

# Enabling Access to the Media for All

The following article:

*Barrier-free access  
to audiovisual content  
A fundamental human right*

by Cristina Bachmeier

is an extract from the publication IRIS *plus* 2014-3  
“Enabling Access to the Media for All”.

The entire publication as a printed version can be purchased  
from the European Audiovisual Observatory.

For further information and order possibilities, please open hyperlinks:  
[http://www.obs.coe.int/shop/irisplus/-/asset\\_publisher/k6BP/content/iris-plus-2014-3](http://www.obs.coe.int/shop/irisplus/-/asset_publisher/k6BP/content/iris-plus-2014-3)

# Foreword

When it comes to barriers to accessing information and to culture for people with disabilities, the concept becomes immediately multifaceted. Depending on how content as such is conceived, whether it is a library with stairs before an entrance door or an immaterial file requiring the command of additional technological equipment, the concept of a barrier may take on different meanings and require the use of different tools.

Most physical barriers seem to have been overcome, but there is still work to be done to ensure that the same can be said of the electronic world. On the one hand, the issue of architectural barriers has been discussed over decades with many tangible results; on the other hand, digital barriers still exist, indicating that complete access to soft content has not yet been achieved.

This is even more complex in the online world, where prior knowledge is necessary not only to allow access to content, but also to interact and to fully experience the 2.0 dimension. The dual dimension of the Internet, where users are both passive recipients of information provided by third parties and active contributors in their capacity as content providers, makes it necessary to broaden the scope of investigation.

In the Lead Article of this *IRIS plus* - which I am particularly pleased to introduce as part of my first task in my new position at the Observatory - Bachmeier offers an in-depth and entertaining exploration of the different approaches that have been followed at various levels (international or European, national or local) by different means (regulatory or voluntary). The result is a collage of best practices and good examples, but it nonetheless shows that merely adopting the toolkit set up for linear media is insufficient to ensure a truly barrier-free Internet.

Considering the many years of regulatory initiatives on this issue, the Related Reporting section is particularly rich. It gives a factual overview of recent developments on broadcasting and copyright legislation concerning people with disabilities, and of recent case law on media and disabilities.

The final Zoom section provides comprehensive details of the practice in Germany. From an insider's perspective, Lenke and Biehl lead us through what happens in recording studios when work is done on subtitling and audio descriptions, and give us food for thought when outlining the various delivery methods and discussing development potentials from a technological perspective.

Strasbourg, July 2014

**Maja Cappello**  
*IRIS Coordinator*  
*Head of the Department for Legal Information*  
*European Audiovisual Observatory*

# Barrier-free access to audiovisual content A fundamental human right

*Cristina Bachmeier, Institute for European Media Law (EMR),  
Saarbrücken/Brussels*

## I. Introduction

For centuries people with disabilities have been repeatedly stigmatised and marginalised. This dates as far back as the time of the selection procedure prescribed in ancient Sparta (ca. 900 BCE) or the “divine punishment” in Mesopotamia. It was not until modern times that the first state facilities were built to enable disabled family members to be cared for. In the 1960s the disability rights movement began to develop in Europe, especially in the United Kingdom. This was modelled on movements in the United States, through which people with disabilities sought to raise awareness of their particular needs. A ban on disability-based discrimination was, for example, enshrined in the German *Grundgesetz* (Basic Law) in the 1994 constitutional reform. From 2008, participation in social life on an equal footing was guaranteed at an international level under the UN Disability Convention<sup>1</sup>. That was the first time that a human rights-based understanding of disability was recognised in an internationally binding treaty<sup>2</sup>.

Around 80 million people in the European Union (about 15% of the total population) are affected by various forms of impairment<sup>3</sup> and often face legal and social barriers, such as a lack of appropriate aids or inadequate integration into social and cultural life.

Ensuring a barrier-free life for people with disabilities is crucially important in today’s society. The Contracting States to the UN Convention were given an important mandate: “to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.<sup>4</sup> Moreover, all forms of direct or indirect discrimination on the basis of disability are prohibited. Also prohibited, therefore, is any distinction or restriction that has the effect of impairing or nullifying an individual’s participation in social life. The same applies to the “denial of reasonable accommodation”. Any obstacles must be eliminated by enacting legislation and appropriate modifications and adjustments must be made.

---

1) *United Nations Convention on the Rights of Persons with Disabilities* (UNCRPD), available at <http://www.un.org/disabilities/convention/conventionfull.shtml>

2) 155 countries (as of March 2013) have signed the Convention.

3) For the proportion of the population with disabilities and the generally distinguished types of disability, cf. Van Eijk/Poort, 2012, “Universal service and disabled people”, *Telecommunications Policy* 36, pp. 85-95, available at [http://www.ivir.nl/publications/vaneijk/telecommunications\\_policy\\_2012\\_2.pdf](http://www.ivir.nl/publications/vaneijk/telecommunications_policy_2012_2.pdf)

4) Article 2 of the UN Disability Convention.

As a result of the principles of equal opportunities and non-discrimination, society was obliged to eliminate negative attitudes to disabilities and to enable people with disabilities to participate fully in the life of the community.

Outside the audiovisual world, there is a remarkable example of how access to culture can be made barrier-free: in Berlin's New Museum blind or seriously visually impaired visitors to the exhibition can run their fingers over a bronze replica of the famous Nefertiti bust and six other original items.

The aim of this article is to provide an overview of the legal bases, practical aspects and current progress on enabling people with disabilities to access audiovisual content barrier-free.

## 1. Definitions

### 1.1. General

**"Persons with disabilities"**, according to Article 1(2) of the UN Disability Convention, includes "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." Their normal means of communication may be through "languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology".<sup>5</sup> In this connection, the term "languages" includes both spoken and sign language as well as other forms of non-spoken language.

**"Barrier freedom"** in the narrow sense means enabling people with disabilities to participate in everyday life on an equal footing with others.

By implementing the measures necessary to guarantee equal treatment, states should create unrestricted access to information and services for this section of the population. In German law, section 4 of the *Behindertengleichstellungsgesetz* (Equal Treatment of Disabled Persons Act)<sup>6</sup> defines barrier freedom as follows: "Structural and other facilities, means of transport, technical appliances, information processing systems, acoustic and visual sources of information and means of communication as well as other areas of life can only be considered barrier-free when they can be used normally by disabled people without difficulty and without the need for help from others."

In the broader sense, the principle of barrier freedom does not distinguish individual groups of people. It also supports the integration into the general social environment of other user groups, such as the elderly (senior citizens), children or people with a low level of education. People with temporary impairments, for example following an accident or illness, are also included. This understanding of barrier freedom is what is meant by "universal design" in Article 2 of the UN Disability Convention: "the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design."

