BASIC LEVEL: Empowerment of people with disabilities through human rights

Participant version

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1. BASIC LEVEL: Empowerment of People with Disabilities through human rights

The learning objectives for this module include:

- To understand the difference between legislation and standards.
- To be able to differentiate between the different types of legislation.
- To be aware of the rights for People with Disabilities offered through legislation.
- To be aware of the obligations of the public sector authorities and how you can get involved

1.1 Legal framework

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1.1.1 EU-level policy

There are two levels of European Union (EU) legislation; regulations and directives.

- **A regulation** is a binding legislative act that covers all member states directly.
- **A directive** can either set goals or minimum requirements that all member states have to transpose into national legislation. For minimum harmonisation directives, the member states must implement the minimum requirements set by the EU into their national legislation, but they are free to go beyond the minimum.

Most EU member states have national anti-discrimination laws covering different aspects of discrimination including accessibility. A handful of member states have had specific web accessibility legislation before the EU decided to harmonise the situation in a series of directives.

Today, all member states - and the UK - share the same minimum requirements for web accessibility in the public sector.

1.1.2 The United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is the first international human rights convention to which the EU has become a party in the 21st century. It is a legally binding instrument setting minimum standards for rights of people with disabilities.

For the EU, the convention entered into force on 22 January 2011. All EU Member States have signed and ratified the convention. 22 EU countries have also signed and ratified its optional protocol in January 2019.

The UN Convention on the Rights of Persons with Disabilities affirms that all the State Parties should take measures that enable people with disabilities to be independent, have and uphold physical and mental health and to fully participate in the society. They are required to protect the rights of people with

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disabilities and ensure that they enjoy full equality under the law. Article 9 of the convention addresses accessibility specifically. It entails all the State Parties to take the necessary measures that people with disabilities have access to physical environment, information and communication on equal basis with others.

An example to put in practice the aforementioned article 9 is the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, adopted by the Member States of the World Intellectual Property Organization (WIPO) on June 27, 2013, to address the so called global book famine. It is the first copyright treaty to include a clear human rights perspective directly linked to the UNCRPD that demonstrates how copyright systems are an important part of the solution to the challenge of improving access to books and other printed works for persons with print disabilities. On the 1st January 2019, the Marrakesh Treaty entered into force in the EU (27 Members States and the UK).

The main elements of the UN Convention are reflected in the European Disability Strategy 2010-2020.

Additional reading:

Information about the UNCRPD including ratifications

Full text of the UNCRPD

Marrakesh Treaty Directive (EU) 2017/1564

Marrakesh Treaty Regulation (EU) 2017/1563

1.1.3 Strategy for the Rights of Persons with Disabilities 2021-2030

The policy work on disability related issues in the EU is described in the Strategy for the Rights of Persons with Disabilities 2021-2030. This new strategy builds on its predecessor, the European Disability Strategy 2010-2020 and supports the implementation by the EU and its member States of the UN Convention on the Rights of Persons with Disabilities (UNCRPD).

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The Strategy aims to ensure the full participation of persons with disabilities in society, on an equal basis with others in the EU and beyond. Persons with disabilities have the right to take part in all areas of life, just like everyone else. Despite progress in some areas for person with disabilities, such as access to healthcare, education, employment, recreation activities and participation in political life, there are still many barriers to overcome.

The ten-year strategy establishes key initiatives around three main themes:

1. EU rights: Persons with disabilities have the same right as other EU citizens to move to another country or participate in political life. By the end of 2023, the European Commission will propose a European Disability Card for all EU countries that will facilitate mutual recognition of disability status between member states. This is coupled with work between the EC and Member States to ensure the participation of Persons with Disabilities in the electoral process.

2. Independent living and autonomy: Persons with disabilities have the right to life independently and choose where and with whom they want to live. The European Commission will provide guidance and an initiative to improve social services for persons with disabilities to support their inclusion in society.

3. Non-discrimination and equal opportunities: The Strategy aims to protect persons with disabilities from any form of discrimination and violence, ensuring equal opportunities in and access to justice, education, culture, sport and tourism.

