



## ERA training on EU Disability law and the UNCRPD

### Meeting/Conference

*Title: "EU Disability Law and the UN Convention on the Rights of Persons with Disabilities"*

*Venue and Date(s): ERA, Trier, 23-24 May 2016*

*Meeting organiser(s): European Law Academy*

*Website(s): <https://www.era.int/>*

*Main themes/topics: UNCRPD*

### The UNCRPD: key features - An-Sofie Leenknecht

- The UNCRPD: purpose, general principles and obligations, key concepts
  - Presentation of all articles (see <http://www.un.org/disabilities/convention/conventionfull.shtml>)
  - Example on accessibility in education: Mention of Wheatley case on sign language provision in primary education in Flanders

Question on what should be considered an undue burden

- Difficult to define: for further information, check with equality bodies to ask for case examples regarding the definition of what is undue burden in your country, depends on each individual situation

Confusion on the notion of undue burden regarding accessibility

- In accessibility, the concept of an undue burden should not exist, not included in art. 9 UNCRPD
- Accessibility should be ensured from the beginning, so that discrimination does not take place in the first place
- The UNCRPD does not define accessibility, it only gives examples of areas that need to be accessible
- The idea is to guarantee accessibility by guaranteeing reasonable accommodation

Lack of definition of accessibility

- This lack can be seen as negative (it unclear, as there is not a lot of information) or as positive (as it gives more room for maneuver and is more adept to changes)
- General comments are useful to give more information, the same applies to the list of questions as well, specifically for the country in question
- Other articles also remain unclear, are not defined in the convention: it is a human rights treaty, not a technical document for implementation

### UNCRPD committee

Composition

- Nominated by state parties, elected
- 18 members, 4 years mandate eligible for reelection once
- June 2016: election of 9 new members (see the result of the election here: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/Elections2016.aspx> )



### Role of the committee

- Review of state reports
- Receipt of individual communications. If the optional protocol has been ratified by a state party: individuals can complain to the committee, if they have exhausted all national measures
- Undertake inquiries into state parties if there is reliable information about grave and systematic violations
- Holds thematic discussions (looks at articles during “Days of General Discussion”)
- Adopts general comments (already exist for several articles or are being developed: 12, 9, 6, 24, see <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx> )

### Investigation into the UK

- Convention is legally binding, if country ratifies it, it has to implement it
- There is of course no international police action to fine non-implementation, but use of diplomatic pressure
- Use of the convention in courts: you can invoke the UNCRPD in court by saying it is the last applicable version of human rights laws
- Ireland asked preliminary questions on disability law, hasn't ratified yet (can say that it is international human rights law), EU countries can also use EU law
- Disability Intergroup in the EP: can raise awareness about the information in one country, organisations can contact them => there are political ways to handle a situation

- The role of the UN Committee on the Rights of Persons with Disabilities: State reporting and the importance of involving Disabled People's Organisations (DPOs)

### Reporting cycle

- The government submits its initial state report
- A country rapporteur responsible for that country is appointed among committee members.
- The committee evaluates the report and submits list of issues, which is a document of the Committee with questions and requests for more information from the state party
- The list of issues is written on the basis of the state report, but also takes into account information from the DPO alternative report, United Nations agencies' reports, other treaty bodies' concluding observations, etc.
- The report and the responses to the list of issues are then discussed at the next session of the Committee, during a constructive dialogue with the state party.
- During this constructive dialogue, the Committee asks more questions and the state party gives additional information
- After the constructive dialogue, the Committee adopts its Concluding Observations based on proposals from the Committee's member who is the country rapporteur.
- The Concluding Observations point out the positive aspects, the factors and difficulties in the implementation of the Convention, and make concrete suggestions and recommendations for future action.
- The Concluding Observations are published and can be a powerful tool for putting leverage on the state party to take action where the Committee has identified failures or weaknesses.



