners of websites~~ **[and mobile applications]**, and of the possibility to give feedback in cases of ~~non-compliance failures to comply~~ with the requirements of this Directive, as set out in ~~this~~ Article 6.

~~3.~~

4. For the purpose of the monitoring and reporting referred to in article 7, the Commission shall facilitate cooperation at Union level between Member States, and between them and relevant stakeholders, in order to exchange best practices and to review the monitoring methodology referred to in Article 7(4), the market and technological developments and progress in ~~web~~ accessibility **for websites [and mobile applications]**.

#### *Article 7*

#### Monitoring and reporting

1. Member States shall periodically monitor the compliance of public sector bodies' websites **[and mobile applications]** with the ~~web~~ accessibility requirements set out in Article 3 ~~taking into account~~ **on the basis of the monitoring** methodology provided for in paragraph 4.

- ~~2. For the purposes of the review referred to in Article 11, By [36] months after the establishment of the monitoring methodology defined in paragraph 4, and every three years thereafter, Member States shall report to the Commission on the outcome of the monitoring including the measurement data. The report shall be sent to the Commission by 54 months after the date set in Article 12. That report shall be drawn upon the basis of the arrangements for reporting referred to in paragraph 3a. [The report shall also cover information on the use of the enforcement procedure set out in Article 7a]~~
3. This **In addition**, ~~the first~~ report shall also cover the **following** ~~actions-measures~~ adopted pursuant to Article 6: **including**
- a. a description of mechanisms set up by Member States for consulting with relevant stakeholders on accessibility of websites [and mobile applications],
  - b. procedures to make public any developments in web accessibility policy relating to websites [and mobile applications], and
  - c. experiences and findings from the implementation of conformity of web with the accessibility requirements set out in Article 3: and
  - d. information on training and awareness raising activities.

**Where there have been significant changes made to the measures referred to in paragraph 3, Member States shall include in their subsequent reports information concerning these updated measures.**

**(3a). The content of all the reports, which shall not necessarily include the list of websites, mobile applications or entities examined, shall be made public in an accessible format. By two years after the entry into force of this Directive, the arrangements for reporting by Member States to the Commission shall be established by means of an implementing act. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 9(3).**

4. By two years after the entry into force of this Directive, the Commission shall establish, by means of an implementing act, a methodology for the monitoring of the conformity of websites **[and mobile applications]** with the requirements for ~~web~~ accessibility as set out in Article 3. That methodology shall be transparent, transferable, comparable, ~~and~~ reproducible, ~~and its usage shall not impose an undue burden to the Member States~~ **and easy to use**. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 9(3).

5. The methodology referred to in paragraph 4 **may take into account expert analysis and** shall include:

(a) the periodicity of the monitoring and the sampling of the websites **[and mobile applications]** that shall be subject to monitoring; and

(b) at website level, **the sampling of webpages, and of the ~~services and products~~ content on those pages; and**

**[(baa) at mobile application level, the sampling of content to be tested, taking into account the moment of the initial release of the application and of subsequent functionality updates; and]**



(ba) the description of how compliance **or non-compliance** with the accessibility requirements set out in Article 3 is to be **sufficiently** demonstrated, directly referencing, **when appropriate**, the relevant descriptions in the harmonised standard or, in its absence, in the **technical specifications referred to in Article 4(2), or in the European standards referred to applicable under ~~in~~ Article 4(3)**; and

(c) in the event of deficiencies being identified, a mechanism to provide data and information on the compliance with the requirements set out in Article 3 in a format which can be used by public sector bodies to correct the deficiencies; **and**

(d) ~~examples of, and guidance on,~~ **appropriate arrangements, including where necessary examples and guidance, for automatic, manual and usability tests, in combination with the sampling settings, in a way which is compatible with the periodicity of the monitoring and reporting and the administrative capacity of the public sector bodies.**

6. **By [date set out in Article 10(1)], Member States shall inform the Commission of who will perform the monitoring and reporting.**

#### *Article 7a*

#### ~~Escalation mechanism~~ **Enforcement procedure**

~~1. Member States shall ensure that a mechanism, such as a the possibility to contact an ombudsman, is in place in order to ensure an efficient handling of complaints relating to compliance with the requirements set out in Articles 3 and 6.~~

1. Member States shall ensure to the availability of an adequate and effective means exist enforcement procedure, to ensure compliance with this Directive, in relation to the requirements set out in Articles 3, 3a and 6(1). In particular Member States shall ensure that an enforcement procedure, such as the possibility to contact an ombudsman, is in place to ensure an efficient effective handling of feedback received as foreseen in Article 6(1)b.

2. The means referred to in paragraph 1 shall include:

(a) provisions on how a person may take non judicial steps to ensure that the national provisions transposing this Directive are complied with, in particular in relation to the requirements set out in Articles 3 and 6;

(b) provisions to ensure that any step taken by a person will trigger an effective and adequate reply ;

(c) provisions on who will perform the monitoring and reporting and liaise with the Commission or other stakeholders.

3. By [date set out in Article 10(1)], Member States shall inform the Commission of who will be responsible for the enforcement of this Directive.

*Article 8*

Exercise of the delegation

*Article 9*  
Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
- ~~2. **Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.**~~
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 10*  
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 24 months after the date set out in Article 12 the latest. They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall apply those provisions as follows:
  - i. to public sector bodies' websites not published before the [insert date: transposition date set out in Article 10(1) ]; from [insert date: 12 months after that date],

- ii. to all public sector bodies' websites not covered by point (i): from [insert date: 24 months after the transposition date set out in Article 10(1)].
  
- iii. **[to mobile applications of public sector bodies: from [insert date: [36] months after the transposition date set out in Article 10(1)]**

#### *Article 11*

##### Review

The Commission shall carry out a review of the application of this Directive within ~~five~~ **six** years from its entry into force. **This review shall take into account the Member States' reports on the outcome of the monitoring set out in Article 7 and the use of the enforcement procedure set out in Article 7a, including It shall also include** a review of technological advances that could make accessibility easier for some types of content ~~currently~~ excluded **from the scope of this Directive**. **The findings of that review shall be made public in an accessible format.**

#### *Article 12*

##### Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 13*

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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