Additional reading:

Strategy for the Rights of Persons with Disabilities 2021-2030

European Disability Strategy

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1.1.4 EU-level Legislation

After failing to agree on an EU-wide Anti-Discrimination legislation, the EU has moved forward with three important directives impacting the digital life of persons with disabilities:

- The **Procurement Directive**, which seeks to ensure greater inclusion of common societal goals in the procurement process.
- The **Web Accessibility Directive**, which will make public websites accessible to all.
- The **European Accessibility Act**, which sets accessibility requirements for products and services.
- The Procurement Directive (2014/24/EU) was transposed into national legislation in 2017. It covers public procurement over the threshold and increases the requirements for accessibility in public procurement compared to earlier versions.

The enforcement of the directive will be further supported by the European Accessibility Act, see below.

The increased requirements for accessibility are clearly stated:

Article 42:1

"For all procurement which is intended for use by natural persons, whether general public or staff of the contracting authority, the technical specifications 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.

Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto."

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Additional reading:

DIRECTIVE 2014/24/EU

1.1.5 Web Accessibility Directive

The Web Accessibility Directive (2016/2102/EU) was brought into national legislation in 2018. It requires public sector organisations and bodies governed by public law (organisations that are more than 50 percent publicly owned, financed or managed by the public sector) in EU member states to comply with minimum accessibility requirements.

The directive covers:

- Websites
- Intranets
- Extranets

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- Documents
- Apps

The Directive does not apply to:

- documents published before 23 September 2018, unless such content is needed for active administrative processes
- pre-recorded videos, podcasts etc published before 23 September 2020
- live videos, podcasts etc
- online maps and mapping services, as long as essential information intended for navigational use is provided in an accessible format
- third-party content that is not funded, developed by or under the control of the public sector body
- reproductions of items in heritage collections
- content only available for closed groups, published before 23 September 2019, until such websites undergo a substantial revision
- archives only containing content that is not updated or edited after 23 September 2019

In each Member State, monitoring must be performed according to specific implementation acts. The monitoring results are reported to the European Commission, the first time being by 23 December 2021.

Deadlines for compliance: All websites, intranets, extranets and documents have to comply with the minimum requirements by 23rd of September 2020. Apps are due 23rd of June 2021.

Accessibility Statement: The public sector body must declare its accessibility status. The Accessibility Statement should be detailed, comprehensible and

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clear and follow the template provided by the European Commission or the national monitoring agency.

Feedback mechanism: The feedback mechanism of the directive is one out of three enforcement pillars; the others being monitoring and self-declaration (accessibility statement). Through the feedback mechanism, end users with disabilities have the right to receive content in an alternative format, should the website not be accessible in itself. By using the feedback mechanism, end-users with disabilities have the opportunity to provide constructive information about the accessibility problems they encounter. This way, people with disabilities are promoted to experts, based on their knowledge and experiences.

Even though this is highlighted again in a later chapter, the trainer can emphasise the importance of the feedback mechanism to give constructive information about the accessibility issues the students encounter.

Disproportionate burden: If the public sector body claims disproportionate burden, the size, resources and nature of the organisation will be considered. The estimated costs and benefits for the organisation in relation to the estimated benefits for persons with disabilities, based on the frequency and duration of the use of the specific website, service or app will also be taken into account.

Additional information:

DIRECTIVE (EU) 2016/2102

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1.1.6 European Accessibility Act

The European Accessibility Act (2019/882), often abbreviated to EAA, is a directive that will enter into force in the member states by 2022. The act covers the private sector and focus on certain accessible products and services that have been identified as being most important for persons with disabilities.

These products and services include:

- computers and operating systems
- ATMs, ticketing and check-in machines
- smartphones
- TV equipment related to digital television services
- telephony services and related equipment

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- access to audio-visual media services such as television broadcast and related consumer equipment
- services related to air, bus, rail and waterborne passenger transport
- banking services
- e-books
- e-commerce

The European Accessibility Act has similar enforcement procedures as the Web Accessibility Directive, such as documentation and monitoring. There are different grace periods for specific products and services. As the implementation acts are not yet published and the directive is currently under transposition, the details remain to be determined.

Additional reading:

DIRECTIVE 2019/882

1.2 The minimum requirements are set in standards

For the legislation to be stable over time, it sets out the goal, but the technical requirements are specified in standards.

Standards are developed by a group of different stakeholders representing consumers (often called end users in the accessibility context), industry, public sector and research.

