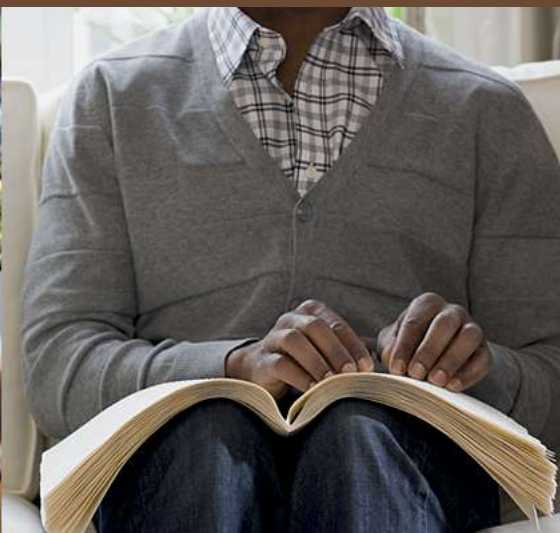# Accessibility of information, technologies and communication for persons with disabilities

Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities

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Accessibility of information, technologies and communication for persons with disabilities

Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities

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Introduction

Situating accessibility in the Council of Europe Disability Strategy 2017-2023

This study[1] contributes to Council of Europe initiatives to support implementation of its Disability Strategy 2017-2023 – Human Rights: a reality for all ("the Strategy"), adopted by the Committee of Ministers of the Council of Europe in November 2016.[2] Through this Strategy, Council of Europe initiatives will be harnessed to support the work and activities carried out by member States to implement the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)[3] as well as relevant Council of Europe standards. The overall goal is to achieve equality, dignity and equal opportunities for persons with disabilities.

The Strategy identifies five rights-based priority areas: equality and non-discrimination; awareness raising; accessibility (with a "special focus … given to access to information, information technologies and the communication sector");[4] equal recognition before the law; and freedom from exploitation, violence and abuse. Accessibility is thus itself one of the priority areas and it is also embedded in the four other priority areas as none of them can be fully progressed without it.

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1. The terminology used in this report (e.g. "persons with disabilities") has been used in order to ensure consistency with Council of Europe style.
2. Council of Europe Disability Strategy 2017-2023 – Human rights: a reality for all, available at: www.coe.int/en/web/disability/strategy-2017-2023.
3. United Nations Convention on the Rights of Persons with Disabilities (2006), available at: www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx.
4. Council of Europe Disability Strategy 2017-2023, para. 56.

Accessibility is furthermore included within all five of the Strategy's cross-cutting themes: participation, co-operation and co-ordination; universal design and reasonable accommodation; gender equality perspective; multiple discrimination; and education and training. Its close connection with the universal design and reasonable accommodation theme is particularly noteworthy. The Strategy enunciates that:

> Accessibility challenges can be avoided or greatly diminished through intelligent and not necessarily costly applications of … universal design, which benefits everyone. In addition to necessary accessibility measures related to groups, individual barriers can further be overcome by individually tailored reasonable accommodation.[5]

As will be explained in the section of this study on "Accessibility in the UNCRPD", failure to provide reasonable accommodation constitutes disability discrimination contrary to Article 5 of the UNCRPD (Equality and non-discrimination) but accessibility barriers will, in some circumstances, also amount to unlawful disability discrimination.

The UN Special Rapporteur on the rights of persons with disabilities highlights accessibility as one of three key components to establishing disability-inclusive policies, alongside a non-discrimination framework which ensures the provision of reasonable accommodation and the availability of services and the provision of assistive devices.[6] Persons with disabilities may experience different types of barriers to accessibility and additional barriers can be the result of multiple discrimination of intersectional discrimination. The Council of Europe Disability Action Plan 2006-2015 recognised the specific barriers experienced by particular groups of persons with disabilities such as women and girls, persons with disabilities who have high support needs, children and young persons with disabilities, older persons,[7] persons from minorities and migrants.[8] The Council of Europe Disability Strategy 2017-2023 identifies the

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5. Ibid., para. 36. The same point is made in UN Human Rights Council (2016), Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities, A/HRC/34/26, para. 33.
6. UN Special Rapporteur of the Human Rights Council on the rights of persons with disabilities (2016), Rights of persons with disabilities.
7. See also Council of Europe Recommendation CM/Rec(2009)6 of the Committee of Ministers to member states on ageing and disability in the 21st century: sustainable frameworks to enable greater quality of life in an inclusive society.
8. 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).

fight against multiple discrimination as one of its five cross-cutting themes.[9] The particularity of the experience of discrimination by persons with disabilities is also stressed by the UNCRPD and the UN Committee on the Rights of Persons with Disabilities (UNCRPD Committee) and its various General Comments,[10] as well as by the UN Special Rapporteur on the rights of persons with disabilities. The UN Special Rapporteur has, for instance, noted the existence of significant barriers in accessing information and communications for people who are blind or deaf, people who have intellectual disabilities and people who are autistic.[11] It is therefore essential that persons with disabilities should not be treated as a homogenous group.

The importance of accessibility is explicitly recognised in the Council of Europe Strategy. It is also evident (implicitly) in Article 15 of the European Social Charter (Revised), which emphasises the need for measures "to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure" to ensure the right of persons with disabilities to independence, social integration and participation in the life of the community.[12]

Accessibility is a precondition for the enjoyment of human rights for persons with disabilities.[13] Indeed, without it, rights such as rights to education, work, health, freedom of expression, voting and holding political office are placed beyond the reach of many persons with disabilities.[14] Even the possibility of accessing justice by seeking redress and obtaining remedies for infringement of rights would be impeded. As mentioned by the UNCRPD Committee, independent systems must be set up:

> to monitor the appropriateness and effectiveness of accommodations and provide safe, timely and accessible mechanisms for redress when students with disabilities and, if relevant, their families, consider that they have not been adequately provided or have experienced discrimination.[15]

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9. Council of Europe Disability Strategy, 2017-2023. The other cross-cutting themes are: Participation, co-operation and co-ordination; Universal design and reasonable accommodation; Gender equality perspective; Education and training.
10. See for example, UNCRPD Committee (2016), General Comment No. 3.
11. UN Special Rapporteur of the Human Rights Council on the rights of persons with disabilities (2016), para. 36.
12. European Social Charter (Revised) (1996), Article 15.
13. Council of Europe Disability Strategy, 2017-2023, para. 55.
14. For the same point, specifically in the context of the accessibility of information and ICTs, see UNCRPD Committee, General Comment No. 2, para. 21.
15. UNCRPD Committee (2016), General Comment No. 4, para. 31.

According to the 2011 World Report on Disability of the World Health Organization and the World Bank:

> A lack of accessible communication and information affects the life of many [persons with disabilities]. Individuals with communication difficulties, such as hearing impairment or speech impairment, are at a significant social disadvantage, in both developing and developed countries. This disadvantage is particularly experienced in sectors where effective communication is critical – such as those of health care, education, local government, and justice.[16]

It is also important to understand accessibility as "a dynamic concept" which "requires periodic regulatory and technical adjustments".[17]

As Ron McCallum, the former Chair of the UNCRPD Committee pointed out:

> We cannot think of anything more crucial for persons with disabilities than accessibility.[18]

It is therefore unsurprising that accessibility has been a Council of Europe concern for many years.[19] In 2009, for example, the Committee of Ministers recommended that member states integrate principles of universal design into their policy, legislation and practice.[20]

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16. World Health Organization and World Bank (2011), World Report on Disability, paras. 170-172.
17. UNCRPD Committee, General Comment No. 4, para. 22.
18. UNCRPD Committee (2010), McCallum R., Opening remarks at the Day of General Discussion on "Accessibility".
19. In 1993, the Committee on the Rehabilitation and Integration of People with disabilities commissioned a study on "Accessibility: principles and guidelines – Adaptation of buildings in an accessible built environment", Committee of Experts on the Training of Personnel other than Health Care Personnel concerned with Rehabilitation (Architects and Town Planners). See also Council of Europe Committee of Ministers, Recommendation No. R (92) 6 to member States on a coherent policy for people with disabilities.
20. Recommendation CM/Rec(2009)8 of the Committee of Ministers to member States on achieving full participation through Universal Design; See also Council of Europe Committee of Ministers (2007), Resolution ResAP(2007)3, Achieving full participation through Universal Design; Resolution ResAP(2001)1 on the introduction of the principles of universal design into the curricula of all occupations working on the built environment; Resolution ResAP(2001)3 towards full citizenship of persons with disabilities through inclusive new technologies.