### State reporting

- Report within 2 years of entry into force of the CRPD in the country, then every 4 years
- Often state reports list all the laws, but not the difficulties they have in implementing them (importance of DPOs submitting alternative reports for this)

### DPO participation

- State drafts its report: DPOs should consult with persons with disabilities and submit alternative report and questions to the committee and suggestions for questions in list of issues, also important to go personally to Geneva
- Important to have a diverse representation of persons with disabilities when going to Geneva and to speak in one voice, drafting one alternative report brings DPOs together

### Reporting cycle and DPO involvement

Step 1. The State Party should have consultations with civil society, including representative organizations of persons with disabilities (DPOs), to prepare its State report.

Step 2. State Party submits its State report to the Committee. DPOs submit their own alternative reports with priority issues and concrete recommendations.

Step 3. The CRPD Committee sends the State Party a list of issues and questions based on concerns they have.

- DPOs can suggest issues for the list of issues and questions the Committee should ask the State, before the Committee adopts its list of issues (written submission)
- DPOs can give an oral presentation during the session in which the list of issues of their country will be adopted.

Step 4. State Party answers to list of issues and questions within 2 months.  
DPOs can also give their own responses.

Step 5. Constructive dialogue between the Committee and the State Party during a plenary session.

- DPOs can give an oral presentation during this session
- Before the dialogue, and during the same session, DPOs could try to meet with Committee members, especially the country Rapporteur, to explain their priority issues and recommendations.

Step 6. The Committee publishes its concluding observations, including recommendations

- Before the concluding observations are adopted, DPOs can identify for the Committee members the priority areas that need quick action, and suggest recommendations on the issues that were discussed during the dialogue
- Concluding observations should be circulated widely at national level.
- Short term follow up recommendations: state party needs to provide update to the Committee within one year of adoption of the concluding observations

Step 7. Implementation and follow up plan on the Concluding observations

- Wide dissemination of the Concluding Observations, amongst the different ministries, Parliament, and other relevant bodies in the country (NHRI, Ombudsman, trade unions, education institutions, etc.



- Development of plan of action on how to implement the recommendations, allocation of budget and timeframe, responsible ministries and administrations

#### DPO inclusiveness in the process

- DPOs participation in the reporting cycle should involve all persons with disabilities
- State report and answer to the list of issues, as well as submissions from DPOs and CSOs should reflect the views of women, children, older persons, migrants (refugees, illegal migrants), indigenous and ethnic minorities and LGBTI people with disabilities, from all across the country, both in rural and urban areas.
- A coalition should be formed with the different organisations since that will strengthen your views and voice.
- To draft and defend one report all together will also be more practical. The DPO movement might be fragmented but in this process DPOs can learn from each other and come to a common understanding of the Convention.

#### Next EU reporting

- Next report due in 2019, but unclear when committee will review again as there is a backlog

### **Building and implementing a European disability policy: key challenges - Inmaculada Placencia Porrero**

2014: EU report sent to the UN

#### UNCRPD: mixed agreement

- UNCRPD has become part of EU legal order
- Is situated in between EU treaties (below) and secondary legislation (above)
- EU and Member states share competences for large part of the convention

#### EU obligations with regards to the UNCRPD

- Internal staff but also visitors (including communication, InSign project)

#### European Disability strategy

- Idea: multiannual framework facilitating the UNCRPD and helping Member states to implement it, especially in areas of shared competences

#### 3 main documents of the strategy

- Communication
- List of actions 2010-2015 (Staff working document)
- Background document with facts and figures

Public consultation done: received a lot of responses

#### Content of the strategy: 8 areas (in communication)

- Aiming to put together key elements at the convention which are priority actions
- 1) Accessibility
- 2) Participation as equal citizens (independent livings)
- 3) Equality and anti-discrimination
- 4) Employment (in open labour market)



- 5) Inclusive E&T
- 6) Social protection and combatting poverty and exclusion
- 7) Equal access to health
- 8) External action

#### EU report

- Follows UNCRPD articles, because even if there is little EU competence (e.g. education), the EU gives funding and supports Member states in that area
- Under each article: mention of relevant measures, legislation, programs, funding etc.