---

5) Article 2, 1st arrow bullet point of the UN Convention.

6) *Behindertengleichstellungsgesetz vom 27. April 2002 (BGBl. I S. 1467, 1468), das zuletzt durch Artikel 12 des Gesetzes vom 19. Dezember 2007 (BGBl. I S. 3024) geändert worden ist* (Equal Treatment of Disabled Persons Act of 27 April 2002 (BGBl. I pp. 1467, 1468), last amended by Article 12 of Act of 19 December 2007 (Bundesgesetzblatt. I, p. 3024), available at: <http://www.gesetze-im-internet.de/bgg/BJNR146800002.html>

## 1.2. Techniques employed<sup>7</sup>

Recital 46 of the Audiovisual Media Services Directive (AVMSD)<sup>8</sup> provides a non-exhaustive list of means by which barrier-free access can be achieved: sign language, subtitling, audio description and easily understandable menu navigation.

**Sign languages** are independent, visually perceptible natural<sup>9</sup> languages used for communication purposes, in particular by deaf and seriously hearing-impaired people. They comprise a combination of signs (gestures) made mainly with the hands in conjunction with mime and mouthed sounds (silently spoken words or syllables) formed in conjunction with the body posture. There are national sign languages as well as a standardised form of international communication.<sup>10</sup>

Spoken dialogue may also be reproduced in written text by means of **subtitling**. The subtitle is usually shown at the bottom of the screen and can be modified to make it easier to read and understand. A distinction is made between edited and verbatim subtitling: the former requires the text to be rewritten to make it easier to understand and is easier to follow at a slower reading speed, while the latter constitutes the word-for-word reproduction of the dialogue.<sup>11</sup>

The term **audio description** refers to the additional description of the important scenes or characters (actors) in a film or other visual medium. It is used in line with the narrative to enable blind or visually impaired people to access the visual content (“deaf film”).<sup>12</sup>

Audio description is currently produced by teams comprising at least three people and is very time-consuming. After a script has been produced and assessed by a blind or visually impaired member of staff, the description of the visual elements is added to the visual medium by a professionally trained narrator with the help of special software.<sup>13</sup> Since adding the audio description is a lengthy process, it is usual for only feature films to be provided with the extra narrative track.

With a view to the standardisation of audio description transmission, decoders or set-top boxes are produced featuring appropriate technical capabilities. At the same time, broadcasters use a two-channel system.

Finally, Recital 46 of the AVMSD calls for **“understandable menu navigation”**. It is also emphasised that visual or hearing impairments are a concomitant phenomenon of ageing<sup>14</sup>: just like people with disabilities, the older generation is a particularly at-risk group of viewers that needs help in accessing audiovisual content.

---

7) The ZOOM section of this IRIS plus discusses the most important approaches to the implementation of relevant technical methods.

8) Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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) (codified version), OJ L 95/1 of 15. April 2010 (hereinafter “the AVMSD”), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

9) A natural language is an individual human spoken or sign language that has resulted from a historical, diachronic development. See [http://en.wikipedia.org/wiki/Natural\\_language](http://en.wikipedia.org/wiki/Natural_language)

10) See Ukrow, Article 3c AVMSD, in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 19, p. 883.

11) See Remael, 2007, “Sampling subtitling for the deaf and the hard-of-hearing in Europe”, in: Díaz-Cintas/Orero/Remael, *Media for All*, pp. 29 ff.

12) An example of an audio description in the title credits of the crime drama *Tatort* (Crime Scene) can be found at the *Bayerischer Rundfunk* (Bavarian Broadcasting Corporation) website (<http://www.br.de/fernsehen/bayerisches-fernsehen/sendungen/tatort/audiodeskription-tatort-trailer100.html>): “A man’s eyes. He looks left, then right, then straight ahead. The crosshairs of a gun sight close around his right eye. The crosshairs open. A man’s blurred silhouette. He holds his hands as protection in front of his face. Running legs on wet asphalt. White lines come together to form a fingerprint. Crime scene.”

13) Jekat, “Respeaking und Audiodeskription: Barrierefreier Zugang zu Informationen für Sinnbehinderte in der Schweiz”, Swiss Academies of Sciences, Berne, 26 March 2013.

14) See Engel, “Untertitel im Teletext als Hilfe beim Fernsehen”, *Media Perspektiven* 7/2007, p. 338.

Another method employed in practice (and not mentioned in Recital 46 of the AVMSD) is the **audio subtitle**. This method was developed to complement subtitling. It provides additional information (in a different colour or font) on the sounds or the music that play a role in the storyline of a film.

## 2. Types of barrier-free access

Free access to information and communication reflects the right to freedom of expression and to unrestricted media reporting from the recipient's point of view. In addition, freedom of expression has a significant impact on all areas of life.

The question of barrier freedom and audiovisual content focuses mainly on the fields of cinema/theatre, television (linear and non-linear audiovisual media services<sup>15</sup>) and the internet.<sup>16</sup>

### 2.1. General

According to the European Commission's Study on the use of subtitling<sup>17</sup>, three main language-transfer practices for audiovisual works exist side-by-side in Europe: subtitling, dubbing and voice-over.<sup>18</sup> Subtitling for the deaf or hearing-impaired and audio description are also available. The latter is intended for blind or visually impaired viewers and is adapted to their particular needs.

Language-transfer practices vary not only from one country to another but sometimes within the same country depending on the broadcast medium (cinema or television) or the target audience (general public, children, people with disabilities).

Subtitling is by far the most common method used in Europe. It is employed in 28 countries (26 countries and 2 regions within 2 countries).<sup>19</sup>

Dubbing is used in Germany, France, Italy, Austria, Spain, the French-speaking part of Belgium and in the French- and Italian-speaking parts of Switzerland, but films are shown in cinemas in the original version with subtitles in these countries too. Voice-over is widespread in particular in Bulgaria, Poland, Latvia and Lithuania and to a lesser extent in Estonia.

### 2.2. Cinema/Theatre

In many cases, it is not a lack of interest that stands in the way of enjoying cultural performances but simply the presence of stairs. In order to guarantee free access for people with impaired mobility, it is first necessary to remove structural impediments. Section 55(1) of the *Landesbauordnung Nordrhein-Westfalen* (North Rhine-Westphalia Regional Building Code), is mentioned here as only one example among others. Under that provision, it must be possible for those parts of publicly accessible cultural facilities (including cinemas and theatres), "that serve the purpose of handling general visitor traffic to be reached barrier-free and without assistance and used for the purpose intended by people with disabilities, old people and people with small children." Ramps, lifts and

---

15) The definition can be found in Article (1)(1)(g) of the AVMSD: "an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider".