Purpose and structure of this study

This study is part of a series of similar Council of Europe studies for each of the priority areas of the Council of Europe Disability Strategy 2017-2023. The studies aim to highlight and expand information, evidence, data and good practice on the priority areas and to provide concrete suggestions to guide implementation.[21]

Following this introduction, the paper will be divided into two main sections. The first part will analyse the nature of relevant UNCRPD obligations. These provide an essential backdrop to Council of Europe commitments in this area and help to frame implementation plans and activities. The second focuses on a range of issues fundamental to the effective implementation of the commitment to enhancing accessibility. Following this, after a short conclusion, a summary checklist of considerations relevant to achieving accessibility in line with the Disability Strategy will be set out, together with a list of useful resources relevant to the topic.

21. Without prejudice to the monitoring of the implementation of the UNCRPD by the Committee on the Rights of Persons with Disabilities and its parties-specific recommendations, this study aims at identifying ways and means with which to implement Article 9 of the UNCRPD on Accessibility, a necessary precondition for persons with disabilities to be able to enjoy human rights actively, participate and contribute fully and equally to society, be independent and make choices about all aspects of their lives.

Accessibility in the UNCRPD

As explained above, accessibility is closely intertwined with the effective implementation and the full enjoyment of all the rights set out in other articles of the UNCRPD. Its importance is reiterated by the UNCRPD Committee in each of its General Comments and by the Council of Europe Disability Strategy 2017-2023.

Article 9

Preamble

(v) Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling persons with disabilities to fully enjoy all human rights and fundamental freedoms.

Article 9 – Accessibility

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, *inter alia*:

(a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;

(b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

(a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;

(b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;

(c) Provide training for stakeholders on accessibility issues facing persons with disabilities;

(d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;

(e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;

(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Article 9, which is entitled "Accessibility", is the subject of the UNCRPD Committee General Comment No. 2. As the Council of Europe Disability Strategy acknowledges, Article 9 applies – but is not confined – to information and communications, including information and communications technologies (ICT) and systems. The fact that accessibility to information and ICT is positioned together with accessibility of the physical environment is itself significant, as the Global Initiative for Inclusive Information and Communication Technologies (G3ict), makes clear in the opening words of its Digital Accessibility and Inclusion Index:

> A very innovative component of the [UN] CRPD relates to dispositions concerning ICTs. … Indeed, Article 9 defines information and communication technologies (ICT) accessibility as an integral part of Accessibility Rights, on par with accessibility to the physical environment and to transportation.[22]

22. G3ict (2011), Convention on the Rights of Persons with Disabilities, 2010 ICT Accessibility Progress Report, p. 5.

Article 9(1)(b) states that the measures to be taken apply, *inter alia*, to "information, communications and other services, including electronic services and emergency services"; and elsewhere in the article reference is made to "access to information"[23] and to "information and communication technologies and systems"[24] – a phrase which, it is explained, includes the Internet.[25] States Parties must also ensure that accessibility measures are taken by private entities which offer facilities and services open or provided to the public.[26]

In relation to information and ICT, Article 9 sets out a range of obligations. For convenience, these can be broken down into two main (overlapping) types – obligations to ensure accessibility on the one hand and obligations to promote awareness of and access to accessible technologies on the other. Obligations to ensure accessibility are located both in Article 9(1) and in Article 9(2). The former provides that "States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, [as well as to] information and communications, including ICTs". It also specifies that appropriate measures include the "identification and elimination of obstacles and barriers to accessibility". Other important measures which must be taken in order to ensure accessibility, mentioned in Article 9(2), are the development and "implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public";[27] as well as the provision of "training for stakeholders on accessibility issues".[28] In addition, Article 9(2) makes it clear that measures must be taken to ensure the accessibility of information connected with the use of buildings or facilities open to the public (for example signage).[29]

Obligations to promote the accessibility of information and ICTs are set out in the final three paragraphs of Article 9(2). These read as follows:

(f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;

(g) Promote access for persons with disabilities to new information and communication technologies and systems, including the Internet;

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23. UNCRPD, Article 9(2)(f).
24. UNCRPD, Article 9(2)(g) and (h). See also Article 9(1).
25. UNCRPD, Article 9(2)(g).
26. UNCRPD, Article 9(2)(b).
27. UNCRPD, Article 9(2)(a).
28. UNCRPD, Article 9(2)(c).
29. UNCRPD, Article 9(2)(d) and (e). See also UNCRPD Committee, General Comment No. 2, para. 20.

(h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Other accessibility-related UNCRPD articles

Accessibility is one of the "general principles" of the UNCRPD set out in Article 3. This gives it cross-cutting relevance to all the substantive rights of the convention. However, several provisions are particularly noteworthy for present purposes, either because of their pertinence to the accessibility of information, information technologies and the communications sector (Articles 21 and 30 in particular); or because of their contextual relevance to accessibility in the Council of Europe Disability Strategy.

Article 21, on "Freedom of expression and opinion, and access to information", provides that "States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice". The following are provided by way of a non-exhaustive list of examples of such measures:

(a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

(b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

(c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

(d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

(e) Recognizing and promoting the use of sign languages.

Thus, in the words of the UNCRPD Committee, "Articles 9 and 21 intersect on the issue of information and communication".[30]

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30. UNCRPD Committee, General Comment No. 2, para. 38.

Article 30, on Participation in cultural life, recreation, leisure and sport, also has particular synergy with Article 9 in relation to information, information technologies and the communications sector. Thus, Article 30(1) imposes an obligation on States Parties to:

> take all appropriate measures to ensure that persons with disabilities:
>
> (a) Enjoy access to cultural materials in accessible formats; [and]
>
> (b) Enjoy access to television programmes, films, theatre and other cultural activities, in accessible formats.

Also worthy of note, particularly in connection with the "promotion" obligations of Article 9, are the following obligations set out in Article 30(3) and (4).

> (3) States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials.
>
> (4) Persons with disabilities shall be entitled, on an equal basis with others, to recognition and support of their specific cultural and linguistic identity, including sign languages and deaf culture.

Beyond a specific focus on information, communication and ICT, there is a strong relationship and overlap between accessibility (within Article 9 of the UNCRPD) and non-discrimination (within Article 5 of the UNCRPD), both of which are required in order to achieve disability equality. A more detailed analysis of this relationship will be provided in the next part.

Another provision with which accessibility has a close (and complex) relationship is Article 24 on inclusive education. The two-way nature of this relationship is neatly summed up in the following words of the UNCRPD Committee:

> Modes and means of teaching should be accessible and teaching should be conducted in accessible environments. The whole environment in which students with disabilities learn must be designed in such a way as to foster inclusion. Inclusive education is also a powerful tool for the promotion of accessibility and universal design.[31]
>
> There is also an important, and often overlooked, connection and interlinkage between accessibility and the right to equal recognition before the law under Article 12 of the UNCRPD.[32] Accessibility and universal design will be essential to

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31. Ibid., para. 49.
32. For more information, see the Council of Europe study on equal recognition before the law of persons with disabilities (2017).

enabling many persons with disabilities to exercise their legal capacity – alongside reasonable accommodation and the development of mechanisms to provide support with the making of legally relevant decisions. According to the UNCRPD Committee, states should introduce obligations on: private and public actors, such as banks and financial institutions, to provide information in an understandable format or to provide professional sign language interpretation – in order to enable persons with disabilities to perform the legal acts required to open a bank account, conclude contracts or conduct other social transactions. Support can also constitute the development and recognition of diverse, non-conventional methods of communication. States Parties must review their laws and practices to ensure that the right to legal capacity and accessibility are being realized.[33]

Finally, reference should be made to the connection between accessibility and the general obligations contained in Article 4 of the UNCRPD. According to Article 4(1)(f), States Parties agree to:

undertake or promote research and development of universally designed goods, services, equipment and facilities … which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines.

Further, according to Article 4(1)(g) and (h) States Parties guarantee:

(g) To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communication technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost.

(h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities.

Terminology and meanings

Universal design

The term "accessibility" is not defined in the UNCRPD. "Universal design" and "Reasonable accommodation", by contrast, are defined in Article 2, as follows:

"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without

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33. UNCRPD Committee (2014), General comment No. 1, paras. 17 and 37.

the need for adaptation or specialized design. "Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

"Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.

Information and communications technologies (ICTs)

This phrase is used by various accessibility-related provisions of the UNCRPD (discussed in the previous section) in connection with the scope of obligations to ensure and promote accessibility. It is not a term which is defined in the UNCRPD itself. However, in its General Comment No. 2, the UNCRPD Committee explains that:

> While different people and organizations understand differently what information and communications technology (ICT) means, it is generally acknowledged that ICT is an umbrella term that includes any information and communication device or application and its content. Such a definition encompasses a wide range of access technologies, such as radio, television, satellite, mobile phones, fixed lines, computers, network hardware and software."[34]

Article 2 of the convention gives some examples of what is included in the term "communication":

> "Communication" includes 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.

