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WHY ARE STANDARDS IMPORTANT FOR PERSONS WITH DISABILITIES?

BY

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ABOUT THE EUROPEAN DISABILITY FORUM (EDF)

EDF is the European umbrella organisation representing the interests of 80 million citizens with disabilities in the EU. EDF's membership is composed of organisations representing persons with sensory, physical and cognitive disabilities, as well as persons with chronic illnesses. EDF is an advocacy organisation and its mission is to fight against discrimination based on disability and to ensure that disabled people have full access to fundamental and human rights through their active involvement in policy developments and implementation, according to our motto (NOTHING ABOUT US WITHOUT US). EDF is a member of the Platform of European Social NGOs and works closely with the Institutions of the European Union, the Council of Europe and the United Nations.

Introduction

Public procurement provides a very important lever to address the critical lack of accessibility to the built environment and to manufactured goods and services for persons with disabilities. It should therefore be used to maximise accessibility clauses in all public tenders.

Public authorities using public procurement to purchase goods and services for the public should not discriminate against persons with disabilities.

However, such discrimination is inevitable, unless the accessibility provisions in the EU public procurement directives are reinforced. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) came into force in the EU on 22 January 2011, introducing new binding obligations on the EU institutions and Member States. Therefore the European Union must uphold the rights of disabled people in all its legislative and non legislative acts. In relation to public procurement, the European Union and the Member States should pay specific attention to the obligations set out in articles 4 para 1(f) "General obligations", 9 "Accessibility" and 21 "Freedom of expression and opinion and access to information" of the UNCRPD.

In the Green Paper on The Modernisation Of EU Public Procurement Policy "Towards a More Efficient Public Procurement Market" the European Commission states that legislative changes "will have to be consistent with EU international commitments" - The disability movement subscribes to this as compliance with the UNCRPD is one such commitment.

The recent economic crisis has increased the vulnerability of persons with disabilities and we expect it to become even worse in the future, and so it is now timely, among others, to review the EU public procurement directives. This opportunity should be taken to enhance the weight of criteria

that help achieve social inclusion policy objectives throughout the public procurement cycle - one key criterion being the accessibility of the goods and services procured.

LACK OF ACCESSIBILITY = SOCIAL EXCLUSION

The situation of the accessibility to ICT products and services for persons with disabilities in Europe is critical. Accessible products are more expensive, text relay services are available in just half, and video relay services only in seven EU Member States, most of them on a pilot project basis. Accessibility of websites is extremely low both in the public and private sector, Digital TV is not accessible, only 5% of the books published are accessible, buildings, roads, museums, theatres are mostly inaccessible. This lack of accessibility creates social exclusion, hampers the possibility for persons with disabilities to participate actively in the community and to be less dependent. In our view there is just one way to change this situation and to remove the existing barriers, this is legislation underpinned by relevant standards.

THE LEGISLATIVE CONTEXT AND THE POLICY DRIVERS

The entry into force of the UNCRPD and the adoption of the Telecoms Package and the AVMS Directive represent a positive legislative evolution. Many articles of the UNCRPD state the right to accessibility of persons with disabilities; in the AVMS Directive there are provisions for audiovisual services accessible to persons with visual and hearing impairments; the Telecoms package contains provisions for persons with disabilities under universal service in e-communications and provisions for equivalent access for persons with disabilities (articles 7 and 23 of the Citizens Rights Directive). Currently there is no horizontal EU legislation to ensure the accessibility of goods and services for persons with disabilities, so in this instance strong general EU public procurement legislation could help to at least guarantee the accessibility of those goods and services that are purchased through public procurement. Although based on several provisions of the TFEU and the UNCRPD there are no clear accessibility rights and a comprehensive legal basis for the accessibility of goods and services is still missing. Despite the recent announcement of the European Commission about the future proposal on an European Accessibility Act the scope of application of this future possible instrument could be complementary to the public procurement provisions as it would probably not cover the accessibility of the built environment.

THE IMPORTANCE OF STANDARDISATION

The other instrument to deliver e-accessibility is standardisation.

Standards are as important for persons with disabilities as for any other consumer. If accessibility is taken into account standardisation can support equal access, avoid further exclusion and remove barriers. Standards have an important impact on the daily lives of persons with disabilities when it comes to ensure the accessibility and usability of the environment at large, the transports and the ICTs and when consumer products are designed and manufactured. Standards are a key factor for the independent living of persons with disabilities. Of course, standards can never replace mandatory measures, AS they should underpin and support the implementation of legislation.

EDF considers mandate M376 a milestone towards the improvement of e-accessibility in Europe, because it is of utmost importance to have an European standard in the ICT field. Therefore, EDF is keen to contribute to the development of this standard and its deliverables and welcomes the funding made available for its participation in ETSI STF 416 and CEN-CENELEC-ETSI e-accessibility JWG.