#### Chapters of the report

- Introduction to EU framework
- Charter of fundamental rights
- Internal implementation
- Declaration of competences
- Legislation adopted, repealed or amended after Council decision for conclusion
- Case law of the ECJ
- EU level statistics

#### Dialogue on implementation

- 9 alternative reports
- List of issues April 2015
- Response to list of issues in June 2015
- Dialogue in August 2015
- 22 Member state experts were present as observers (code of conduct allows this possibility, also the EU can be an observer during national sessions which can be useful to provide information on questions to Member states which relates to EU law)
- Recommendations published in September 2015

#### 3 urgent recommendations (that were to be addressed within 1 year)

1. Commission withdrawal from the EU framework, will be elaborated on later
  - EC was already the focal point, should not be in the framework
  - EC continues to monitor national implementation, but not within the framework
2. Adoption of a European Accessibility Act
3. Revision of declaration of competences, will remain an illustration as legislation evolves

#### Work with Member States

- Disability card project
- Work forum
- European Semester
- Statistics
- European structural and investment funds

#### **A concrete example: the European Accessibility Act (EAA) - Inmaculada Placencia Porrero**

European disability strategy: contained commitment to explore the merits of a European Accessibility Act

#### Steps



1. Analysis of the existing problems
  - Result: Fragmented market due to divergent national legislation
  - Assessment of EU competence (article 114, internal market)
2. Question if the EU should act (principle of subsidiarity)
  - Result: Fragmentation cannot be addressed by MS on their own
3. How to act – in accordance with principle of proportionality (Question: What type of legislation is to be chosen?)
  - ⇒ All this taken into consideration: allowed to prepare the impact assessment

#### Impact assessment

- Analysis of accessibility legislation in 9MS which covered 80% of GDP and 77% of the population
- 4 options kept for further analysis
  - 1. No further action => Discarded
  - 2. EU Recommendation => Discarded
  - 3. EU directive defining accessibility requirements for selected products and services, applicable as soon as MS decide to legislate => Discarded
  - 4. EU directive defining accessibility requirements for selected products and services, applicable immediately => Retained

#### Products and services concerned

- General purpose computer hardware and operating systems;
- The following self-service terminals:
  - (i) Automatic Teller Machines;
  - (ii) Ticketing machines;
  - (iii) Check-in machines.
- Consumer terminal equipment with advanced computing capability related to telephony services;
- Consumer terminal equipment with advanced computing capability related to audio-visual media services
- Telephony services and related consumer terminal equipment with advanced computing capability;
- Audiovisual media services and related consumer equipment with advanced computing capability;
- Air, bus, rail and waterborne passenger transport services;
- Banking services;
- e-books;
- e-commerce.

#### Interaction with other acts

- Public procurement
- Structural funds
- Tenders for public passenger transport services
- Transport infrastructure

#### Proposal

- Prescribes functional accessibility requirements
- Free movement of products and services if they meet the requirements
- Use of self-declaration of conformity and checks by market surveillance authorities



- Defines accessibility under already existing obligations
- Does not amend existing EU sectorial legislation on accessibility (e.g. transport)

#### Proposed time-table

- Transposition period: Two years after entry into force
- Enter into application: Six years after entry into force
- Implementation report: Five years after application

#### **Art. 9 UNCRPD and related General comment - Inmaculada Placencia Porrero**

##### Why accessibility?

- Accessibility is linked to the interaction between a disabled person and the environment
- Before the UNCRPD: Very medical approach to disability, most of the work was linked to assistive technology that would compensate for the impairment
- Needed: Combination of as much universal design as possible and assistive technology as compensation for moments where universal design is not a 100% possible

##### Use of harmonized standards

- If you comply for example with the technical specifications of European standards, you are in compliance with the directive

##### UNCRPD general comment 2 on accessibility

- Need to have a specific legislation containing clear rules and time frames and allocation of budget
- If you don't allocate the budget, this is not an excuse not to create accessibility