Relationship between the right to accessibility and the right to be free from discrimination

The UNCRPD Committee has drawn attention to the connection between accessibility and non-discrimination which, as set out in Articles 5 and 2 of the UNCRPD, includes a right to reasonable accommodation. In its General Comment No. 2, it notes that denial of access to information and communication technologies "should be viewed in the context of discrimination."[35] Similarly, in its General Comment No. 4, on inclusive education, it notes that:

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34. UNCRPD Committee, General Comment No. 2, para. 5.
35. UNCRPD Committee, General Comment No. 2, para. 23.

> The right to non-discrimination includes the right not to be segregated and to be provided with reasonable accommodation and must be understood in the context of the duty to provide accessible learning environments and reasonable accommodation.[36]

It is clear from General Comment No. 2 that at least some forms of accessibility barrier should be treated as disability discrimination and should therefore be made unlawful by States Parties.

However, the General Comment also emphasises that the removal of some forms of accessibility barrier will need time, resource and planning. In such situations, at least during the necessary transition or implementation phase, lack of accessibility should, presumably, not of itself constitute unlawful disability discrimination[37] – although a failure to provide reasonable accommodation to a person with disabilities (who would otherwise be excluded or disadvantaged by the accessibility barrier) would do so.

Drawing on guidance provided in the General Comment, a number of important distinctions between UNCRPD accessibility and reasonable accommodation duties may be identified. Firstly, accessibility is an "ex ante" (or anticipatory) obligation, a general accessibility duty, whereas reasonable accommodation is an "ex nunc" (or reactive/responsive) obligation.[38] This means that accessibility obligations, unlike reasonable accommodation obligations, operate regardless of whether a particular individual has encountered a barrier. As the International Labour Organization has explained (in the context of employment):

> Reasonable Accommodation is normally viewed as an individualized adjustment to the working environment in response to the specific requirements of a worker. Whereas accessibility entails taking general measures in anticipation of the needs of a range of workers, including those who may be expected to work for the company in the future, reasonable accommodation will typically be a response to an individual request.[39]

Secondly, accessibility is concerned with tackling barriers for groups of the population, here persons with disabilities, and thus requires collaboration

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36. UNCRPD Committee, General Comment No. 4, para. 13.
37. Although there is a suggestion in para. 34 that all forms of denials of access will constitute disability discrimination.
38. UNCRPD Committee, General Comment No. 2, paras. 25 and 26.
39. International Labour Organization (2016), "Promoting diversity and inclusion through workplace adjustments: a practical guide", p. 26. See also, Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities, para. 33.

with organisations of persons with disabilities[40] – whereas reasonable accommodation is concerned with tackling a disadvantage experienced by a particular individual by finding a solution which takes into account that individual's "dignity, autonomy and choices".[41] Thirdly, accessibility obligations, unlike reasonable accommodation obligations, are not constrained by notions of "reasonableness" or "undue" or "disproportionate" burden.[42] Fourthly, a failure to ensure accessibility will not necessarily constitute disability discrimination whereas a failure to provide reasonable accommodation will by definition do so.[43] As highlighted by the UN Special Rapporteur on the rights of persons with disabilities, this is due to the fact that "the right to non-discrimination is not subject to progressive realization".[44] The duty to provide reasonable accommodation is immediately applicable while the standards of accessibility are implemented gradually.[45]

Whilst the conceptual differences between accessibility and reasonable accommodation are important, so are the practical synergies, complementary and reinforcing tendencies (and opportunities) between them. Thus, the more accessibility is built into the design of a service or system, the less likely it is that an individual with disability will need adjustments by way of reasonable accommodations. Further, the need to provide an individual with a reasonable accommodation might well have the effect of hastening accessibility measures which will benefit persons with disabilities generally and not just the person concerned – an issue which will be discussed more fully below.

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40. UNCRPD Committee, General Comment No. 2, para. 25.
41. Ibid., para. 26.
42. Ibid., para. 25.
43. See the definition of "discrimination on the basis of disability" in Article 2 of the UNCRPD, which includes denial of reasonable accommodation.
44. UN Special Rapporteur, UNCRPD Committee, General Comment No. 2, para. 25.
45. UNCRPD Committee, General Comment No. 4, paras. 29 and 31.

Achieving accessibility: Key considerations for governments and other organisations

Involving organisations of persons with disabilities

Unsurprisingly, given the unprecedented role played by civil society (and in particular organisations of persons with disabilities) in the drafting of the UNCRPD, it is a requirement that States Parties "closely consult with and actively involve persons with disabilities, through their representative organizations" in "the development and implementation of legislation and policies to implement the … Convention".[46] As General Comment No. 2 stresses, accessibility is concerned with groups rather than individuals and therefore organisations of persons with disabilities should be involved in and consulted on the development of accessibility standards.[47] However, the UNCRPD Committee identifies as a "common challenge" the "insufficient involvement of persons with disabilities and their representative organizations in the process of ensuring access to the physical environment, transport, information and communication".[48] Organisations of persons with disabilities have important roles to play in connection with accessibility initiatives. In particular, their expertise and experience will be relevant to the identification of accessibility barriers; the design of new accessible and barrier-free products and systems;[49] and to holding governments and others accountable in the event of continued exclusion. Because of the particular impact of accessibility barriers on persons with disabilities, the voice of their representative organisations is a distinctive one with which the UNCRPD requires States Parties to engage. However, enhancing accessibility also benefits other people in society and achieving it requires

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46. UNCRPD, Article 4(3).
47. UNCRPD Committee, General Comment No. 2, para. 25.
48. Ibid., para. 10.
49. See generally, on the importance and potential of strong user involvement in this context, G3ict (2015), Burger D. and Durand K. (eds), "User-driven e-Accessibility".

technical expertise and awareness. Accordingly, consultative or monitoring bodies set up to focus on accessibility issues may helpfully bring together organisations of persons with disabilities and other types of stakeholder.

"**In France**,[50] an Interministerial Observatory on Accessibility and Universal Design was established in 2010.[51] It was charged with the role of seeking, recording, evaluating and disseminating examples of good practice in accessibility and universal design. The Observatory has a membership of 57 which includes representatives of different territorial authorities, the Government, organisations of persons with disabilities, accessibility professionals and experts and economists. It is chaired by a senator and provided with secretariat support from the general secretary of the Interministerial Committee on disability.[52] In 2011, this Observatory compiled a report for the Prime Minister, which assessed the extent to which the requirements of the 2005 law had been achieved – indicating that in many respects (particularly relating to television) good progress had been made but highlighting a number of other respects (including websites) where targets were in danger of not being met by the specified deadlines."[53]

Strategic commitment and ongoing monitoring

The UNCRPD Committee has attached considerable importance to the establishment of effective plans and strategies for tackling accessibility and to the resourcing of mechanisms for monitoring progress. In its words:

> States Parties should adopt action plans and strategies to identify existing barriers to accessibility, set time frames with specific deadlines and provide both the human and material resources necessary to remove the barriers. Once adopted, such action plans and strategies should be strictly implemented. States Parties should also strengthen their monitoring mechanisms in order to ensure accessibility and they should continue providing sufficient funds to remove barriers to accessibility and train monitoring staff. As accessibility standards are often implemented locally, continuous capacity-building of the local authorities responsible for monitoring implementation of the standards is of paramount

50. This example is an extract from Academic Network of European Disability Experts (2012), Lawson A., "Maximising the impact and effectiveness of accessibility measures for goods and services: learning from national experience", section 2.1.2.
51. French Prime Minister (2010), Decree on the establishment of an interministerial observatory on accessibility and universal design.
52. Ministry of Social Affairs and Health, OBIAÇU.
53. OBIAÇU (2011), Report to the Prime Minister.

importance. States Parties are under an obligation to develop an effective monitoring framework and set up efficient monitoring bodies with adequate capacity and appropriate mandates to make sure that plans, strategies and standardization are implemented and enforced.[54]

As part of these strategies or plans, "States Parties should clearly prescribe the duties of the different authorities (including regional and local authorities) and entities (including private ones) that should be carried out in order to ensure accessibility." "States Parties should also prescribe effective monitoring mechanisms to ensure accessibility and monitor sanctions against anyone who fails to implement accessibility standards."[55] There should be "a legislative framework with specific, enforceable, time-bound benchmarks for monitoring and assessing the gradual modification and adjustment by private entities of their previously inaccessible services into accessible ones".[56] The lack of effective and adequately resourced monitoring mechanisms was, however, identified by the committee as a "common challenge" in 2014.[57]

Accessibility strategies should also take account of the important distinction, drawn by the UNCRPD Committee, "between the obligation to ensure access to all newly designed, built or produced objects, infrastructure, goods, products and services" on the one hand, and the obligation to remove barriers and ensure access to the existing physical environment and existing transportation, information and communication, and services open to the general public" on the other.[58] For newly designed structures, products and services, the obligation has immediate effect – meaning that States Parties must take measures (including the development and promulgation of accessibility standards and the promotion of research) to ensure that they are accessible from the outset. This integration and planning will enlarge the range of customers at minimal cost and avoid potential additional costs to make them accessible post-production.