16) Radio broadcasts will not be discussed in this article.

17) "Study on the use of subtitling - The potential of subtitling to encourage foreign language learning and improve the mastery of foreign languages", final report of June 2011 (study requested by the European Commission, Directorate-General Education and Culture) available at [http://eacea.ec.europa.eu/llp/studies/documents/study\\_on\\_the\\_use\\_of\\_subtitling/rapport\\_final-en.pdf](http://eacea.ec.europa.eu/llp/studies/documents/study_on_the_use_of_subtitling/rapport_final-en.pdf)

18) This technical term refers to the sound recording of a voice that is superimposed over another sound recording of a film scene. Unlike dubbing, the original recording in the foreign language can still be heard but a translation spoken by an actor in a studio is superimposed over it.

19) Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Flemish part of Belgium, German-speaking Switzerland, Greece, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Norway, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Turkey and the United Kingdom.

wheelchair parking spaces must be installed so that a cultural event can be reached barrier-free and in such a way that does not amount to a luxury for people with disabilities.

For example, the showing of a film on a big cinema screen is always an exciting event for cinema fans. In particular, they can experience the event as a group and can not only hear the sounds – through more powerful sound systems than any home system – but also feel them.

When films are viewed, another important (cultural) aspect comes into play, especially in cinemas: the possibility of providing foreign audiovisual works (feature films, documentary films and animated films) in the original language – with or without subtitles in the viewer's language. Although the main purpose of accessibility is to help people with disabilities, others benefit from this too. In particular, original-language films with subtitles help to promote learning a foreign language or to improve command of the language concerned.

Recently, smartphone apps (*Starks*<sup>20</sup> and *Greta*<sup>21</sup>) have also become available for barrier-free film enjoyment. They were developed in the German language to make visits to the cinema for hearing- and visually impaired film lovers as fully enjoyable as possible. *Starks* is for people who are hard of hearing and displays on their own mobile device so-called "HoH subtitles", which describe important background noises, for example, in addition to the spoken dialogues. *Greta* was specially developed for blind or visually impaired people and provides a spoken film description to which users can listen on a headset in the cinema. Users can download both apps free of charge before the start of the film. Both *Greta* and *Starks* automatically recognise when the audio description should begin and when to start displaying subtitles. The development of both apps received financial support from the *Filmförderungsanstalt* (Film Board), the *Medienboard Berlin-Brandenburg* (Berlin-Brandenburg Media Board), the Culture and Media Commissioner and the Swiss *Bundesamt für Kultur* (Federal Culture Office).

### 2.3. Television

Mass media play an important role in day-to-day socialisation. Media use among EU citizens is still topped by television as the most popular mass medium; it is also an important opinion-former.<sup>22</sup>

#### *Different forms of assistance*

Blind people have several ways of accessing audiovisual content. Public service broadcasters in particular, as well as commercial television stations, transmit individual programmes and films with an audio description. This consists of comments on important visual information or film sequences that are broadcast through the television loudspeakers with very little dialogue. A prerequisite for this is that the television is able to receive dual-channel sound. Additional assistance for blind and visually impaired people may be provided by video recorders equipped with voice-activated controls that can read out teletext. There is also the possibility of receiving television and teletext via a computer (using a television card) equipped with special text-to-speech software. The applicable films are marked with a crossed-out eye in programme listings magazines.

Broadcasters provide teletext subtitles for some of their programmes, so that deaf and hearing-impaired people can watch television. Dialogue and explanations of sounds are displayed at the bottom of the screen, without the need for any special device. Subtitles are broadcast as teletext on analogue televisions and together with the digital signal on digital TV sets.

---

20) Available at <https://itunes.apple.com/ch/app/starks/id793927739?uo=5> and <https://play.google.com/store/apps/details?id=de.debesefilm.starks>

21) Available at <https://itunes.apple.com/ch/app/greta/id793892423?mt=8> and <https://play.google.com/store/apps/details?id=de.debesefilm.greta>

22) "Media use in the European Union", study carried out at the request of the European Commission – Directorate-General Communication, published in March 2012, available at [http://ec.europa.eu/public\\_opinion/archives/eb/eb76/eb76\\_media\\_en.pdf](http://ec.europa.eu/public_opinion/archives/eb/eb76/eb76_media_en.pdf)

*Opportunities and challenges resulting from digital distribution*

New technical opportunities provided by digital television mean that more methods are available to transmit a television programme in a language that can be understood by deaf, hearing-impaired, blind and visually impaired people. However, the analogue TV switch-off in Europe constitutes a challenge for the access services for two different reasons.

Firstly, many people who had no problems accessing analogue TV will experience some difficulties in accessing digital TV for reasons such as hearing disorders, dyslexia, visual impairments, the complexity of setting up a digital receiver or set-top box, sophisticated remote control models or hard-to-use electronic programme guides (EPGs).

In addition, although the analogue switch-off has brought about an improvement in the quality of existing digital TV programmes, for example high-definition TV (HDTV), the provision of an additional virtual channel that allows a signer to be shown more prominently than in conventional portrayals, naturally means that broadcasters have to transmit more data. However, users value this service because the signer's facial expressions can be more clearly seen, and these are an important part of the communication.

The European Commission funded the Digital Television for All (DTV4All) project under the CIP ICT Policy Support Programme<sup>23</sup> in order to facilitate the provision of access services<sup>24</sup> on digital television across the European Union. The most valuable contribution of the DTV4All project is to identify the enablers that will allow a core set of access services to be offered in all EU member states in the near future. Those enablers are:

- *DVB subtitle design variants*: High-definition television (HDTV) and new content provision platforms, such as internet television (IPTV) and hybrid TV (HbbTV)<sup>25</sup> offer improved screen display options and internet access by pressing a button. DVB subtitles and new text offerings are optically more attractive and easier to operate than conventional teletext. Some can also be individually adjusted by colour combination, font size, window size and font type. In comparison to familiar teletext subtitles, these can be given a modern design and made HD-compatible with optically pleasant background variations.
- *Barrier-free teletext*: For hybrid TVs, which can receive both internet and conventional television, a barrier-free teletext service specially tailored to the needs of visually impaired people has been developed in the HbbTV standard. Alternative colours and a zoom function enable viewers with eye disorders to access the new type of teletext.
- *Signers*: Another application for hybrid televisions with an internet connection assists hearing-impaired viewers, who can use it to access a TV programme with sign language on the internet and watch it on their TV screen.
- *Clean audio process*: Complex sound content can be simplified through this process to enable people with hearing disorders to better understand the sound. For example, a background noise that makes it hard to understand the dialogue, or background music felt to be annoying, can be suppressed to the desired extent.