##### Difference between accessibility and reasonable accommodation

- Accessibility needs to be done before offering the product or service (ex ante)
- Reasonable accommodation is something you do when confronted with a person that does not have equal access (ex post)

##### Role of standardization in accessibility legislation

##### Regulation 1025/2012 on the European Standardisation System (ESS)

- Recitals contain references to persons with disabilities
- European Standardisation organisations (ESOs) are the only ones who can adopt standards to allow presumption of conformity
- ESOs have obligation of being transparent, to take into account the needs of persons with disabilities
- Regulation refers in annex III to four groups of stakeholders: European organisations representing the interests of SMEs, consumers, environmental interests and social interests
- There are differences between an international, a European and harmonized standards: In EU law we apply harmonized standards, which help to define the specific requirements. It is a possibility to implement EU law

##### Key Commission Mandates



- Standardisation requests from the Commission (which are non-legislative actions) invite ESOs to align the development of voluntary European standards to global developments. The requests related to accessibility are: M/3766 (2005) on ICT which resulted in a European standard EN 301 5497 adopted in February 2014; M/4208 (2007) on built environment and M/4739 on mainstreaming accessibility following a "design for all" approach in the European standardization
- It is important for DPOs to go to national standardization bodies to participate in national delegation developing such standards, so that not just industry and state are represented

#### ICT standard (EN 301 549)

- Suitable for public procurement, but also for making sure that a service or product is accessible
- Contains technical specifications for several areas
- Is highly harmonized with US legislation, there is ongoing collaboration to have a coherent end result so that industry can compete on a global level, not finalised yet, as
- Contains accessibility definitions, requirements, e.g. characteristics that technology needs to have
- Standard addresses ICT not from a product-to-product point of view, but from a point of view of product features (if product has this feature, you need to do that)
- Harmonised with WCAG 2.0 web accessibility standards

#### Participation in monitoring at a national level

##### • Art. 33(1) UNCRPD: Coordination mechanisms

- State parties shall designate a focal point within government related to the implementation of the UNCRPD, there can be more than one
- Once it is established, it needs to be adequately funded

#### Focal points - functions

- Does state reporting
- Develops measures to implement the CRPD
- Develops a strategy and policies to be implemented
- Involves civil society/DPOs
- Is a contact point on national and international level (also to organise issues on state-level)

#### Options for choice of focal point

- Often the Social affairs ministries plays that role, UN recommends that it is the ministry of Justice
- Not a problem if the Ministry of disabled persons is chosen, but people working there need to be sensitive to the new definition of disability in the convention (social model)
- Can be interesting to have a focal point at the regional level (especially in federal states, is the case in Germany for example)

Also, Member state shall consider establishing or designating a coordination mechanism within government to facilitate related action in different sectors and at different levels

- Novelty, never in a human rights treaty before





- Contrary to the focal point, the coordination mechanism it is an option, not an obligation
- Does vertical and horizontal cooperation, can help avoiding duplicated or conflicting policies
- Can be a platform for all the ministerial services, especially the different layers of government in federal states
- It is a forum to facilitate discussion but also involve DPOs
- Not always a decision-making mechanism, more for consultation but that depends on the set up of that mechanism

#### Options

- Focal point = coordination mechanism
- Focal point and other ministries = coordination mechanism
- Distinct or no coordination mechanism

#### • Art. 33(2) UNCRPD: independent monitoring mechanisms

- Obligation to designate/establish a framework of one or several independent mechanisms to promote, protect and follow the implementation of the convention
- Promotion: Sensibilisation, education & training
- Protection: deals with complaints, provides assistance and representation
- Follow: evaluations, data collection, etc.