> The strict application of universal design to all new goods, products, facilities, technologies and services should ensure full, equal and unrestricted access for all potential consumers, including persons with disabilities, in a way that takes full account of their inherent dignity and diversity. ... Persons with disabilities and other users should be able to … access information and communication. … Accessibility of information and communication, including ICT, should also

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54. UNCRPD Committee, General Comment No. 2, para. 33.
55. Ibid., para. 24.
56. Ibid., para. 30.
57. Ibid., para. 10.
58. Ibid., para. 24.

be achieved from the outset because subsequent adaptations to the Internet and ICT may increase costs. It is therefore more economical to incorporate mandatory ICT accessibility features from the earliest stages of design and production.[59]

For existing goods, facilities and services, by contrast, the obligation "is to be implemented gradually"[60] – meaning that "barriers should be removed in a continuous and systematic way, gradually yet steadily".[61] This will nevertheless require, in the "short to mid-term", the carrying out in an "efficient manner" of an "analysis of the situation to identify the obstacles and barriers that need to be removed".[62] In addition, as explained above, the General Comment indicates that states parties "should establish definite time frames and allocate adequate resources for the removal of existing barriers".[63]

For governments, comprehensive accessibility strategies and plans should address a wide range of matters. These include the accessibility of government information and facilities; public functions (such as emergency services, policing, planning and the public realm; elections, social protection); any services available to the public, whether delivered by public or private providers; and also, accessibility barriers to the employment of persons with disabilities (in ICT as well as in physical infrastructure or transport). All persons with disabilities must be considered – including persons with learning difficulties, who might require easy-read formats and other accessibility features;[64] persons with impairments affecting manual dexterity, other physical functioning or speech, for whom certain standard types of ICT might not be accessible; and persons with sensory impairments, for whom the web, ICT and information and communications in other contexts may not be accessible.[65]

Further, although the focus of this study is information, communication and ICT, it should not be forgotten that physical accessibility is also a critical issue (for example in areas such as the built environment and transport) which would also need to be included in comprehensive accessibility plans or

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59. Ibid., paras. 15 and 21.
60. Ibid., para. 24.
61. Ibid., para. 27.
62. Ibid., para. 27.
63. Ibid., para. 24.
64. For extensive and interesting analysis relating to the web, see Blanck P. (2014), *eQuality: the struggle for web accessibility by persons with cognitive disabilities*, Cambridge University Press.
65. See Power C., Freire A., Petrie H. and Swallow D. (2012), "Guidelines are only half of the story: accessibility problems encountered by blind users on the web".

strategies. In addition, account should be taken of specific barriers associated with multiple (or intersectional) discrimination. For example, women and girls with disabilities may encounter accessibility barriers which prevent them from accessing sexual and reproductive healthcare services (contrary to Articles 25 and 23 of the UNCRPD, as well as Articles 9 and 5). These might take the form of inaccessible information or communication systems, or inaccessible transport systems buildings, facilities, equipment, or ICT. Such barriers might also prevent women and girls with disabilities accessing services to support victims of domestic or other violence, abuse, or exploitation (contrary to Article 16).[66] Indeed, in its General Comment No. 3, the UNCRPD Committee drew attention to the way in which the deliberate removal or denial of accessibility features can amount to a form of exploitation, violence or abuse, for example "the removal or control of communication aids and the refusal to assist in communicating; the denial of … accessibility by, for example, removing or destroying accessibility features such as ramps".[67]

Countries which have adopted relatively comprehensive accessibility or universal design strategies include France[68] and Norway.[69] More commonly, however, it appears that accessibility is embedded in wider disability strategies[70] – as it is indeed in the Council of Europe Disability Strategy and the European Commission European Disability Strategy.[71] There are also examples of countries adopting e-accessibility strategies and broader e-inclusion strategies.

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66. For more information, see the Council of Europe study on freedom from exploitation, violence and abuse of persons with disabilities (2017). See also Article 16 of the UNCRPD; and CEDAW Committee (1991), General Recommendation No. 18, Women with disabilities, contained in document A/46/38, as well as the Istanbul Convention (2011) which includes disability as a ground for non-discrimination in its Article 4 and refers to the UNCRPD in its Preamble.
67. UNCRPD Committee, General Comment No. 3, para. 31.
68. French legislation (2005), Equal rights and chances, participation and citizenship of persons with disabilities.
69. Norwegian Ministry of Children and Equality (2009), The Norwegian Government's action plan for universal design and increased accessibility 2009-2013. See also the 2004 Standard Norway's action plan for universal design in standardisation.
70. See generally Flynn E. (2011), *From rhetoric to action: implementing the UN Convention on the Rights of Persons with Disabilities*, Cambridge University Press.
71. European Commission (2010), European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636 final.

"In 2010, the … Department for Business Innovation and Skills [of the **British Government**] launched an 'eAccessibility Action Plan' (to be updated quarterly) and ten core principles of inclusive web design (adopted by the Department for Culture, Media and Sport, DCMS). In 2011, the DCMS set up an eAccessibility Forum, made up of experts from government, industry and voluntary organisations. This aims to ensure that more inclusive services are developed. The Forum is responsible for implementing the 'eAccessibility Plan'."[72]

"In 2011, the Government of **'The former Yugoslav Republic of Macedonia'** adopted the National Strategy for e-inclusion with a main priority for 'improvement of the internet availability for [persons] with disabilities'. This includes a project initiative in 2012 to begin drafting a system of speech synthesis for blind users in the Macedonian language, in co-operation between the Ministry for Information Society and Administration, the Association of the Blind and the Faculty of Information Technologies and Computer Engineering."[73]

Sector-specific strategies or action plans also play an important role. In the communications sector, a number of significant initiatives to plan strategically for accessibility of broadcasting and media can be identified.[74] In many European Union (EU) countries, EU law and policy has acted as an important catalyst and support. Thus, the Audiovisual Media Services Directive of 2007 required that "Member States … encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to [persons] with a visual or hearing disability."[75]

In addition, the Radio and Telecommunications Terminal Equipment Directive[76] requires that relevant equipment (to be determined by the Commission) is designed so as to enable persons with disabilities to use it without the need

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72. ANED, Disability Online Tool of the Commission. See also, UK Department for Culture, Media & Sport (2011), "The eAccessibility action plan: making digital content accessible by everyone".
73. ANED, Disability Online Tool of the Commission.
74. See further Varney E. (2013), *Disability and information technology: a comparative study in media regulation*, Cambridge University Press.
75. European Parliament and Council (2007), Audiovisual Media Services Directive 2007/65/EC, Article 3c. See also Directive 2010/13/EU, Article 7.
76. European Parliament and Council (1999), Radio and Telecommunication Terminal Equipment (R&TTE) Directive 1999/5/EC.

for substantial adaptation. The updated Users' Rights Directive[77] recognises that users with disabilities have rights to "equivalent access" to the level and quality of service enjoyed by persons without disabilities and promotes the use of European standards to achieve accessibility of electronic communications services.

Developments in **France** provide a useful example of attempts to develop a strategy for enhancing disability equality in the broadcasting sector. Accessibility requirements were laid down in the laws of 2005[78] and 2009.[79] Under these laws, broadcasters were required to make programmes accessible to persons with hearing and visual impairments over a five-year period.