---

23) The Competitiveness and Innovation Framework Programme ran from 2007 to 2013. [http://ec.europa.eu/information\\_society/activities/ict\\_psp/about/index\\_en.htm](http://ec.europa.eu/information_society/activities/ict_psp/about/index_en.htm)

24) In the context of the DTV4All project, access services are services that enable users to access the storyline of a TV programme.

25) Hybrid Broadcast Broadband TV, also known as smart TV or connected TV, links static and dynamic broadcast and internet content on a TV set.



*Possibilities available with the use of on-demand content*

In the last few years, the use of on-demand audiovisual content has increased in leaps and bounds. Television now adapts to those viewers who want to watch programmes in the new media, regardless of the time of day. TV stations therefore make a large proportion of their programme schedule available in the form of internet streaming via media libraries. Public service broadcasters in particular are also endeavouring to make their on-demand offering barrier-free. Although it is occasionally made possible to insert subtitles in media libraries, the total number of programmes available remains very low.

Various items of information are made available in a number of different formats corresponding to the different needs of people with disabilities. With the aid of a video recorder specially developed for blind people, this group of people is able to receive and record films without assistance. The device is distributed under the name AMMEC<sup>26</sup>. It has a built-in speech output that reads out the user interface and all additional information needed to use the video recorder. Owing to its many features and manageable menu structure, the AMMEC provides eight different devices in one: TV receiver for receiving digital TV and radio stations; the option of digital satellite television (DVB-S) or digital cable television (DVB-C), each with the option of digital terrestrial television (DVB-T); a video recorder with a recording option on a hard drive; a teletext decoder; EPG reader; a DVD player (for self-burned DVDs, CSS protected DVDs); an audio player for different formats; and a DVD burner (for storing recordings on DVD and formatting DVD-RW blanks).

*Requirements to be met by the advertising industry*

The regulation of advertising on television has a key role to play in ensuring barrier freedom. The principle of the clear separation of, and ability to distinguish between, advertising and other content is very relevant to people with disabilities. The AVMSD generally leaves it up to the member states to identify advertising by optical or acoustic means (optical *and* acoustic means are required only when identifying teleshopping windows). Because people with disabilities cannot perceive optical or acoustic warnings, there is an increased potential to mislead them. This is relative to a person's degree of impairment or disability. As such, even if the combined use of both methods would constitute an improvement for people with disabilities, a general obligation on audiovisual content providers does not seem necessary. However, if the relevant information were to be included in subtitles or an audio description provided, this would represent an additional benefit for people with disabilities.

*2.4. Internet*

The internet and electronic communications media are constantly changing the way in which people interact with one another, do business, create access to services and information and communicate generally. The internet offers great opportunities to people with disabilities, because it enables them to share information, organise and set up teamwork and maintain contacts with other people, irrespective of disability.

When designing websites, certain barriers should be taken into account and eliminated. These barriers may include a lack of text for describing graphics, an unfortunate choice of colour combination, a poorly structured design or an impractical navigation system. Continuous improvements in computer and internet performance have led to greater use of multimedia effects. This is not problematic if information provided in video and audio files is also available as on-screen text, but difficulties arise when a website user receives only acoustic information (as an audio file). However, difficulties can be overcome by adhering to certain basic rules on accessibility, to allow barrier-free internet use.

---

26) Accessible MultiMedia Entertainment Centre.

Barrier-free public sector websites are a key issue at a European level. Only a third of the 761,000 public sector and government websites were fully accessible at the end of 2012, despite the availability of technical solutions, some of which have been developed with EU research funding over the last fifteen years.<sup>27</sup>

When constructing websites, public bodies should introduce principles and techniques based on the concept of “web-accessibility” so that access to online content is made easier for all users, especially those with disabilities. Measures should also encourage private industry and all service providers to implement these methods.

Internationally recognised and technology-neutral guidelines have already been developed in this field, such as the Success Criteria and Conformance Requirements Level AA in version 2.0 of the Web Content Accessibility Guidelines (WCAG 2.0) developed by the World Wide Web Consortium (W3C). A European standard that includes web accessibility based on those guidelines is under development within the European Commission Mandate 376.<sup>28</sup>

The EU social protection and social inclusion policy supports EU member states in promoting equal opportunities for people with disabilities. The Web Accessibility Initiative: Ageing Education and Harmonisation (WAI-AGE) project<sup>29</sup> is an example of EU funded research work. It focuses on the special needs of older users and provides guidelines for reviewing the WCAG 2.0. In particular, the aim is to make proposals for optimising the design of public authority websites with regard to tax declarations, welfare benefits or health services.

With regard to audiovisual content, the establishment of barrier-free access to regulators’ official websites is extremely important as this enables people with disabilities to submit suggestions or complaints, and to do so without any difficulty.<sup>30</sup>

Furthermore, barrier-free web design should not be limited to individual technical details in the programming. Rather, a holistic design should be developed that makes the entire information system accessible. It is important for several components of web development and interaction to work together to make the web accessible to people with disabilities. These components include:

- content: both presented information such as text, images and sounds as well as programming that defines the structure and presentation of a website;
- assistive technology, such as screen readers, alternative keyboards, switches and scanning software;
- user knowledge, experiences and adaptive strategies.<sup>31</sup>

People with disabilities should be constantly consulted on the development of new information and communication technologies. That way they will be able to make the most of national commitments and expenditure designed to ensure the accessibility of public sector websites and to speed up the implementation of these essential rules. The European Commission has indicated an intention to engage with authorities, companies and organisations to bring about a truly integrative society.<sup>32</sup>

---

27) European Commission press release of 3 December 2012, available at [http://europa.eu/rapid/press-release\\_IP-12-1305\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1305_en.htm)

28) <http://www.mandate376.eu>

29) <http://www.w3.org/WAI/WAI-AGE>

30) See for example in Germany the *Verordnung zur Schaffung barrierefreier Informationstechnik nach dem Behindertengleichstellungsgesetz* (Regulation for the creation of barrier-free information technology under the Equal Treatment of Disabled Persons Act) (*Barrierefreie-Informationstechnik-Verordnung – BITV 2.0*) for Federal Government services, available at [http://www.gesetze-im-internet.de/bitv\\_2\\_0/BJNR184300011.html](http://www.gesetze-im-internet.de/bitv_2_0/BJNR184300011.html)

31) <http://www.w3.org/WAI/intro/components.php>

32) European Commission press release of 3 December 2012 – Digital Agenda: Commission proposes rules to make government websites accessible for all.

