Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (Text with EEA relevance)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) The trend towards a digital society provides users with new ways of accessing information and services. The providers of information and services, such as public sector bodies, rely increasingly on the internet in order to produce, collect and provide a wide range of information and services online which are essential to the public.

(2) In the context of this Directive, accessibility should be understood as principles and techniques to be observed when designing, constructing, maintaining, and updating websites and mobile applications in order to make them more accessible to users, in particular persons with disabilities.

(3) The fast-growing market for making digital products and services more accessible comprises a range of economic operators, such as those developing websites or software tools to create, manage and test web pages or mobile applications, those developing user agents such as web browsers and related assistive technologies, those implementing certification services and those providing training.

(4) As underlined in the Commission communication of 19 May 2010 entitled ‘A Digital Agenda for Europe’, public authorities should play their part in promoting markets for online content. Governments can stimulate content markets by making public sector information available under transparent, effective and non-discriminatory terms. This is an important source of potential growth of innovative online services.

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(5) Several Member States have adopted measures based on internationally used guidelines for the design of accessible websites, but those measures often relate to different versions or compliance levels of those guidelines, or have introduced technical differences in respect of accessible websites at national level.

(6) Suppliers of accessible websites, mobile applications and related software and technologies include a large number of small and medium-sized enterprises (SMEs). Such suppliers, and SMEs in particular, are discouraged from entering into business ventures outside their national markets. Due to the differences between Member States in accessibility specifications and regulations, suppliers' competitiveness and growth are hampered by the additional costs they would incur in the development and marketing of cross-border web accessibility-related products and services.

(7) Due to limited competition, buyers of websites, mobile applications and related products and services are faced with high prices in respect of the provision of services or dependence on a single supplier. Suppliers often favour variations of proprietary ‘standards’, hindering subsequent scope for interoperability of user agents and Union-wide ubiquitous access to the content of websites and mobile applications. Fragmentation among national regulations reduces the benefits that could result from sharing experiences with national and international peers in responding to societal and technological developments.

(8) In a harmonised framework, the design and development industry for websites and mobile applications should face fewer barriers to operating in the internal market, while costs for public sector bodies and others procuring products and services relating to the accessibility of websites and mobile applications should be reduced.

(9) This Directive aims to ensure that the websites and mobile applications of public sector bodies are made more accessible on the basis of common accessibility requirements. The approximation of national measures at Union level, based on the agreed accessibility requirements for the websites and mobile applications of public sector bodies, is necessary in order to put an end to fragmentation of the internal market. It would reduce uncertainty for developers and would foster interoperability. The use of accessibility requirements which are technology-neutral will not hamper innovation, and may even stimulate it.

(10) Approximation of national measures should also allow Union public sector bodies and enterprises to obtain economic and social benefits from extending the provision of online or mobile services to include more citizens and customers. This should increase the potential of the internal market for products and services relating to the accessibility of websites and mobile applications. The resulting market growth should allow undertakings to contribute to economic growth and job creation within the Union. Strengthening the internal market should make investment in the Union more attractive. Public sector bodies would benefit from cheaper provision of web accessibility-related products and services.

(11) Citizens would benefit from wider access to public sector services through websites and mobile applications and would receive services and information facilitating their

daily lives and the enjoyment of their rights across the Union, in particular their right to move and reside freely within the territory of the Union, their freedom of establishment and their freedom to provide services.

(12) By respectively ratifying and concluding the United Nations Convention on the Rights of Persons with Disabilities, adopted on 13 December 2006 ('the UN Convention'), the majority of Member States and the Union have committed themselves to taking appropriate measures to ensure access for persons with disabilities, on an equal basis with others, to, inter alia, information and communication technologies and systems, 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, and to promote access for persons with disabilities to new information and communications technologies and systems, including the internet, and have undertaken to refrain from engaging in any act or practice that is inconsistent with that Convention and to ensure that public authorities and institutions act in conformity with it. The UN Convention also stipulates that the design of products, environments, programmes and services should enable their use by all people, to the greatest extent possible, without the need for adaptation or specialised design. Such 'universal design' should not exclude assistive devices for particular groups of persons with disabilities, where this is needed. According to the UN Convention, persons with disabilities include those having long-term physical, mental, intellectual or sensory impairments which may, in conjunction with other barriers, hinder their full and effective participation in society on an equal basis with others.

(13) The Commission communication of 15 November 2010 entitled 'European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe' builds on the UN Convention and aims to eliminate barriers that prevent persons with disabilities from participating in society on an equal basis. It sets out actions to be taken in several priority areas, including accessibility of information and communications technologies and systems, and its objective is to ensure accessibility to goods, services (including public services) and assistive devices for people with disabilities.

(14) Regulations (EU) No 1303/2013[(3)] and (EU) No 1304/2013[(4)] of the European Parliament and of the Council contain provisions on the accessibility of information and communication technology (ICT). They do not, however, address the specificities of the accessibility of websites or of mobile applications.

(15) Horizon 2020 — The Framework Programme for Research and Innovation, established by Regulation (EU) No 1291/2013 of the European Parliament and of the Council[(5)], supports research on, and the development of, technological solutions to accessibility problems.