The Broadcasting Standards Council (the industry regulator) reports to parliament on progress made towards achieving the accessibility targets and also consults the National Advisory Council of Persons with Disabilities on an annual basis. The Council appears to have played an active role in promoting accessibility within the industry. It contributed to the development of Standards on Subtitling and used its website to publish guidance on accessible broadcasting.[80] In addition, it attempted to heighten the profile of accessibility in the market by asking television set manufacturers to give priority to subtitles for persons with hearing impairment despite additional demands for other subtitling, for example language.[81]

To conclude this section, it is worth noting that government initiatives to promote or require accessibility will fail unless action is also taken by private organisations, companies and employers. The incorporation of accessibility considerations into long-term planning is essential. As the International Labour Organization mentions in its practical guide to promoting diversity and

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77. European Parliament and Council (2009), Directive 2009/136/EC amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No. 2006/2004 on co-operation between national authorities responsible for the enforcement of consumer protection laws.
78. French legislation (2005), Equal rights and chances, participation and citizenship of persons with disabilities.
79. French Parliament (2009), Law concerning audiovisual communication and the new public television service.
80. French Superior Council of Audiovisual, Accessibility of programmes.
81. This example is taken from Academic Network of European Disability Experts (2012), Lawson A., "Maximising the impact and effectiveness of accessibility measures", section 5.2.

inclusion through workplace adjustments: "Accessibility implies strategic planning by companies in advance, and on a continuous basis."[82]

Accessibility standards and guidelines

As explained in the section of this study on "Accessibility in the UNCRPD", Article 9(2)(a) of the UNCRPD specifies that States Parties must take appropriate measures to:

> Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.

Furthermore, under Article 4(1)(f), there is a requirement "to promote universal design in the development of standards and guidelines" – which emphasises the importance of incorporating and mainstreaming universal design and accessibility considerations into standards dealing with matters other than accessibility.

In one of the earliest complaints of violations (in the form of "individual communications") to be brought before the UNCRPD Committee,[83] Hungary was found to have taken inadequate steps to ensure the accessibility of the ATM machines used in banks. The committee recommended that minimum accessibility standards for financial services (including those offered by private institutions) should be developed and that all newly procured ATMs and other banking services be accessible.[84]

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82. International Labour Organization (2016), "Promoting diversity and inclusion through workplace adjustments: a practical guide", p 25.

83. UNCRPD Committee (2013), _Nyusti and Takács v Hungary_, Communication No. 1/2010. For a comment, see Lawson A. (2014), "Accessibility obligations in the United Nations Convention on the Rights of Persons with Disabilities: _Nyusti and Takács v. Hungary_", _South African Journal on Human Rights_ Vol. 30, Issue 2, p. 380; and Lewis O. (2013), "Case Comment: _Nyusti and Takács v. Hungary_: decision of the UN Committee on the Rights of Persons with Disabilities", _European Human Rights Law Review_ 419.

84. This is an issue which would be addressed by the proposed European Accessibility Act. See European Commission (2015), Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the member States as regards the accessibility requirements for products and services, COM(2015) 615 final.

More generally, the Committee has stressed that accessibility standards should "be adopted in consultation with organizations of persons with disabilities"[85] and "take into account the diversity of persons with disabilities and ensure that accessibility is provided to persons of any gender and of all ages and types of disability".[86] It has also specified that "[i]n the field of communication-related services [such as sign language, tactile signing and, it is suggested, easy read, there is a need for standards which ensure] at least a minimum quality of services."[87]

Furthermore, the UNCRPD Committee has drawn attention to the importance of international collaboration in the design and development of accessibility standards – particularly in the field of ICT. According to it, "[s]uch co-operation can be useful in developing and promoting international standards that contribute to the interoperability of goods and services".[88] The recognition of the importance of harmonised standards across national borders is a key driver of the proposal for a European Accessibility Act.[89] In relation to ICT standards, General Comment No. 2 notes that:

> "States Parties are encouraged to join [the International Telecommunication Union] study groups in the radio communication, standardization and development sectors of the Union, which actively work at mainstreaming accessibility in the development of international telecommunications and ICT standards and at raising industry's and governments' awareness of the need to increase access to ICT for persons with disabilities."[90]

A prominent example of international collaboration to develop and promulgate accessibility standards concerns the web. The Web Content Accessibility Guidelines were developed by the Web Accessibility Initiative, which is part of the leading international standards organisation for the internet – the World

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85. UNCRPD Committee, General Comment No. 2, para. 25.
86. Ibid., para. 29.
87. Ibid., para. 30.
88. Ibid., para. 30. See also, for analysis of mechanisms for international dialogue and harmonisation of standards, Placencia I., Sindelar M., Martinez I., Capozzi D. and Weaver T. (2013), "EU-US ICT standardization dialogue on eAccessibility: background and achievements", *European Yearbook of Disability Law* Vol. 3, p. 101; and Giannoumis G. A. (2015), "Transnational convergence of public procurement policy: a 'bottom-up' analysis of policy networks and the international harmonisation of accessibility standards for information and communication technology", *International Review of Law, Computers & Technology* Vol. 29, Issue 2-3, p. 183.
89. European Commission, Proposal for a European Accessibility Act.
90. UNCRPD Committee, General Comment No. 2, para. 30.

Wide Web Consortium (W3C). Version 2.0 of the Guidelines[91] has now been adopted by the International Organization for Standardization (IOS) as one of its standards.[92]

> "**In Malta**, ICT solutions and websites in particular must conform to international ICT accessibility standards. Government websites and commercial websites are audited and certified by the Foundation for Information Technology Accessibility (FITA)."[93]
>
> At the **EU level**, the collaborative development of accessibility standards is an important complement to the growing number of accessibility requirements in EU law. Particularly significant is the 2010 mandate from the Commission to the EU standardisation bodies, according to which Design for All principles should be embedded across all areas of the committee's work. Also important in this context is Mandate 273, which called for the elaboration and adoption of European standards in the field of ICT for persons with disabilities and older persons based on "design for all" and "assistive technology" approaches. In 2014, (pursuant to Mandate 376 issued by the European Commission in 2005), an accessibility standard was adopted relating to ICT products and services in public procurement processes.

Technical accessibility standards will remain voluntary unless given teeth – generally by legislative provision. Accordingly, there is an important link between this section on standards and the next one on legislation. However, before closing this section, it should be noted that accessibility standards and guidelines applicable to particular sectors or organisations are also extremely valuable. A relatively recent and far-reaching example is the Accessible Information Standard adopted by the National Health Service (NHS) in England.

> According to the website of NHS **England**,[94] the purpose of the Accessible Information Standard is "to make sure that people who have a disability, impairment or sensory loss are provided with information that they can easily read or understand and with support so they can communicate effectively with health and social care services". Following a lengthy period of consultation, particularly with persons with disabilities, the Standard

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91. World Wide Web Consortium (2008).
92. ISO/IEC 40500:2012 W3C Web Content Accessibility Guidelines (WCAG) 2.0; see also ISO/IEC Guide 71:2014, Guide for addressing accessibility in standards (2014).
93. ANED, Disability Online Tool of the Commission.
94. National Health Service of England, Accessible Information Standard.

became binding as of August 2016 on all organisations providing National Health Service care and adult social service care. It is an extremely ambitious set of requirements, the impact of which depends on effective communication between different care providers, based on information about the accessibility needs of individuals being placed on their patient records. In specifying how needs should be met, the standard incorporates minimum quality standards (e.g. on easy read, Braille, sign language or electronic formats). The Standard is being reviewed in 2017 to assess impact and ensure appropriateness according to its purpose.

Accessibility and legislation

The UNCRPD Committee has stressed the importance of underpinning accessibility strategies and standards with legislative commitments. Its General Comment No. 2 provides useful guidance on how states should go about ensuring that accessibility requirements are appropriately and effectively embedded in legislation. Prior to establishing a suitable legal framework, states "should undertake a comprehensive review of the laws on accessibility in order to identify, monitor and address gaps in legislation and implementation"[95] – a review which should be undertaken "in close consultation with persons with disabilities and their representative organizations".[96] The General Comment offers several recommendations to ensure that accessibility is given effect through legislation. Firstly, it urges a mainstreaming approach whereby accessibility standards are incorporated into "laws on construction and planning … laws on public aerial, railway, road and water transport, information and communication, and services open to the public".[97] An important aspect of mainstreaming accessibility into these types of laws is that they are often accompanied by inspection or licensing regimes. This makes it possible to embed conformity to accessibility standards into such systems. The proposal for a European Accessibility Act[98] is also worth mentioning in this context. It would require manufacturers and distributers of certain ICT products to factor accessibility into design and certify compliance with a potentially far-reaching impact on the accessibility of ICT in Europe.

Secondly, the General Comment stresses the importance of embedding accessibility requirements and standards within laws governing the way in which

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95. UNCRPD Committee, General Comment No. 2, para. 28.
96. Ibid.
97. Ibid., para. 29.
98. European Commission, Proposal for a European Accessibility Act.

public funds are spent (e.g. through procurement procedures). This is the subject matter of the following section and will not therefore be further discussed here.