## II. Legal instruments at international and European levels

### 1. United Nations

The UN Disability Convention and its Optional Protocol were adopted on 13 December 2006 and entered into force on 3 May 2008. The Convention's purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."<sup>33</sup>

Full participation in social life means equal access to information and communication and to other publicly available services. Article 9(2) of the UN Disability Convention calls on states to take appropriate measures to ensure that private entities that offer facilities and services take into account all aspects of accessibility for people with disabilities. To that end, training on the accessibility of services should be provided and guidelines developed and promulgated and their implementation monitored. Furthermore, states' attention is drawn to the fact that accessibility should be achieved at as little cost to users as possible. In accordance with Article 21 of the UN Disability Convention, certain information should even be made available without additional costs in accessible format and technologies, such as sign language.

However, freedom of information with regard to audiovisual content can be guaranteed only when the mass media, including entities that provide information through the internet, make their services accessible by appropriate means, modes and formats of communication. Efforts should be made to promote and develop universally designed goods, services, equipment and facilities – as pointed out in section 1 – with the minimum possible adaptation and cost.

### 2. Council of Europe

Barrier-free accessibility (with respect to freedom of information) and the principle of equal treatment (with respect to the ban on discrimination), as provided for by the European Convention on Human Rights (ECHR)<sup>34</sup> need to be discussed in more detail.

Article 10 ECHR<sup>35</sup> guarantees both freedom of speech and freedom of information and covers all forms of communication, including through the media. The dissemination of information and ideas corresponds to the public right to receive this information. People with disabilities must be able to exercise this right. That applies to barrier-free access to audiovisual content and to the principle of equality in terms of the content being reasonably comprehensible.

The ban on discrimination is set out in Article 14 ECHR<sup>36</sup>. It does not operate in isolation and prohibits discriminatory treatment only with regard to the provisions of other Articles of the ECHR. However, inclusion of the phrase "or other status" indicates that the list of grounds contained in Article 14 is not exhaustive.

This article prohibits the unequal treatment of people in a comparable situation and without objective justification for that treatment. On that basis, it is axiomatic for a disabled person to infer a right to unequal treatment from Article 14 ECHR.<sup>37</sup> Seen that way, Article 14 is violated when the state fails for no objective reason to provide different treatment to people who are obviously in a

---

33) Article 1(1) of the UN Disability Convention.

34) Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, (ECHR), available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/005.htm>

35) Article 10(1), first sentence ECHR: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

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

37) Ladewig, ECHR – Konvention zum Schutz der Menschenrechte und Grundfreiheiten, Handkommentar, 2003, p. 202.

different situation, i.e. when it does not enact any appropriate measure for people with disabilities in order to provide them with an effective guarantee of their rights and freedoms.

As far as can be ascertained, there is no relevant European Court of Human Rights case law on the application of Article 10 or Article 14 ECHR with regard to barrier-free access to media services.

### 3. European Union

#### 3.1. Primary law

Article 10 of the Treaty on the Functioning of the European Union (TFEU)<sup>38</sup>, which was introduced by the Treaty of Lisbon, refers to the aim of “[combating] discrimination based on sex, racial and ethnic origin, religion or belief, disability, age and sexual orientation.” It instructs the addressees (the EU organs) to combat discrimination by means of measures that, with regard to equal treatment, can eliminate any type of disadvantage. To this end, the EU organs are not granted any exemption from the ban on discrimination, which would itself be discriminatory, even if it might favour smaller or disadvantaged groups<sup>39</sup>. Accordingly, only supportive measures are permissible, such as the establishment of a European Union Agency for Fundamental Rights.<sup>40</sup> Article 10 TFEU sets out the same principles as Article 19 TFEU: the combating of discrimination and, as a result of that action, specific manifestations of the principle of equality.

“Without prejudice to the other provisions of the Treaties”, Article 19 TFEU empowers the Council to take appropriate action to combat discrimination based on disability. It presupposes a ban on discrimination, but such a ban can only have a binding effect for the measure taken by the member state when that measure is “within the limits of the powers conferred by [the Treaties] upon the Union”, especially in the case of the indirect implementation of EU law. If measures are taken that, for example, limit fundamental freedoms, reference must accordingly be made to Union rights and to the general principle of equality recognised as a general legal principle by the European Court of Justice (ECJ).<sup>41</sup>

When the EU organs enact rules containing measures against discrimination, a balance is normally struck between the need to combat discrimination and the legal rights of third parties (protected by contract or by fundamental rights legislation). This is subject to review by the ECJ inasmuch as the principle of proportionality also requires that a balance is struck between objectives and interests.<sup>42</sup> Measures must therefore have a legitimate purpose. They must be necessary, appropriate to their purpose and likely to achieve the desired objective.

As far as is known, the ECJ has so far not ruled on the question of barrier-free access to audiovisual content.

The Charter of Fundamental Rights of the European Union (CFREU)<sup>43</sup>, which came into force in 2009, constitutes an important development in the protection of fundamental rights in Europe, although it does not extend far beyond existing primary law, especially the fundamental rights developed as general legal principles by the ECJ. The provisions of Article 53 CFREU (“Level of protection”) govern the effects of the CFREU on the fundamental rights enshrined in Union law, international law and domestic law. According to this article, “Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as

---

38) Treaty on the Functioning of the European Union – consolidated version, OJ C 115/47 of 9 May 2008, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT>

39) Schwarze, EU-Kommentar, 3rd Edition 2012, p. 422.

40) <http://fra.europa.eu/en>.

41) Schwarze, EU-Kommentar, 3rd Edition 2012, pp. 492 ff.

42) Schwarze, EU-Kommentar, 3rd Edition, 2012, p. 498.

43) Charter of Fundamental Rights of the European Union of 14 December 2007, OJ C 303 p. 1, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12007P&from=EN> – Article 21(1): “Any discrimination based on any ground such as [...] disability [...] shall be prohibited”.

recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions."

The fundamental right enshrined in Article 21 CFREU ties in with Article 19(1) TFEU and Article 14 ECHR. Moreover, Article 21(1) CFREU contains a ban on discrimination with regard to certain personal attributes – including a disability – that unalterably affect the person concerned or can be changed only by him or her with difficulty. In contrast to Article 14 ECHR, Article 21(1) CFREU is applicable not only in the area of fundamental rights; as such it provides for the enjoyment of all rights free of any discrimination.<sup>44</sup>

Article 21(1) must be interpreted in conjunction with Article 26 CFREU, which protects "persons with disabilities" and emphasises their "independence". The intention is to ensure their "social and occupational integration" and their "participation in the life of the community". Possible ways of bringing about that integration include the provision of training opportunities and a guarantee of barrier-free access to the media. Article 26 CFREU is infringed if the Union limits the measures taken by member states to protect people with disabilities or if their situation is not taken into account when decisions are taken that have adverse effects. Such adverse effects may therefore be permissible if that situation is sufficiently taken into account and a careful balance is struck between the rights involved.<sup>45</sup>

### 3.2. Secondary law

In accordance with the above-mentioned provisions, the European Union considered the protection of human dignity and the promotion of the rights of people with disabilities and their integration when drafting secondary legislation.