#### Independent mechanism(s) related to Paris principles

- Independence: creation by law, governmental involvement and proper funding
- Pluralism: representation or appointment of and cooperation with civil society, trade unions and concerned social and professional organisations, universities and qualified experts
- CRPD has pointed out the need to respect the Paris principles in several national concluding observations

#### Independent mechanism(s) – framework

- Option 1: NHRI and/or equality body
- Option 2: Ombudsman
- Option 3: Others
- Many combinations are possible

#### • Art. 33(3) UNCRPD: involvement of civil society & DPOs

#### General obligations of article 33 (3)

- Key obligation: Involvement of persons with disabilities and their DPOs
- Important from the beginning, often, people only get in touch with DPOs in the end when the legislation is already drafted
- Involvement needs to be established at all stages and should involve all disability types, also highly marginalized persons
- Focal points need to set up consultative committees that are open to DPOs and persons with disabilities, important to have official and formal mechanisms for this
- Set up of an independent monitoring mechanism with permanent consultation of DPOs



- Financial support needs to be granted to DPOs, so that they can take part and monitor independently, only this means compliance with the Paris Principles, as it allows them to effectively monitor the implementation of the CRPD.

#### Participation in the monitoring on the national level

- Important to have a monitoring body with sufficient resources at a national level, DPOs and persons with disabilities need to be involved
- Important to have structured finances for daily functioning and activities of DPOs, including for an alternative report

#### Examples monitoring bodies in the EU involving DPOs

- In Italy and Slovenia a third of the members of the monitoring body are representatives of DPOs
- In Slovakia it is half of the members of the monitoring body who represent DPOs.
- In the Lithuanian Council for Disability Affairs, one part of a two-body monitoring body, half of the Council members are DPOs.
- In Denmark, DPOs are represented on the board of the Danish Institute for Human Rights, as well as in the Council for Human Rights, which discusses the work of the institute.
- Spain is the only example where a DPO forms itself the monitoring body
- At the EU level, the European Disability Forum (EDF) is a member of the monitoring framework (together with the Fundamental Rights Agency, European Ombudsman and the European Parliament)

#### Example of the European Disability Forum and its members

- EU submitted its first state report in June 2014 to the UN
- UN CRPD Committee reviewed the EU in April and August 2015
- EDF and its members drafted an alternative report, proposals for list of issues and alternative answers to list of issues
- EDF presence in Geneva – 3 side events in April and August 2015 to brief the Committee on EDF priorities
- Concluding observations adopted in September 2015
- Clear roadmap for implementation of CRPD in the coming 4 years, and basis for EDF and members' EU and national advocacy work

### **Implementing the UNCRPD: the legislative phase**

#### **• Accounting for the UNCRPD in legislation - Deaglán Ó Briain**

##### Report on Irish situation

- Ireland: last October: published roadmap to ratification
- According to Ireland, ratification is the end of the process not the beginning, government is trying to make sure that legislation already applies as much as possible to the rules of the Convention to be ratified, this is why they are taking more time to adopt it
- See consultations as a central piece on how to address social issues

#### **• How to conduct a disability impact assessment: guidelines and best practices - Deaglán Ó Briain**



#### Guidelines published in 2012 in Ireland

- Try to see how a measure or situation impacts persons with disabilities, use it as an outline to see how to monitor the impact of this measure or situation
- Before adoption of new acts, often lack of an impact assessment on how it would impact persons with disabilities

#### New strategy for 2016-2020 in Ireland

- Did have a 3 phase consultation process on themes, high-level objectives containing detailed commitments for action

#### • Including the voice of persons with disabilities in the legislative process: best practices - André Gubbels

##### Additional challenges when implementing the UNCRPD in the legislative phase

- Need to undertake a comprehensive legal review (art. 4)
- Challenge to change persons' views on disability (move from medical to social model, paradigm shift)
- Disability is not alone standing, it is very embedded in social and cultural life, change requires coordinated action in various domains by a range of stakeholders
- Important change from thinking about needs of persons with disabilities to thinking about their rights, from UNCRPD point of view it is about equal human rights
- Important to empower persons with disabilities to exert their rights and strengthen the accountability of duty bearers towards the rights holders
- Need of changes in policies, practices, institutions, attitudes and behaviours
- Complexity of the issue: is socially complex, multi-casual and interdependent, involves changing behaviours and there is no agreement on the solutions