(16) In its communication of 15 December 2010 entitled 'The European eGovernment Action Plan 2011-2015 — Harnessing ICT to promote smart, sustainable & innovative Government', the Commission called for action to develop eGovernment services that ensure inclusiveness and accessibility. This includes measures to reduce the gap in ICT usage and to promote the use of ICT to overcome exclusion, thus ensuring that all users are able to make the most of the opportunities presented. In its communication

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of 19 April 2016 entitled 'EU eGovernment Action Plan 2016-2020 — Accelerating the digital transformation of government', the Commission reiterates the importance of inclusiveness and accessibility.

(17) In the Digital Agenda for Europe, the Commission announced that public sector websites should be fully accessible by 2015, thereby reflecting the Riga Ministerial Declaration of 11 June 2006.

(18) In the Digital Agenda for Europe, the Commission stressed that concerted actions were needed to ensure that new electronic content was fully available to persons with disabilities, in order to provide Europeans with a better quality of life through, for instance, easier access to public services and cultural content. It also encouraged the facilitation of the Memorandum of Understanding on digital access for persons with disabilities.

(19) Content of websites and mobile applications includes textual as well as non-textual information, downloadable documents and forms, and two-way interaction such as the processing of digital forms and the completion of authentication, identification and payment processes.

(20) The accessibility requirements set out in this Directive should not apply to content which is to be found exclusively on mobile devices, or to user agents for mobile devices, which are developed for closed groups of users or for specific use within certain environments and which are not available to and used by large parts of the public.

(21) This Directive is without prejudice to Directive 2014/24/EU of the European Parliament and of the Council[(6)] and in particular Article 42 thereof, and Directive 2014/25/EU of the European Parliament and of the Council[(7)] and in particular Article 60 thereof, which require that the technical specifications for all procurements which are intended for use by natural persons, whether the general public or staff of the contracting authority, shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

(22) Given the lack of automated or efficient and easy-to-implement means to make some types of published content accessible, and in order to limit the scope of this Directive to content of websites and mobile applications effectively under the control of public sector bodies, this Directive provides for the temporary or permanent exclusion from its scope of some types of content of websites or mobile applications. Those exclusions should be reconsidered in the context of the review of this Directive, in the light of future technological advances.

(23) The right of persons with disabilities and of the elderly to participate and be integrated in the social and cultural life of the Union is inextricably linked to the provision of accessible audiovisual media services. However, that right may be better developed in the context of Union sector-specific legislation or legislation focusing on accessibility that also applies to private broadcasters in order to guarantee conditions of fair competition without prejudice to the public interest role performed by the audiovisual media services. This Directive should consequently not apply to the websites and mobile applications of public service broadcasters.

(24) Nothing in this Directive is intended to restrict the freedom of expression and the freedom and pluralism of the media as they are guaranteed in the Union and in the Member States, in particular under Article 11 of the Charter of Fundamental Rights of the European Union ('the Charter').

(25) Some non-governmental organisations (NGOs), which are voluntary self-governing bodies established to pursue essentially non-profit making objectives, provide services that are not essential to the public, such as services that are not directly mandated by State, regional or local authorities, or services that do not specifically address the needs of persons with disabilities in particular, and could fall within the scope of this Directive. In order to avoid imposing a disproportionate burden on such NGOs, this Directive should not apply to them.

(26) Office file formats should be understood as documents that are not intended primarily for use on the web and that are included in web pages, such as Adobe Portable Document Format (PDF), Microsoft Office documents or their (open source) equivalents.

(27) Live time-based media that are kept online or republished after the live broadcast should be considered as pre-recorded time-based media without undue delay from the date of the initial broadcast or republishing of the time-based media, not exceeding the time strictly necessary to make time-based media accessible with priority being given to essential information relating to the health, welfare and safety of the public. That necessary period of time should in principle be no longer than 14 days. In justified cases, such as when it is impossible to procure the relevant services in due time, that period might exceptionally be extended to the shortest time necessary to make the content accessible.

(28) This Directive, while encouraging public sector bodies to make all content accessible, is not intended to limit the content which public sector bodies place on their websites or in their mobile applications to accessible content alone. Whenever non-accessible content is added, public sector bodies should, to the extent reasonably possible, add accessible alternatives on their websites or in their mobile applications.

(29) When maps are intended for navigational use, as distinct from geographical description, accessible information may be needed in order to help persons who cannot use visual information or complex navigation functionalities properly, for instance to locate premises or areas where services are provided. An accessible alternative should therefore be provided, such as postal addresses and nearby public transport stops, or the names of places or regions which are often already available for the public sector body in a form that is simple and readable for most users.

(30) Embedded content, such as embedded images or videos, should be covered by this Directive. However, websites and mobile applications are sometimes created into which additional content may be subsequently incorporated, for example an email program, a blog, an article that allows users to add comments, or applications supporting user-contributed content. Another example would be a page, such as a portal or news site, composed of content aggregated from multiple contributors, or sites that automatically insert content from other sources over time, such as when advertisements are inserted