The Audiovisual Media Services Directive (AVMSD) is the result of a political agreement between the Parliament, the Council and the Commission in accordance with the subsidiarity and proportionality principles enshrined in Article 5 TEU<sup>46</sup>. The power to adopt measures is explained in Recital 104 of the AVMSD.

The Contracting Parties recognise in Recital 46 of the AVMSD that the right of people with disabilities to participation in the social and cultural life of the Union and their integration is inextricably linked to the availability of accessible audiovisual media services.

When implementing measures under these provisions, a fair balance should be struck between this individual right, on the one hand and broadcasting freedom enshrined in Article 10 ECHR and Article 11 CFREU, on the other. Freedom of broadcasting focuses on audiovisual service providers' freedom to choose and schedule programmes, which could be seriously affected if states were to exert influence in this area. For this reason, the EU cannot impose a direct obligation on providers of audiovisual services; it can do no more than make an appeal (either direct or indirect) to the member states to facilitate barrier-free access for people with disabilities.<sup>47</sup>

This limited scope for action is taken into account in Article 7 AVMSD: "Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability."

The duty imposed in this article ("shall encourage") is much less binding on states in comparison to other provisions ("shall ensure"). The approach mentioned ("gradually" to make services accessible) refers to financial considerations on the one hand and to technical considerations on

44) Jarass, *Charta der Grundrechte der Europäischen Union*, Kommentar, 2nd Edition, 2013, p. 236.

45) Jarass, *Charta der Grundrechte der Europäischen Union*, Kommentar, 2nd Edition, 2013, p. 278.

46) Treaty on European Union of 13 December 2007, last amended by Article 1 of the Treaty of Lisbon, OJ 306 p. 1.

47) See Ukrow, "Article 3c AVMSD", in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 18, p. 882.

the other. The provision of the programmes of an audiovisual media service with subtitles or audio descriptions involves additional costs to the provider. When a programme is broadcast in analogue format, the introduction of the second audio programme may lead to a loss of quality, in particular from the perspective of viewers who do not suffer from hearing or visual impairments. However, digital television offers new and simple opportunities and considerably reduces any additional costs.

Member states are not obliged to ensure that media service providers take suitable steps to bring about barrier-free access, nor are they obliged to ensure that services are gradually made accessible to hearing- and visually impaired people. This interpretation leads to the conclusion that Article 7 AVMSD is not legally binding and is only politically binding. It is therefore unlikely that the ECJ can or will state that a member state has not met its obligations under Article 4 TEU, Article 256 TFEU and Article 4 AVMSD by failing to properly implement Article 7 AVMSD.<sup>48</sup>

As the wording of the rule is unclear, imprecise and not unconditional, no direct effect is attributed to Article 7 AVMSD and it cannot constitute a basis for a claim to state liability under EU law.<sup>49</sup>

### 3.3. Implementation of Article 7 AVMSD in the member states

Owing to the “soft law” character of Article 7 AVMSD, member states have only partly implemented the provision and have done so in different ways.

#### *Distinction between linear and non-linear media services*

The question of the technical prerequisites for receiving a television service needs to be answered before considering the requirement to provide barrier-free access. The courts have confirmed that a severely disabled tenant may install a satellite dish to realise his right to participation in cultural and social life, when the reception of digital stations from his home country is possible only via a dish mounted on the outside of the building.

In France and Poland, the provisions apply to **linear** media services only, whereas in Ireland only **non-linear** media services are regulated. Moreover, the verbs employed, such as “encourage”<sup>50</sup>, “are encouraged”<sup>51</sup> or “shall make accessible”<sup>52</sup>, are used differently.

In Germany, neither the *Rundfunkstaatsvertrag* (Interstate Broadcasting Agreement) nor the *Telemediengesetz* (Telemedia Act) provides for a legal obligation to provide subtitles or audio descriptions or to translate content into sign language. The *Landesmedienanstalten* (regional media authorities) are calling for improvements to the provisions of the Interstate Broadcasting Agreement in favour of barrier-free services. In September 2011 the Media Council of the Saarland Regional Media Authority unanimously passed a resolution in favour of barrier-free programmes on television and the internet and against the exclusion of people with disabilities and the elderly.

The public service broadcasters belonging to the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (Association of Public Broadcasting Corporations in the Federal Republic of Germany – ARD) and the second German channel *Zweites Deutsches*

48) See Ukrow, Article 3c AVMSD, in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 20, p. 882.

49) See Ukrow, Article 3c AVMSD, in: Castendyk/Dommering/Scheuer, *European Media Law*, para. 21, p. 882.

50) See Ar. 32 (6) of *Decreto Legislativo 31 luglio 2005, n. 177* (Italian Legislative Decree No. 177 of 31 July 2005) amended by Art. 5 (2) of *Decreto Legislativo 15 marzo 2010, n. 44 “Attuazione della direttiva 2007/65/CE relativa al coordinamento di determinate disposizioni legislative, regolamentari e amministrative degli Stati membri concernenti l’esercizio delle attività televisive”* (Italian Legislative Decree No. 44 of 15 March 2010), available at: <http://www.camera.it/parlam/leggi/deleghe/10044dl.htm>

51) See section 10(3)(k) of the amended Romanian Audiovisual Act No. 504/2002, available at <http://www.cna.ro/Legea-audiovizualului-nr-504-din-6023.html>

52) See section 11(1) of the Slovenian Audiovisual Media Services Act, available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAK06225>

*Fernsehen* (ZDF) offer these facilities on a voluntary basis. With regard to commercial broadcasters, the Conference of Regional Media Authorities (made up of the conference of committee chairs and the conference of directors) held on 20 November 2013 criticised a number of points, especially the fact that, “the two German families of TV stations with the broadest coverage, ProSieben-Sat.1 Media AG and Media Group, are still doing too little to develop their barrier-free programme schedules, thus failing to adequately live up to their social responsibility.” Other commercial stations always show the Bundesliga match hook-up and the top game on Saturdays with live subtitles.