##### Designing effective legislation for implementing the UNCRPD

- Needs to be consistent with UNCRPD guiding principles, but also effective in delivering the intended outcomes (good law is not always well-implemented, implementation problems must be taken into consideration while being drafted)

##### Drafting legislation for social change

- Influences of environment, resources and constraints on possibilities of a legislator to put together a good text, implementers to implement it and duty bearers and right holders to inform the legislating process regarding problems in implementation
- Copy and paste while drafting legislation does not work
- Main factors affecting compliance: consistency and clarity, communication, capacity and opportunity, incentives, belief and values as well as process
- Legislative provisions must address the causes of the problem at hand, allow to specify the requested behaviours and allow implementing institutions to behave in transparent and participative ways

##### Impact of social norms

- Participatory processes are key factor for promoting social change
- There needs to be a setting of legal provisions, external independent bodies to inform, advice, educate and persuade, incentives to encourage organizational scrutiny and



action to promote equality and mechanisms for effective deliberation and participatory decision-making

Legislative process as a learning loop

- Identification and analysis of problem => Choice of policy instruments=> Drafting of normative content => Formal enactment procedure => Implementation => Evaluation

## Thematic sessions

### Education and employment - Gauthier de Beco

- Education and employment: are mutually strengthening economic and social rights
- Article 24 stipulates the right to education as well as the principle of inclusive education

Before UNCRPD

- Standard rules on the equalization of opportunities for persons with disabilities and Salamanca statement => introduced education for persons with disabilities specifically
- UNCRPD: inclusive education is the main principle
- Some rights are subject to progressive realisation (meaning they can be implemented over time, e.g. education) others aren't (e.g. anti-discrimination or reasonable accommodation)
- Convention puts mainstream education as a goal, but doesn't forbid special education, general comment on article 24 species however the views of the Committee on moving towards a fully inclusive mainstream system
- Some countries rely a lot on special schools

Obligations of article 24

- Non-discrimination (including the duty to provide reasonable accommodation)
- Accessibility
- Individualized support
- Teacher education

Inclusive education systems

- Adapted curriculum, methods and assessment
- Creating welcoming school environments

Costs of transfer from segregated education system to inclusive system higher than inclusive education in itself

- You have to finance a double route for a while, but two separate systems are more expensive in the long-run (different buildings, administrations etc.) => in the long run, inclusive education is less expensive
- Struggles from special education actors who fear to lose their reason for existence and are against inclusive education

## Employment

Article 27: stipulates the principle of an open labour market

Obligations



- Non-discrimination (including duty to provide reasonable accommodation) – recruitment, salary, promotion, training, etc.
- Progressive realization (accessibility, continuous training, professional rehabilitation)

#### Transition from education to employment

- Vocational and Rehabilitation and Employment Convention for Disabled persons and above mentioned standard rules
- UNCRPD: main principle: open labour market that it is made inclusive and accessible

#### Sheltered workshops – conditions

- Only for persons who cannot work in the open labour market
- Transition towards the open labour market
- Labour laws (protection, salaries etc.) need to be respected

### **Passenger rights legislation and the UNCRPD – Ruth Lopian**

#### Legal framework

- Passenger rights legislation air, rail sea and inland waterways, coach
- All contain rules for persons with disabilities, specific act for air for the rights of persons with disabilities when travelling by air
- Elements: anti-discrimination, provision of assistance and accessibility of transport
- Accessibility is only referred to in recitals, not an obligation to make the transport services accessible => something to be acted upon (will change if European Accessibility Act is adopted)

#### Easy Jet case in the UK

- Problems: apply UK rules, a person is considered a security risk if he/she cannot understand the security features (e.g. if deaf)
- There are no European security requirements, each civil each aviation authority sets up their own requirements

### **Accessibility - Art. 9 UNCRPD and related General Comment - An-Sofie Leenknecht**

#### Why accessibility?

- Right enshrined in UNCRPD
- Soft approach failed
- Accessibility not sufficiently addressed in national legislation
- Is essential, standards are needed
- Labels and awareness-raising can help
- Enforcement, monitoring and redress mechanisms are essential