In the EU, member states have national standardisation bodies who are members in the European Committee for Standardization (CEN) and/or the European Committee for Electrotechnical Standardization (CENELEC). These two standardisation bodies are managed jointly and commonly referred to as CEN/CENELEC.

The telecoms industry is represented by the European Telecommunications Standards Institute (ETSI).

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Only standards developed by these three organisations are recognised as Harmonised European Standards (ENs), supporting European regulation and legislation.

Additional reading:

CEN/CENELEC

ETSI

1.2.1 EN301549

The European standard "EN301549 v.2.1.2 Accessibility requirements for ICT products and services" acts as the presumed conformance to the minimum requirements of the Web Accessibility Directive. The EN301549 contains functional performance statements and technical specifications for ICT in a broad sense. In addition to the web, the standard covers, among other things, vending machines, telephones and computers. It is probably the most comprehensive standard for ICT accessibility in the world and it has been developed in close collaboration with USAccessboard to correlate as far as possible with the American requirements.

The standard is divided into Clauses, which can be seen as chapters:

- Clause 4 covers the functional performance statements, which means the different use cases of people with disabilities using ICT.
- Clause 5 covers the general requirements, and the following chapters are dedicated to different parts of ICT such as hardware, software, web etc.

In Annex A of the EN301549, the relationship between the EN-standard and the requirements of the Web Accessibility directive is mapped.

Annex B covers the relationship between the functional performance statements and the technical requirements and can be used to support the

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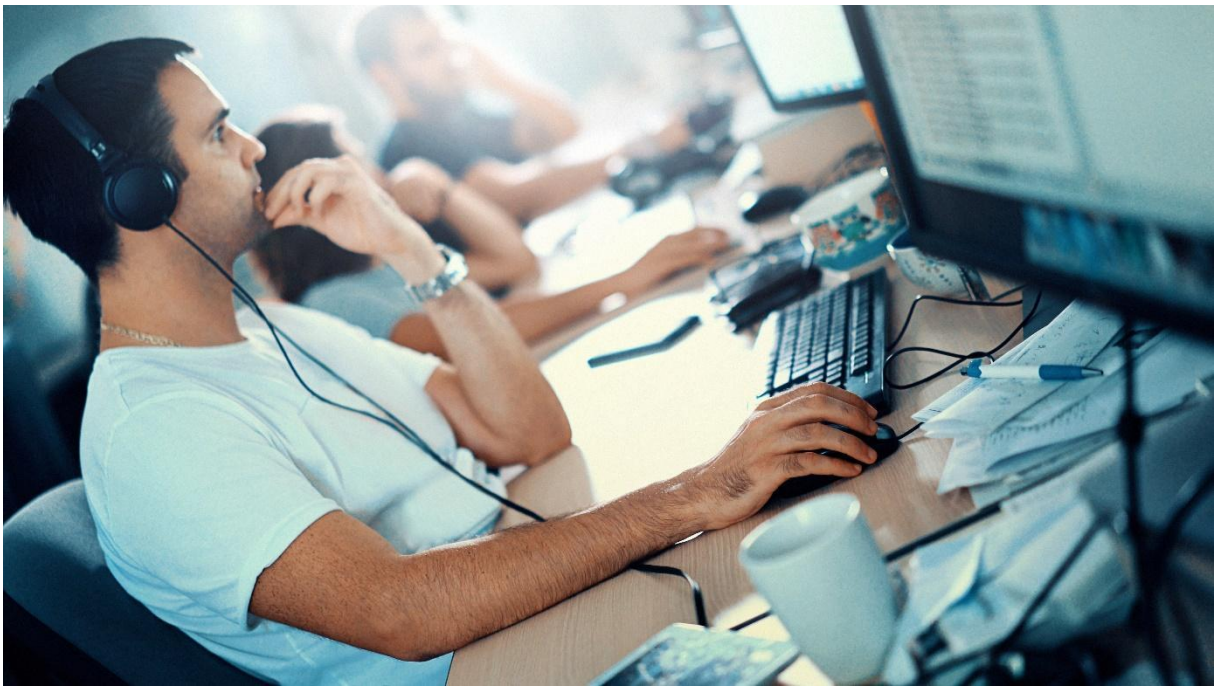
reader in understanding what noncompliance may mean to different user groups.

When it comes to the technical requirements for web accessibility, the EN301549 is referring to the international standard WCAG 2.1 AA.