The German *Filmförderungsgesetz* (Film Support Act)<sup>53</sup> provides for a fund for the support and production of German films of a specific (“programme-filling”) length. According to section 14a, the programme must last at least 79 minutes in order to benefit from financial support. Section 15 states that support for programme-filling films can be granted only once a final version of the film has been produced with a German audio description and with German subtitles for hearing-impaired people and at least two other conditions are met (for example, the storyline or the setting is German or from another EU member state, another EEA member state or Switzerland or the plot or setting deals with the lifestyles of minorities, with scientific topics or with natural phenomena).

The accessibility of television is promoted in other countries too. In Romania, for example<sup>54</sup>, a bill amending the Audiovisual Media Act was submitted to the Senate in March 2014. This requires the national TV stations to provide at least 30 minutes a day of sign-language interpretation and subtitling for news broadcasts and discussion and analysis of current political and economic issues. For their most important programmes, they must also provide a full translation or a summary in sign language as well as subtitles. Programmes particularly suitable for deaf and hearing-impaired people must be clearly identified both optically and acoustically.

In conclusion, in view of the different rules for linear and non-linear audiovisual media services it can be said that the rules for television are more specific and the obligations more stringent than for on-demand audiovisual media services. This accords with the graduated approach of the AVMSD.

#### *Distinction between public service and private broadcasters*

The member states have also imposed different obligations on public service and on commercial broadcasters. Generally speaking, the public service broadcasters’ remit to provide a basic service suggests that the extent of their tasks is broader in this connection and their obligations more onerous. The principle refers to the state’s duty, “to ensure a diverse, comprehensive and balanced range of media services in the interests of freedom of information and democracy”.<sup>55</sup> This principle has been developed by the case law of the Federal Constitutional Court in Germany. In France too, the state broadcasters have to fulfil a public remit. Under the terms of the broadcasting franchise (*cahiers des charges*), the state lays down the programme conditions that have to be met by each individual station. Although several states have as a result of this principle set out different rules for commercial and for public service broadcasters, the same rules apply to both sectors of the broadcasting system in Cyprus, for example.<sup>56</sup> Owing to the many different conditions and legal provisions prevailing in the member states, it is impossible to draw any general conclusion.

53) [http://www.gesetze-im-internet.de/bundesrecht/ffg\\_1979/gesamt.pdf](http://www.gesetze-im-internet.de/bundesrecht/ffg_1979/gesamt.pdf)

54) See Eugen Cojocariu, “Romania – Draft Proposals for Modification and Completion of Audiovisual Law”, IRIS 2014-2/31, available at: <http://merlin.obs.coe.int/iris/2014/2/article31.en.html>

55) Section 11 para. 2 and 3 of the *Rundfunkstaatsvertrag*.

56) Section 30B of the Cyprus Broadcasters Act, as amended, in conjunction with section 18C of the Cyprus Broadcasting Act, available at [http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/F71A8ECC327AC776C2257BDC002C2A72/\\$file/4132%20%204%209%202013%20%20PAR.%206ov%20%20pages%201061-1220.pdf](http://www.mof.gov.cy/mof/gpo/gpo.nsf/All/F71A8ECC327AC776C2257BDC002C2A72/$file/4132%20%204%209%202013%20%20PAR.%206ov%20%20pages%201061-1220.pdf)

*Requirements concerning the grant of licences*

In Portugal, the obligation to take into account the special needs of people with disabilities is laid down as part of the licence agreement entered into as part of the registration process. According to Article 51(2)(j) of the amended Television and On-demand Audiovisual Media Services Law<sup>57</sup>, it is incumbent upon the concessionaire to, “(e)nsure that people with special needs are able to follow broadcasts, including through subtitling, sign language, audio-description and other techniques deemed appropriate.” To this end, Article 34(3) of the law regulating access to and conduct of television broadcasting<sup>58</sup> provides for a multi-year timetable to be developed by the Portuguese regulator for all audiovisual media services (whether television or video on demand and whether supplied by a public service or commercial broadcaster). The same Article gives the Portuguese media regulator an additional task (in close co-operation with the National Institute for Rehabilitation and other facilities). The regulator must define a number of obligations regarding the accessibility of television services and on-demand media services for people with special needs. Moreover, the obligation to facilitate accessibility for people with disabilities is a precondition for the Portuguese public service broadcasters to be awarded a licence.

*Media regulators’ regulatory methods*

Owing to the lack of clarity of Article 7 AVMSD, a number of member states have instructed their **regulators** to draw up specific provisions.<sup>59</sup>

In Belgium, for example, in May 2011 the regulator of the French Community (*Conseil Supérieur de l’Audiovisuel*) adopted a Regulation on the accessibility of programmes for persons with sensory deficiencies.<sup>60</sup> This instrument applies to providers of audiovisual media services and contains obligations based according to annual revenues. For example, broadcasters with annual revenues of more than EUR 100 million must broadcast at least 1,000 programmes a year with subtitles, an audio description or in sign language. In addition, they should broadcast at least two feature films with an audio description and three feature films with an audio description in several languages, because this technology is already available from the relevant service providers. Other broadcasters, with annual revenues between EUR 10 million and EUR 100 million, must offer at least 200 hours of barrier-free programmes a year. Stations with annual revenues under EUR 10 million must show at least 50 hours of such programmes.

When laying down such obligations in the United Kingdom and checking whether requirements have been met, the media regulator Ofcom (Office of Communications) bases its decisions on audience market shares. It requires television broadcasters that achieve a market share between 0.05% and 1% to broadcast 30 minutes of programming presented in sign language each month between 7am and 11pm.<sup>61</sup>

An overview of the extent and relevant details of individual state regulations shows in particular that many member states have taken seriously the implementation of Article 7 AVMSD and, ultimately as a result of prompting from the regulatory authorities, are ensuring barrier-free access to media services.

---

57) Television and On-demand Audiovisual Media Services Law, available in English at <http://www.gmcs.pt/en/television-and-on-demand-audiovisual-media-services-law>

58) <http://www.anacom.pt/render.jsp?contentId=979660>

59) On the role played by broadcasting regulators, see Machet, Comparative background document, Round table on access to audiovisual media services for persons with disabilities, 37th EPRA Meeting, 8 July 2013, available at [http://epa3-production.s3.amazonaws.com/attachments/files/2202/original/accessibility\\_WG3\\_final\\_revised.pdf](http://epa3-production.s3.amazonaws.com/attachments/files/2202/original/accessibility_WG3_final_revised.pdf)

60) See *Règlement relatif à l’accessibilité des programmes aux personnes à déficience sensorielle* of 6 May 2011, available at [http://csa.be/system/documents\\_files/1534/original/CAV\\_20110506\\_reglement\\_accessibilite.pdf?1305100227](http://csa.be/system/documents_files/1534/original/CAV_20110506_reglement_accessibilite.pdf?1305100227). See also *Arrêté du Gouvernement de la Communauté française portant approbation du règlement du Collège d’avis relatif à l’accessibilité des programmes aux personnes à déficience sensorielle* of 15 September 2011, available at [http://csa.be/system/documents\\_files/1624/original/20110915\\_arrete\\_accessibilite.pdf?1318932704](http://csa.be/system/documents_files/1624/original/20110915_arrete_accessibilite.pdf?1318932704)

61) See Ofcom Code on Television Access Services, para. 13.