#### Measures need to be taken with regards to

- Information and communication
- Transportation
- Physical environment
- Other facilities and services provided to the public (schools, housing, medical facilities and work places, electronic services and emergency services)
- 

#### General comment on accessibility (No 2)



- Accessibility needs to be provided by public and private actors
- Need of accessibility standards
- Barriers are to be removed gradually with continuous monitoring, costs shall not be an excuse and timeframes + resources are necessary as well as the designation of responsible authorities
- Need to increase the involvement of persons with disabilities in all phases of the drafting, adoption and implementation of accessibility measures, including in the development of accessibility standards

#### State parties obligations as per general comment No 2

- Adopt a suitable legal framework based on the universal design principle
- Develop accessibility standards in consultation with persons with disabilities and through international cooperation
- Mandatory application of accessibility standards, including fines in cases of non-respect

#### Universal design principles

- Equitable use
- Flexibility in use
- Simple and intuitive use
- Perceptive information
- Tolerance for error
- Low physical effort
- Size and space for approach and use

#### Problems with lack of accessibility

- High costs of assistive technologies
- Lack of accessible products and services

#### European Standardisation system (ESS)

- Standards: technical specification, adopted by a recognized standardization body, for repeated or continuous application, with which compliance is not compulsory
- Increasing importance at EU level
- Are the means to a goal
- Are used in support of legislation
- Establishes a minimum level of accessibility that shall be guaranteed, but there is a need to go beyond
- Has to allow for innovation and competition

#### Barriers and solutions in standardization for DPOs

##### Barriers

- Limited funding opportunities
- Lack of accessible environment
- High level of expertise and skills required
- Lack of influence

##### Solutions

- Offering new funding opportunities
- Developing capacity-building activities and tools



- Policy actions
- Inclusive procedures

## eAccessibility

ICT: key enabler for persons with disabilities, is a gateway to social participation and independent living

- ICT must be available, affordable and accessible, UNCRPD is the first international human rights treaty addressing ICT
- Important to promote accessible ICT from the start so that technologies and systems become accessible at minimum cost

European Digital Single market strategy 2015

- 16 actions to harmonise the rules of the internal market in the digital environment
- Lack of inclusive approach, but there are some opportunities for persons with disabilities: upcoming revision on audiovisual media directive, Universal service directive, e-commerce directive etc.
- A lot of room for improvement with regards to equal access and choice in telecommunications products and services and accessibility of audiovisual content

### • Web accessibility

- A website needs to be perceivable, operable, understandable, robust (needs to be possible to access it on a mobile phone, too)
- WWW consortium, have developed WCAG 2.0 criteria
- Different levels for success criteria A, AA and AAA (AA is used in European standards), we should strive for AAA
- These standards allow for a website to load faster, better maintenance times, increased usability

US

- If a website not accessible, you can complain to ministry of Justice, case Ahold (groceries store)

Europe

- 52% of public, 48% of private websites are accessible

Study MEAC 3

- Progress, especially in countries with strong obligations and good monitoring
- Huge variations between countries
- Often WCAG 2.0 level AA with some variations
- Often focused on blind users

Formal adoption on proposal for a European directive on the accessibility of public sectors bodies websites

- Covers public body sector websites + mobile apps
- Exceptions: broadcasters (will hopefully be removed through the European Accessibility Act)
- Live audiovisual – is to be made accessible in 14 days



- Non-administrative functions of schools, kindergartens and nurseries (only the most important parts)
- Contains the notion of disproportionate burden
- Web accessibility statement, including feedback mechanism with an on-demand service for inaccessible content (should contain information about what parts are not accessible, you can write to host and request them)

#### Agreement on web accessibility directive

- Harmonised standards used
- Establishment of national authorities with a complaint mechanism as an enforcement mechanism, also use of focal points
- Implementation – 21 months for transposition, different durations according to device