Additional reading:

EN301549 v.2.1.2



1.2.2 Content Accessibility Guidelines (WCAG)

The Web Content Accessibility Guidelines, often called WCAG, is a set of technical requirements for web accessibility. WCAG is based on four principles; *perceivable, operable, understandable, and robust,* which set out the overall areas the standard is covering. *Under these principles,* there are guidelines providing the basic goals for making content more accessible. These guidelines can be seen as chapters. For each guideline, there are success criteria, which equals the technical requirements. At the most granular level, there are

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Sufficient and Advisory Techniques, aiming to support the reader into understanding the requirements and how to meet them.

The WCAG success criteria are presented in three levels: A, AA and AAA. In the EU, the minimum requirements are at the AA level. This means that success criteria at level A and AA must be met to comply with the minimum requirements of the EU-directives.

1.3 National anti-discrimination regulations

1.3.1 Anti-discrimination legislation

Anti-discrimination statutes outlaw discriminatory practices in various areas, such as employment, education, housing, communication and transportation. Normally, they enumerate protection categories, including gender, sexual orientation, religious belief, minority status and disability.

Almost all EU member states have anti-discrimination statutes. These statutes can be implemented in different ways – e.g., as laws (primary legislation) or as regulations (secondary legislation) – and vary somewhat in content. As a rule, however, anti-discrimination statutes include disability as a protected category and accord specific rights on the basis of that protection. One such right is the right to accessibility, also guaranteed by Article 9 of the UNCRPD. The right of persons with disabilities to be integrated in society is also provided for in chapter 3 of the EU Charter of Fundamental Rights.

Since these statutes are usually written in terms of broad rights, complainants may struggle to use them to remediate specific cases. For instance, it would be hard to address an inaccessible digital interface by appealing to an anti-discrimination law, since such a law would not be likely to specify technical requirements for accessibility. Moreover, since the statutes are implemented at the national level, in different fashions, they cannot be used to adjudicate cross-border and inter-European cases.

For that reason, there have been efforts to create anti-discrimination legislation for the EU. Attempts at more general-purpose legislation have thus far failed, but there are some sector-specific instruments, including Directive 2000/78/EC,

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which provides for equal treatment in work. The Procurement Directive, the Web Accessibility Directive, and the European Accessibility Act, as mentioned above, also provide protection against discrimination, albeit in very narrow and specific ways.

As directives, the first two instruments provide instructions to national lawmakers: if there is a relevant statute on the books, this can be updated to align with the directive; if there is not, new transposition legislation has to be introduced. While national legislation may exceed the provisions of a directive, it cannot stop short of it. For the Web Accessibility Directive, this means that, at minimum, provisions on matters such as reporting, monitoring, the feedback mechanism and so on have to be present in national transpositions.

1.3.2 WAD transposition and previous national laws on web accessibility

A central aim of the Web Accessibility Directive is to harmonise rights and obligations regarding web accessibility across EU and EEA member states. Before passage of the Directive, member states took a range of different approaches to digital accessibility issues. A few member states had existing legislation that only needed minor tweaks to conform; some had non-binding recommendations; and still others did not regulate the field at all.

By the end of 2020, all EU member states, as well as the UK, had completed transposition of the Web Accessibility Directive.

1.3.3 UNCRPD implementation

Following Ireland's ratification in November 2018, all EU and EEA members are now states parties to the UNCRPD. The Convention's optional protocol, which establishes an individual right to lodge complaints against a state party, has been ratified by most, but not all EU and EEA members: Romania, Bulgaria, the Czech Republic, and Iceland have signed but not ratified; Poland, the Netherlands, Ireland, and Norway have thus far not taken any action on the protocol.

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1.3.4 Responsibility for carrying out disability policy

In addition to binding legislation, many member state governments have implemented disability policies – in essence, documents that outline cohesive strategies for disability-related issues. Where such documents exist, they vary considerably in scope, sometimes going into detail about specific legislative initiatives, at other times remaining at the level of broad principles. Governments may assume responsibility for carrying out disability policy themselves or assign that responsibility to a subordinate agency.

Between 2010 and 2020, the European Commission also implemented a specific European disability strategy. The strategy's aim was to reduce barriers and promote inclusion, through eight areas of action: accessibility; participation; equality; employment; education and training; social protection; health; and external action (that is, beyond the EU). The evaluation of the strategy shows that, while there is room for improvement, the Strategy had a positive impact on EU rules and policies.