### III. Action plans in the European political arena

The Council of Europe has initiated various measures to promote inclusion. For example, the “Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015” was launched at the European Disability Conference in September 2006. The aim of the Action Plan is to ensure that people with disabilities are no longer regarded as welfare cases but as citizens with equal rights entitled to participate in community life. It provides a concrete set of measures to improve the quality of life of people with disabilities in Europe and calls on member states to take the necessary steps, “to ensure that people with disabilities can access broadcasting, films, theatre plays and other arts-related activities in accessible formats which may include captioning, subcript, audio description and sign language.”<sup>62</sup>

At the same time, the European Union promotes the active integration and unrestricted participation of people with disabilities in social life. In order to raise awareness in member states of the right of people with disabilities to be protected against discrimination and to be allowed to fully exercise their rights, 2003 was declared European Year of People with Disabilities.<sup>63</sup>

On 26 February 2014, the European Parliament approved the proposal for a directive on the accessibility of public sector bodies’ websites<sup>64</sup>. It lays down the rules according to which the member states are required to make the content of government websites accessible.

On 22 May 2013, the European Parliament adopted a resolution of the implementation of the AVMSD.<sup>65</sup> The resolution also emphasised the shortcomings of the AVMSD with regard to the accessibility of audiovisual media services for the elderly and people with disabilities. The report advocates rewording Article 7 AVMSD to include stronger and more binding language requiring media service providers to make their services accessible to these groups.

Also with regard to the AVMSD; the European Commission announced on 24 April 2013 the adoption of a Green Paper entitled “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”<sup>66</sup>. In it, the Commission analyses a number of values on which the regulation of audiovisual media services in Europe is based, emphasising such key values as freedom of speech, media pluralism, the promotion of cultural diversity and the protection of personal data, as well as the protection of consumers, including vulnerable groups such as minors and people with disabilities. It discusses the European regulatory framework, media freedom and pluralism, the protection of minors and accessibility for people with disabilities, and does so against the background of the key values mentioned. It also poses questions for public consultation, inter alia on complaints handling mechanisms and on whether additional standardisation efforts are needed for people with disabilities.<sup>67</sup>

---

62) Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, available at <https://wcd.coe.int/ViewDoc.jsp?id=986865>

63) Council Decision of 3 December 2001 on the European Year of People with Disabilities 2003 (2001/903/EC), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0903&from=EN>

64) European Parliament legislative resolution of 26 February 2014 on the proposal for a directive of the European Parliament and of the Council on the accessibility of public sector bodies’ websites (COM(2012)0721), available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0158+0+DOC+XML+V0//EN>

65) See <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0215+0+DOC+XML+V0//EN>

66) European Commission Green Paper “Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values”, Brussels, 24 April 2013, COM(2013) 231 final, available at [https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/convergence\\_green\\_paper\\_en\\_0.pdf](https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/convergence_green_paper_en_0.pdf)

67) De Beer R., European Commission – Green Paper on a Fully Converged Audiovisual World, available at <http://merlin.obs.coe.int/iris/2013/6/article5.en.html>

Independently of this, on 15 November 2010 the Commission launched the “European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe”.<sup>68</sup> The purpose of that Communication is to ensure that the targets set by the UN Disability Convention are implemented in the EU as a whole and that the interests of people with disabilities are taken into account in all relevant policy areas for which European organs are responsible. The Strategy’s predecessor was the Commission 2003–2010 Disability Action Plan (DAP). The aim of the Strategy is to empower people with disabilities in general provisions, legal rules and social life as a whole instead of viewing them in isolation. Various instruments are available for the development of measures that meet the needs of people with and without disabilities. Like the previous action plan, the Strategy is reviewed every two years. The European Disability Strategy 2010-2020 focuses inter alia on the following areas: accessibility, participation, equality, and education and training. For each of these areas it sets out concrete implementation measures.

#### IV. Conclusions

The analysis carried out here clearly shows that barrier-free accessibility is an important issue in respect of which it will be necessary not only to raise the awareness of political decision-makers, companies and society as a whole. In addition, those concerned must be made aware of the legal framework, even though it describes only basic obligations to act. Accessibility is an imperative precondition for the unrestricted enjoyment of human rights, but the involvement of, support for and co-operation of everyone concerned – government bodies, the private sector, local and regional authorities and stakeholders as well as people with disabilities and their family members – is required if this objective is to be achieved.

It must not be overlooked that people with disabilities not only draw society’s attention to their needs but are also capable of serving society with their own work and efforts, which requires unrestricted access to the audiovisual media. Those responsible in the relevant policy areas – including media policy – must therefore be urged to pay more attention to the needs of people with disabilities than they have up to now.

As European law is implemented on a national basis – in connection with the transposition of Article 7 AVMSD – member states’ individual legal rules differ with regard to their precision, their scope (predominantly broadcasting, to a lesser extent non-linear media services) and the nature of the obligations imposed on providers of media services. In addition to national legislation, sector-based guidelines play a key role in raising standards, since they have the ability to make strong reference to individual cases to describe the appropriateness of the standards to be observed by providers of audiovisual media. In spite of all the measures that have been pushed through by media regulators in particular, two important aspects make it difficult to implement Article 7 AVMSD: firstly, practical realities have to be taken into account (technical capacities and developments, suitable equipment and infrastructure and, above all, the costs of the measures required); secondly, there is a conflict of interests between viewers, service providers and regulatory authorities. Moreover, it remains unclear what sanctions can be imposed in the event of non-compliance.

Finally, at the international and European levels not only are declarations of intent made; in addition concrete steps are taken in the form of support programmes, action plans and effective strategies in order to guarantee accessibility to media and information for people with disabilities. This serves to ensure that all citizens can participate on an equal footing in democratic opinion-forming processes.

---

68) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 15 November 2010, “European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe” [COM(2010) 636 final – Not published in the Official Journal], available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0636:FIN:EN:PDF>