Thirdly, it provides more specific guidance for incorporating accessibility into legislation prohibiting discrimination. Given the link between accessibility and equality, this is a matter of some importance. According to the committee:

> When reviewing their accessibility legislation, States Parties must consider and, where necessary, amend their laws to prohibit discrimination on the basis of disability. As a minimum, the following situations in which lack of accessibility has prevented a person with disabilities from accessing a service or facility open to the public should be considered as prohibited acts of disability-based discrimination:
>
> (a) Where the service or facility was established after relevant accessibility standards were introduced;
>
> (b) Where access could have been granted to the facility or service (when it came into existence) through reasonable accommodation.[99]

A good example of legislation which embeds accessibility requirements into equality and non-discrimination law is that of Norway.

"The universal design provision of the **Norwegian law** (Article 9) provides that it will amount to discrimination to fail to provide services and activities for the public in a manner consistent with universal design unless doing so would constitute an undue burden. It adds that the application of a provision or practice will not amount to discrimination if that provision or practice is consistent with rules and regulations that govern the type of service/building/vehicle in question. Thus, where accessibility standards exist, compliance with them will constitute a defence to discrimination actions based on this provision. Accessibility standards are being introduced in a gradual way and, in the process, strengthening the power of the universal design duty. Where no standards exist, however, it will be relatively easy to establish undue burden."[100]

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99. UNCRPD Committee, General Comment No. 2, para. 31.
100. This example is taken from Lawson A. (2012), "Maximising the impact and effectiveness of accessibility measures", section 7.2.

"The legislation on access to ICT is regulated by Article 11 of the Law on Discrimination and Accessibility. The law came into force on 1 January 2009. Article 11 has been in force since 1 July 2013 regarding new equipment/ services making universal design mandatory from 1 July 2014. Existing technologies should be universally designed by 1 January 2021. Article 11 applies to ICT for the public and provides the Government with the legislative basis for developing standards or more concrete requirements concerning what is meant by universal design. The law cannot be enforced in a given area until 12 months after detailed regulations/standards have been provided. Access to ICT is the top priority of the current Government's Action Plan for Universal Design 2015-2019."[101]

The effectiveness of equality and non-discrimination law in providing a mechanism for individuals to challenge accessibility barriers is dependent on the effectiveness of the associated complaints and enforcement mechanisms. This issue will not be elaborated further here as it is discussed in the Council of Europe study on equality and non-discrimination for persons with disabilities.[102] This is also linked to another priority area of the Council of Europe Disability Strategy which is the right to equal recognition before the law.[103]

Accessibility and public funds

An influential means of incentivising and embedding accessibility is to incorporate explicit accessibility conditions or requirements in any contract or agreement regulating the expenditure of public money. Thus, according to General Comment No. 2:

> as part of their review of accessibility legislation, States Parties must consider their laws on public procurement to ensure that their public procurement procedures incorporate accessibility requirements. … Public procurements should be used to implement affirmative action in line with the provisions of article 5, paragraph 4, of the Convention in order to ensure accessibility and *de facto* equality for persons with disabilities.[104]

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101. ANED, Disability Online Tool of the Commission.
102. Council of Europe study on promoting equality and non-discrimination for persons with disabilities (2017).
103. For more information, see the Council of Europe study on equal recognition before the law of persons with disabilities (2017).
104. UNCRPD Committee, General Comment No. 2, paras. 31-32.

More broadly, it states that:

> It is unacceptable to use public funds to create or perpetuate the inequality that inevitably results from inaccessible services and facilities.[105]

Accordingly, accessibility requirements should be embedded in any legislation or policy document regulating the payment of public funds by way of grants, research monies or international aid.

EU law has gone a long way to embedding accessibility requirements in its laws regulating the payment of EU funds. In relation to the Structural and Investment Funds, accessibility is one of the horizontal principles of the General Regulation on the EU Structural Funds and must therefore be embedded into the specifications regulating how the money is spent within member states.[106] The 2014 Public Procurement Directives[107] require that (subject to a limited number of exceptions) accessibility must be incorporated into technical specifications.

At the national level, the following passage from the 2012/13 report of the EU Academic Network of Experts on Disability (ANED) provides a helpful example:

> "The strongest provisions on procurement and accessibility to emerge from the ANED country reports appear to be contained in the **Irish Disability Act** 2005. According to section 27(1) of this Act:
>
> Where a service is provided to a public body, the head of the body shall ensure that the service is accessible to persons with disabilities.

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105. Ibid.
106. European Parliament and the Council (2013), Regulation 1303/2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No. 1083/2006.
107. European Parliament and the Council (2014), EU public procurement directives (Directive 2014/24/EU); and European Parliament and the Council (2014), Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. See further Rice D. (2015), "Public procurement as a means to achieving social gains – progress and challenges in European legislation and standards for accessible information and communication technology", *International Review of Law, Computers & Technology*, Vol. 29, Issue 2-3, p.162; and G3ict (2015), Global Initiative for Inclusive Information and Communication Technologies, CRPD Implementation: Promoting Global Digital Inclusion through ICT Procurement Policies & Accessibility Standards.

This appears to be a strong requirement, which is further strengthened by subsection (3) which provides that here, the provision of "services" includes the supply of "goods". However, its potential impact is qualified by subsection (2), according to which:

Subsection (1) shall not apply if the provision of access by persons with disabilities to any services provided to the body –

(a) would not be practicable,

(b) would not be justified having regard to the cost of doing so, or

(c) would cause unreasonable delay in making the goods or services available to other persons.

There appears to be little evidence about the impact which this provision has had in driving up accessibility levels and accessibility awareness. However, a contribution to the 2010 review of the Disability Act 2005 suggested that the procurement provisions were among those which had the most potential to foster disability inclusion. [108] The Department of Community, Equality and Gaeltacht Affairs conducted a Review of the Operation of the Disability Act in 2010 and explained that it appeared that clarification of the scope of section 27 is needed, relating to what constitutes services procured by a public body, particularly in the context of health services. Further, 'where funded services supplied to the public on behalf of a public body do not come within the accessibility provisions of the Act, consideration should be given to placing an obligation on bodies to include equivalent accessibility requirements as a condition of service level agreements'.[109]

In 2012, guidance on including accessibility in procurement processes was issued by the National Disability Authority which launched a website that functions as an accessibility toolkit for public sector staff. [110] As well as providing guidance on procurement, it informs public servants and organisations how to include accessibility in a Customer Charter and provides guidance on how buildings, information, websites and services can be made more accessible."[111]

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108. NUI Galway (2010), Review of the Operation of the Disability Act 2005.
109. Irish Department of Community, Equality and Gaeltacht Affairs, 2010 Review of the Operation of the Disability Act.
110. Irish National Disability Authority website.
111. Lawson A. (2012), "Maximising the impact and effectiveness of accessibility measures", section 6.

Research

Article 4 of the UNCRPD which sets out "General Obligations", contains a number of requirements which are directly linked to accessible ICTs. Article 4(1 (f) requires states parties:

> To undertake or promote research and development of universally designed goods, services, equipment and facilities … which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities.

and Article 4(1)(g) requires them:

> To undertake or promote research and development of, and to promote the availability and use of new technologies, including information and communication technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost.

ICT has the potential to revolutionise the way in which a range of different sectors of society functions, for example through greater use of ICT in healthcare and in justice systems as well as in driverless cars. It is vital that accessibility requirements and considerations are embedded in the research and development of ICTs at an early stage so that the resulting products are universally designed.

The UNCRPD Committee gives examples of such products, including "the use of hearing enhancement systems, including ambient assistive systems to assist hearing aid and induction loop users, and passenger lifts pre-equipped to allow use by persons with disabilities during emergency building evacuations".

Indeed, as stated by the committee:

> New technologies can be used to promote the full and equal participation of persons with disabilities in society, but only if they are designed and produced in a way that ensures their accessibility. New investments, research and production should contribute to eliminating inequality, not creating new barriers.[112]

Training, awareness raising and knowledge sharing

One of the best ways of raising awareness on accessibility needs and issues is to integrate persons with disabilities in mainstream schools from the earliest

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112. UNCRPD Committee, General Comment No. 2, para. 22.

age. This will foster mutual understanding and support. Later on, future workers will be more inclined to naturally mainstream a disability perspective in their work and life when they have had and have classmates and colleagues with disabilities.

As mentioned above, one of the obligations set out in Article 9(2) is to provide training on accessibility to "stakeholders".[113] Whilst this term is not defined in the Convention, General Comment No. 2 states that they include "authorities that issue … broadcasting boards and ICT licences, engineers, designers … transport authorities, service providers, members of the academic community and persons with disabilities and their organizations. Training should be provided not only to those designing goods, services and products, but also to those who actually produce them."[114]

Accessibility issues should therefore be embedded and mainstreamed into university and professional education, as well as being available to existing professionals and manufacturers as part of continuing professional development.