STRENGTHEN THE EU PUBLIC PROCUREMENT DIRECTIVES

We believe that the EU public procurement directives should be strengthened in order to harness the weight of public procurement to increase the accessibility of the goods and services procured. The overriding priority, in our opinion, is to ensure that the revision of the public procurement directives introduces mandatory accessibility criteria for all goods and services procured for the public. In doing this the European Union would contribute to uphold the right of persons with disabilities as enshrined in the UNCRPD.

There are plenty of inaccessible commercial goods and services, therefore the procedures should still ensure the inclusion of an accessibility criterion for all kinds of goods and services. Furthermore, the objective of social inclusion should be given more emphasis. This is absolutely necessary if public procurement rules are to support the Europe 2020 objectives of "smart, sustainable and inclusive growth".

When we stress that accessibility criteria should be made mandatory, we draw the attention to the fact that there is compelling evidence from the United States which demonstrates that public procurement can deliver accessibility features. Section 508 of the Americans with Disabilities Act (ADA) establishes requirements for electronic and information technology developed, maintained, procured or used by the Federal government. It requires such technology to be accessible to people with disabilities, including employees of the federal administration. It is the pressure of educational authorities in the US that led APPLE to mainstream accessibility features such as voice over technology in all its products, although accessibility is not yet fully provided for.

In whatever terms technical specifications are defined, they should be inclusive, i.e. the goods or services concerned would be usable by the majority of the end-users, including persons with disabilities. In this respect, it is absolutely necessary to stick to the principle of 'design for all.'

Unfortunately, in most member States the contracting authorities do not make sufficient use of the possibilities offered under Article 23 of Directive 2004/18/EC, as this article does not currently include a clear requirement for goods and services to be accessible. This must be addressed in the light of the new commitments that the EU and the Member States made when they ratified the UNCRPD. The accessibility criterion should be given more weight as this would ensure a level playing field and fair competition amongst European undertakings. It is also important that public authorities should make better use of the expertise available within the organisations of persons with disabilities throughout the public procurement cycle, in compliance with article 4, para 3 of the UNCRPD:

"In the development and implementation of legislation and policies to implement the present Convention and in other decision-making processes concerning issues relating to persons with disabilities States Parties shall closely consult with and actively involve persons with disabilities (...) through their representative organisations".

In the "Riga Ministerial Declaration On An Inclusive Information Society" (June 2006) the European Commission and the ministers in charge committed to deliver standards in public procurement for ICT products and services with a view to making these mandatory by 2010. Standards on web accessibility exist and designing websites in an accessible way from the outset is not more expensive. Despite this, non binding instruments have failed to deliver accessible websites, both in the private and in the public sector. Divergent policy approaches to web accessibility in the Member States are fragmenting the market, this creates legal uncertainty, particularly for technology providers and makes it difficult for persons with disabilities and older people to use online services freely across Europe.

The Digital Agenda for Europe renews the commitment to web-accessibility and announces that the Commission will "based on a review of options make proposals by 2011 that will make sure that public sector websites and websites providing basic services to citizens are fully accessible by 2015. We welcome the fact that the Green Paper makes explicit reference to the New European Disability Strategy when it says that "As regards social inclusion the new disability Strategy 2010-2020 indicates that the Commission will explore the merits of adopting regulatory measures to ensure accessibility of products and services including measures to step up the use of public procurement. We of course share the Commission view that imposing obligations "can be a very effective tool for achieving the Europe 2020 policy objectives by fostering the market uptake of goods and services of a high societal value". This may not be achieved without an EU level obligation on "What to buy", which is necessary to remove barriers to trade, create a level playing field for manufacturers and service providers and make public services fully accessible to all. The European Union is in the unique position to foster this by linking its research and innovation agenda with its single market agendas.

It is necessary to strengthen the public procurement rules and make accessibility requirements mandatory in public tendering by making accessibility clauses binding in the planning of public tenders. The role of European standards in defining accessibility requirements in public procurement contracts offers also a good opportunity for mainstreaming accessibility.

CONCLUSIONS

EDF believes that the European Union should make use of the public procurement regulations as a powerful lever for change. E-accessibility is a fundamental human right of persons with disabilities and this is a basic prerequisite for their participation in society. Mandates 376 and 420 foresee in addition to the development of standards also an analysis of the existing conformity assessment schemes. The analysis should also address the existing or proposed requirements for the supplier's technical capacities and abilities in the accessibility domain. We also welcome the elaboration of a tool-kit to provide guidance to public procurers in a clear and comprehensible form so that the target audience can use them as technical specifications and as an award criterion in the tenders in support of conformity processes.

This presentation aims at demonstrating how important it is for persons with disabilities that public procurement may be used to foster the accessibility of goods and services for all and how much we expect from the work of the CEN-CENELEC-ETSI Accessibility JWG.