#### • Telecommunications

- Article 9 UNCRPD
- Framework directive for telecommunication, will be revised in 2016
- Universal service directive, Article 23: equal access and choice to and affordability of electronic communication services equivalent to that enjoyed by the majority of end-users
- Also includes emergency services

#### Barriers encountered by European countries

- Lack of interoperability and common approach
- Often persons with disabilities live in remote areas, lack of choice of services in these areas
- Accessible products and services often procured outside of the mainstream procurement
- Lack of DPO involvement
- Lack of monitoring of accessibility

#### EDF recommendations

- Refer to EN 301 549 standard for ICT accessibility
- Wide definition of terminal equipment for persons with disabilities necessary
- Requirements for all communication service providers are important
- Need for national regulatory authorities to provide guidance to users and companies
- DPO involvement in national regulatory authorities
- Regular monitoring
- Awareness raising about the accessibility provisions adopted in the country

#### EU level recommendations

- Ongoing mechanism to provide guidance to NRA's
- Regular and harmonized benchmark reporting exercises need to be done
- Importance of involving users in working groups of the Body of European Regulators of Electronic Communications (BEREC)
- Importance to raise awareness on the rights of EU citizens concerning accessibility of e-communications

#### • Accessibility for audiovisual services





#### Audiovisual services

- Captions closed or live
- Sign language interpretation
- Audio description for blind
- Spoken subtitles
- Clean audio: accessibility feature for the hard of hearing, increases the volume (the technology is not quite there yet)
- Usability & quality issues
- 2<sup>nd</sup> screen / 2<sup>nd</sup> device solution (is being developed)

#### EU directive (Audiovisual media services directive)

- 2007
- Applies for TV broadcasting and on-demand services (e.g. Netflix)
- Applies for operators established in the EU, commercial communications (advertisement etc.)
- User protection and prohibition of hate speech and discrimination, but does not include a reference to persons with disabilities
- Recital 46: calls to provide sign language, subtitle, audio-description and easily understandable menu navigation
- Art. 7: encourages use of accessibility features
- Limited to visual and hearing disability (not others)

#### MeAC 3 study

- First public television: often subtitles
- Sign language: 5%, provision of audio description is very low
- Use of accessibility features on TV is even lower

#### Art. 7

- Huge differences, as only encouragement and no obligations
- Only 9 countries provide subtitles, sign language and audio description
- Video on demand and private channels lag behind
- Electronic programmes guides are inaccessible, it should be
- Online platforms are not accessible (e.g. Youtube)
- Subtitles also useful for persons with dyslexia and foreign language learners
- Need to set up binding gradual quantitative targets of access services to all TV-like providers (broadcasters and VOD)
- Important to encourage not TV-like providers to provide access services (e.g. Youtube)
- Include outside EU operators that aim at an EU audience
- Include disability in anti-discrimination article
- Set quality standards
- Complaint, accessible and monitoring level is necessary

#### **Good practice examples for DPO involvement in UNCRPD reporting at national level**

##### **Involvement of civil society in UNCRPD reporting – Belgium**

Belgium Disability Forum drafted an alternative report to the state report submitted in 2011

- 18 member organisations took part in this exercise, representing various disabilities
- 4 national and regional instances gave opinions



- A committee was established reuniting all organisations (one representative per organisation)
- Use of a survey, partner organisations described the realities
- Synthesis per article done, as per agreement in the committee
- Drafting of the report article per article, as per agreement in the committee

#### Result

- Alternative report of 271 pages, containing 21 general recommendations
- Also a detailed analysis article per article
- Report considered as an addition to the official report, showcasing the reality of people with disabilities living in Belgium
- Report also sent to governments, parties, via the newsletter to member organisations
- Led to a meeting in the Parliaments

#### Review session in Geneva

- Delegation of civil society present
- Committee recommendations reflected input given by civil society

#### Follow-up

- Informal advice platform created, meets every 3 months, has become more important with the work on the report, as organisations work together
- Exchange about good practices and exchange of information, identification of priority actions, determining common positions, coordination