Besides formal training, it is important that relevant stakeholders are aware of and understand relevant policies and their implications to ensure the effectiveness of accessibility strategies and requirements. As the Office of the High Commissioner for Human Rights has noted:

> The provision of technical assistance, guidelines and information, in particular on reasonable accommodation, accessibility and universal design, is crucial to advance equality and to reduce dependency on legal actions to enforce rights.[115]

In some countries, centres of excellence have been established with remits both to monitor conformity and also to provide training and guidance:

"[In **Malta**, government] and commercial websites are audited and certified by the Foundation for Information Technology Accessibility (FITA) which also assists service providers in ensuring that their ICT products are accessible to persons with disabilities in Malta and Gozo.

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113. UNCRPD, Article 9(2)(c). For more information, see the Council of Europe study on awareness raising on the rights of persons with disabilities (2017).
114. UNCRPD Committee, General Comment No. 2, para. 19.
115. UN Human Rights Council (2016), Equality and non-discrimination under Article 5 of the Convention on the Rights of Persons with Disabilities, para. 17.

FITA also provides consultancy services and training on the effective use and procurement of accessible ICT solutions. Additionally, FITA provides courses in the use of ICT for persons with disabilities, especially persons with visual impairment in the use of screen-reader software, and courses for persons with intellectual disability."[116]

Elsewhere, authoritative guidance and toolkits have been published to provide a reference point for people working in particular fields. The following are examples of guidelines relevant to education (in multiple countries), procurement and the public sector (in Ireland):

In its 2015 "Guidelines for accessible information", the **European Agency for Special Needs and Inclusive Education** aims to provide a resource which will support non-ICT experts (particularly those working in education) to ensure that the information they create is accessible. According to the report's abstract:

The procedure for creating accessible information is universal. Therefore, these Guidelines support all individuals or organisations wishing to create information that is accessible in different formats.[117]

"The **[Irish] Centre for Excellence in Universal Design** (hosted by the National Disability Authority) has published IT Accessibility Guidelines, an IT Procurement Toolkit and Web Accessibility Techniques. These guidelines are addressed to a range of actors in IT and web development sectors."[118]

An interesting example of awareness raising aimed at the population more broadly, is the following from France:

"In 2015, the **French Government** launched a public awareness campaign on universal accessibility in partnership with 'France Télévisions', a public broadcaster, and the popular television series 'Plus belle la vie' ('Life's So Sweet'). Broadcast with subtitles and audio description, the 20 one-minute sketches of 'Life's So Sweet Together' illustrate various aspects of universal accessibility. By focusing on everyday scenes such as using a smartphone

116. ANED, Disability Online Tool of the Commission.
117. Turner-Cmuchal M. (ed.) (2015), Guidelines for Accessible Information: ICT for Information Accessibility in Learning, European Agency for Special Needs and Inclusive Education.
118. ANED, Disability Online Tool of the Commission.

and waiting for the doctor, the series highlights how improving accessibility for persons with disabilities can result in much broader benefits for all members of society."[119]

An example of a scheme for raising awareness and promoting mutual learning is as follows:

"The **Estonian Gender Equality and Equal Treatment Commissioner** has launched a scheme for providers of services to highlight the steps they are taking to improve accessibility for persons with disabilities. The 'BE Here. Access for all' (SIIA SAAB. Ligipääs kõigile) project encourages participating organisations to display signs indicating that their premises, operations and information are accessible to persons with different impairments. The scheme also facilitates mutual learning, as services just starting to improve accessibility can share experiences with others with more long-standing accessibility initiatives."[120]

Prizes and awards also provide a useful way of raising the profile of accessibility issues. Examples of relevant international awards are the following:

The **Vodafone Foundation's Smart Accessibility Award**, introduced in 2011, is a European-wide competition for accessible apps which have the potential to make major contributions to the lives of persons with disabilities and older people.[121]

The **Zero Project**[122] grants awards to innovative and effective policies and practices each year on a particular theme based on the UNCRPD. While accessibility is relevant to all themes, it was itself the theme of 2013 and, in 2015-16, the theme was ICT and inclusive education. As well as the awards, the Zero Project holds a large international conference each year and launches a report on nominated innovative policies and practices.

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119. EU Agency for Fundamental Rights (2016), Fundamental Rights Report 2016, p.193.
120. Ibid., p. 191.
121. Vodafone Foundation EU Smart Accessibility Awards.
122. Essl Foundation, Zero Project.

"In 2010, the **[European] Commission** initiated **Access City**,[123] an annual award that recognises and showcases European cities that have taken exemplary action to improve accessibility in the urban environment. The award is organised in co-operation with the European Disability Forum (EDF).

National disability councils in the Member States take part in the pre-selections of cities at national level, while the EDF represents persons with disabilities on the European jury for the final selection stage. The award scheme addresses accessibility to the built environment, transport, ICT and public facilities and services."[124]

123. Access City Award, available at: http://ec.europa.eu/justice/discrimination/disabilities/award/index_en.htm.
124. European Union (2014), Initial Report on the implementation of the UN Convention on the Rights of Persons with Disabilities, para. 44.

Conclusion

Article 9 of the UNCRPD recognises that, without accessibility, many persons with disabilities will have no opportunity to live, learn, work and play alongside their peers without disabilities and family members. All too often the consequences are dependency, marginalisation and poverty. Without accessibility, inclusion, equality and dignity are impossible.

ICT is changing our ways of communicating, working, travelling and interacting with governments, the justice system and service providers. The UNCRPD demands that accessibility is effectively embedded and mainstreamed into these processes of change so that the coming world is not one from which persons with disabilities are barred from entering and participating. It also requires strategic commitment to, and investment in, the dismantling of the barriers which persons with disabilities currently experience.

The analysis in the section on "Achieving accessibility" has drawn attention to key issues which must be taken into account by states in their implementation of Article 9. Although the section was divided into six points, an effective strategy will embrace all the issues covered with the involvement of organisations of persons with disabilities as a core principle.

Checklist for strategies to achieve accessibility in information, communication and information and communication technologies

This checklist is aimed at achieving accessibility in a consistent manner with Article 9 of the UN Convention on the Rights of Persons with Disabilities and the Council of Europe Disability Strategy 2017-2023.

The section of this study on "Achieving accessibility" has outlined a set of key considerations or matters which should be taken into account by governments in their efforts to implement their UNCRPD obligations under Article 9 (and other inter-connected articles) relating to accessibility of information and ICT. These may be summarised as follows:

- ▶ Have relevant international guidelines and toolkits been identified and consulted?
- ▶ Has a structure and system been put in place by which organisations of persons with disabilities can effectively be consulted and involved?
- ▶ Has a suitably qualified, appropriately supported and realistically resourced co-ordinating mechanism been brought together to draw up and implement an overarching accessibility strategy?
- ▶ Will this strategy be informed, on an ongoing basis, by the experiences of those primarily affected by it – taking into account the diversity of persons with disabilities (through their representative organisations), as well as by the expertise of relevant accessibility professionals?
- ▶ Is the strategy underpinned by legislation?

▶ Does the strategy have clear benchmarks, targets and time frames?

▶ Will steps be taken, at a very early stage and on an ongoing basis, to identify barriers to accessibility so that this evidence can shape plans developed under the strategy?

▶ Will steps be taken, at a very early stage and on an ongoing basis, to assess the effectiveness of relevant legal and policy frameworks and to reflect on how they could be made more effective?

▶ Are there sufficient accessibility standards in place, for example to cover ICT products and services?

▶ In different policy domains, how effectively are accessibility requirements (linked to accessibility standards) being embedded into regulatory checks and mechanisms? How does this compare, for example, with the embedding of health and safety requirements?

▶ Has specific consideration been given to whether discrimination law is doing enough to require accessibility, for example could links be made to accessibility standards with additional enforcement mechanisms to strengthen compliance?

▶ Are accessibility requirements (linked to accessibility standards) embedded into the spending of public funds (e.g. through procurement, grants, etc.)

▶ Is accessibility firmly embedded within research on, and the design of, new ICT products and systems?

▶ Is accessibility embedded in education and training in relevant subject areas?

▶ What steps are being taken to ensure that relevant stakeholders are all aware of relevant accessibility requirements?

▶ What steps are being taken to incentivise and reward excellence and innovation relating to accessibility and to facilitate knowledge exchange and mutual learning?

▶ What steps are being taken to ensure widespread awareness of making certain that information (including on websites) is accessible – including by making it available in different formats?