Involving persons with disabilities and organisations representing them in the policy-design of the Strategy has contributed to its positive results, notably in making sure that issues that really matter to them were high on the EU's agenda. The results of the Strategy include EU-wide regulations, general policies, specific initiatives and a number of research projects. Still, people with disabilities continue to face challenges, like high rates of unemployment or poverty. The new EU Strategy 2021-2030 will build on the results of the previous strategy and will address emerging issues such as the impact of the COVID-19 pandemic on persons with disabilities.

1.3.5 Procurement

An important way to counteract discrimination against persons with disabilities is through accessibility requirements for public procurement of goods and services. With passage of the Procurement Directive in 2014 and its transposition into national legislation by 2017, such requirements are now in place and harmonised across Europe.

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1.3.6 Language

Another aspect of anti-discrimination receiving more attention is the use of plain language – that is, communication that is clear and intelligible to the widest audience possible. Most member states will have official guidelines for how to write clearly and succinctly in the official language. In several cases, including in Denmark, designated government agencies will be tasked with promoting these guidelines. In the UK, a former member state, "plain English" is not mandated by law, but there is an influential civil society organisation promoting and monitoring the approach. In a few countries, plain language is actually a legal requirement: in Sweden, through the Language Act of 2009, and in France, through a 2002 decision by the Constitutional Council.

1.4 Workplace and reasonable accommodation

Anti-discrimination statutes can compel public sector bodies or providers of goods and services to make so-called 'reasonable accommodations' for persons within protected categories. 'Reasonable accommodation' means that the provider of a product or service should extend or adjust their offer,

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unless doing so would be unreasonable; that is, too onerous, or too expensive relative to the capabilities of the provider.

The principle of reasonable accommodation is often applied in the workplace. Persons with disabilities are vulnerable to discrimination in work and employment. An employer may decide against hiring an otherwise qualified disabled person because that person needs a specific accommodation. Anti-discrimination statutes, as well as specific workplace discrimination statutes, seek to prevent this where possible, not least by delineating more clearly what should and should not be considered a reasonable accommodation.

1.5 User involvement in enforcement: constructive feedback, alternative formats and complaints

According to the Web Accessibility Directive, the public sector body must declare its accessibility status. The Accessibility Statement should be detailed,

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comprehensible and clear and follow the template provided by the European Commission or the national monitoring agency.

In the statement, the public sector body must also provide a feedback mechanism and a link to the complaints mechanism. Via the feedback mechanism, end users with disabilities can tell the organisation about inaccessible parts of the service and receive content in an alternative format, should the website not be accessible in itself. By using the feedback mechanism, end users with disabilities have the opportunity to provide constructive information about the accessibility problems they encounter. This way, people with disabilities are promoted to experts, based on their knowledge and experiences.

If the public sector body doesn't respond to the claim for alternative format within a reasonable time, the monitoring agency can step in and start the control process, which in turn can lead to fines.

1.6 Understanding what we have learnt: Now it's your turn!

- What is the difference between legislation and standards? Choose the one correct statement:
    - Legislation covers the WHAT, for example "websites must be accessible" whereas standards cover the HOW, for example "websites must comply with this standard".
    - Standards cover the WHAT, for example "websites must be accessible" whereas legislation covers the HOW, for example "websites must comply with this standard".
    - Legislation and standards cover the HOW, for example "websites must comply with this standard".
- Identify the anti-discrimination statutes in your country:
    - Provide a brief summary of the protection provided for people with disabilities.

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- Link the following EU Directives with their main objectives:
    - EU Directives
        - The procurement Directive…
        - The Web Accessibility Directive …
        - The European Accessibility act…
    - Objectives
        - sets accessibility requirements for products and services.
        - seeks to ensure greater inclusion of common societal goals in the procurement process.
        - aims to make public websites accessible to all.
- Choose a website of a public sector body. They should be located in Europe. Visit their webpage and answer the following questions:
    - Can you find the accessibility statement?
    - Is the accessibility statement detailed, comprehensible, clear?
    - What level of compliance to the WCAG guidelines does it provide?
    - Do they provide a link to the feedback mechanism for users to highlight inaccessible parts of the service?

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