▶ Are systems of conformity checking and auditing adequate and are those involved appropriately trained and resourced?

▶ Have systems been established for ongoing monitoring, data collection and review?

While the above checklist might be of some help in condensing many of the points emerging from the analysis carried out here, it should not be used as a definitive guide. The most cursory of web searches reveals that there is already a multiplicity of checklists relating to achieving accessibility. Indeed, there is a wealth of material and guidance in the resources highlighted in the section below on "Useful resources". Many existing checklists focus primarily on checking compliance with particular accessibility standards or guidelines. Others relate to the carrying out of reporting on accessibility and monitoring progress.[125] Checklists which provide guidance and structure to support the formulation and implementation of accessibility policies or strategies are less common. However, an extremely impressive resource of this kind is "the e-Accessibility Policy Toolkit for Persons with Disabilities" developed jointly by the International Telecommunications Union and the Global Initiative for Inclusive Information and Communication Technologies.[126] This toolkit provides thoughtful, well-researched guidance which is firmly grounded on the UNCRPD, in a clear and carefully structured manner and is likely to prove an invaluable resource to governments and other organisations.

Finally, it should be stressed again that while governments are the primary duty-bearers under the UNCRPD, it is clear that accessibility is the concern of all types of organisation engaging in providing functions or services to the public, or indeed simply in employment. Accessibility needs to become "institutionalised", or embedded "within the DNA of the organisation" so that it becomes the norm.[127] Guidance on accessibility aimed at governments will also be of value and relevance to other organisations, with the potential to be adapted for use in guiding their internal accessibility strategies and plans.

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125. See Global Alliance for Accessible Technologies and Environments (2015), Toolkit: Key Indicators of Accessibility, which provides a thorough and helpful analysis of the key accessibility indicators used by the UNCRPD Committee to help states in reporting to that committee.
126. G3ict and ITU (2015), Rice D. and Bianchi F. (eds), The e-Accessibility Policy Toolkit for Persons with Disabilities.
127. These quotations are taken from G3ict (2012), Nahata P., Institutionalization of Accessibility – A Step Towards Inclusion.

Useful resources

Unless otherwise stated, all URLs referenced in this document were checked on 20 April 2017.

The quotations which appear in connection with the resources listed below are taken from the webpage to which they relate.

Council of Europe

Council of Europe Disability Strategy 2017-2023 – Human Rights: A Reality for All, www.coe.int/en/web/disability/strategy-2017-2023

The then Committee on the Rehabilitation and Integration of People with disabilities (CD-P-RR) adopted a report on "Achieving full participation through Universal Design" (2009). The report was drafted by Ginnerup S. in co-operation with the Committee of Experts on Universal Design (Partial Agreement (P-RR-UD)). The report includes recommendations to governments and examples of good practices in relation to the Council of Europe Disability Action Plan 2006-2015.

https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMConte nt?documentId=09000016805a2a1e

Council of Europe (2015), Tatic D., Access for People with Disabilities to Culture, Tourism, Sports and Leisure Activities: Towards Meaningful and Enriching Participation https://rm.coe.int/CoERMPublicCommonSearchServices/Displa yDCTMContent?documentId=09000016805a2a23

Global Initiative for Inclusive Information and Communication Technologies (G3ict)

http://g3ict.org/index

> "G3ict is an advocacy initiative launched in December 2006 by the United Nations Global Alliance for ICT and Development, in co-operation with the Secretariat for the Convention on the Rights of Persons with Disabilities at the United Nations Department of Economic and Social Affairs (DESA). Its mission is to facilitate and support the implementation of the dispositions of the Convention on the Rights of Persons with Disabilities on the accessibility of Information Communication Technologies (ICTs) and assistive technologies. G3ict relies on an international network of ICT accessibility experts to develop and promote good practices, technical resources and benchmarks for ICT accessibility advocates around the world."

Global Alliance for Accessible Technologies and Environments (GAATES)

http://globalaccessibilitynews.com/about/

> "The Global Alliance on Accessible Technologies and Environments (GAATES) is the leading international organization dedicated to promoting the understanding and implementation of accessibility of the sustainable built, social and virtual environments, including architectural, infrastructural design, transportation systems, habitat, and electronic information and communication technologies.
>
> Global Accessibility News Weekly Service is World's First accessibility newsletter which will provide news on Accessibility. The News Website is a global source of information for those involved in the Universal Design, Assistive Technologies, and accessible environments and for people with disabilities."

International Telecommunications Union (ITU)

www.itu.int

> "ITU is the United Nations specialized agency for information and communication technologies – ICTs.
>
> [It allocates] global radio spectrum and satellite orbits, develop the technical standards that ensure networks and technologies seamlessly interconnect, and strive to improve access to ICTs to underserved communities worldwide.

ITU is committed to connecting all the world's people – wherever they live and whatever their means. Through our work, [it protects and supports] everyone's fundamental right to communicate."

One of ITU's areas of action is "Accessibility to ICTs: Achieving equitable communications for everyone".

www.itu.int/en/action/accessibility/Pages/default.aspx

Web Accessibility Initiative (WAI)

www.w3.org/WAI/

"WAI develops:

– guidelines widely regarded as the international standard for Web accessibility;

– support materials to help understand and implement Web accessibility;

– resources, through international collaboration."

Global Accessibility Reporting Initiative (GARI)

www.gari.info/

"Run by the Mobile & Wireless Forum, the Global Accessibility Reporting Initiative is a project designed to help consumers learn more about the accessibility features of mobile devices and to help them identify devices with the features that may assist them with their particular needs."

It also contains information and links for developers, manufacturers and governments.

Zero Project

http://zeroproject.org/about-us/

"The Zero Project, an initiative of the Essl Foundation, focuses on the rights of persons with disabilities globally. It provides a platform where the most innovative and effective solutions to problems that persons with disabilities face, are shared. Its sole objective is to assist in creating a world without barriers.

[It takes] a solutions-based approach to [its] work. Together with [a] continuously growing network of over 3,000 disability experts in over 150 countries, [it seeks] to identify the most innovative and effective policies and practices that improve the lives of persons with disabilities."

Disability Online Tool of the Commission (DOTCOM)

www.disability-europe.net/dotcom

> "DOTCOM is constructed from a large database of information about national laws, policies, strategies and initiatives in the Member States of the European Union (EU), its Candidate countries and other associated countries. For each of the 35 Academic Network of European Disability Experts (ANED) member countries, and for the EU, it includes summary information on 44 selected policy instruments, organised in eight themes."

The theme C3 of the database is on "ICT and Web accessibility".

E-Access Bulletin

www.headstar.com/site/scripts/documents_info.php?categoryID=1&documentID=11

> "Bulletin coverage includes the latest news about accessible IT, smartphones and apps, digital books, online learning, digital TV and digital radio.
>
> The target audience for the bulletin includes people with disabilities; technology companies; telecommunications companies; publishers; employers; and all public, voluntary and charitable bodies that work with people with disabilities, as well as their families, friends and carers."

Guidelines for accessible information: ICT for information accessibility in learning (ICT4IAL)

www.ict4ial.eu/guidelines-accessible-information

Turner-Cmuchal M. (ed.) (2015), European Agency for Special Needs and Inclusive Education.

The e-Accessibility Policy Toolkit for Persons with Disabilities (G3ict and ITU)

http://g3ict.org/resource_center/toolkit

Joint ITU/G3ict Toolkit for Policy Makers Implementing the Convention on the Rights of Persons with Disabilities, Rice D. and Bianchi F. (eds) (2015).

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ANED, Disability Online Tool of the Commission, Ireland, available at: www.disability-europe.net/dotcom?l%5B%5D=19&t%5B%5D=21&view_type=list

ANED, Disability Online Tool of the Commission, Malta, available at: www.disability-europe.net/dotcom?l%5B%5D=24&t%5B%5D=21&view_type=list

ANED, Disability Online Tool of the Commission, Norway, available at: www.disability-europe.net/dotcom?l%5B%5D=40&t%5B%5D=21&view_type=list

ANED, Disability Online Tool of the Commission, "the former Yugoslav Republic of Macedonia", available at: www.disability-europe.net/dotcom?l%5B%5D=34&t%5B%5D=21&view_type=list

ANED, Disability Online Tool of the Commission, United Kingdom, available at: www.disability-europe.net/dotcom?l%5B%5D=33&t%5B%5D=21&view_type=list

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Council of Europe Committee of Ministers Recommendation No. R (92) 6 to member States on a coherent policy for people with disabilities, available at: https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804ce0f8

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" **Accessibility can bridge the knowledge divide and foster media and information literacy, inclusion and participation.**

ENG

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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