

**29th EPRA Meeting  
6-8 May 2009  
Reval Hotel Olympia, Tallinn**

**Working group on the access by the Disabled to Audiovisual Media Services  
Comparative background document**

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**Introduction**

In the fight against discrimination in our societies, the media have an important role to play, not only with regard to the portrayal of the handicapped but also in providing access to audiovisual media services, by means of appropriate devices, for the aurally and visually impaired. Against the backdrop of a rapidly ageing society, characterised by an increase in visual and aural impairment, this issue should not be neglected.

This issue has recently been given some of the prominence it deserves at European level, in particular with the development of eAccessibility policies. With specific regard to audiovisual media services, accessibility provisions are now imbedded in the AVMSD and are likely to be included in the revised ECTT.

The issue of media and disability has only been on the agenda of the EPRA meeting in Istanbul in October 2004. On that occasion, a working group focused on issues of access to media services for people with disabilities, whereby the Ofcom and the BCI provided an overview of new developments and approaches to these issues in the UK and Ireland.

The present paper is based on the responses to a questionnaire prepared by the EPRA Secretariat and compiles answers from 29 regulatory authorities: the Communications Regulatory Agency (BA), the Flemish Regulator for the Media (BE), The Conseil supérieur de l'audiovisuel of the French Community of Belgium (BE), the Federal Office for Communication – OFCOM (CH), the Cyprus Radio - Television Authority (CY), The Director's Conference of the State Media Authorities (DE), The Radio and TV Board (DK), The Audiovisual Council of Catalonia (ES), the Audiovisual Council of Navarra (ES), The Telecommunications Market Commission (ES), The Conseil supérieur de l'audiovisuel (FR), The Office of Communications, Ofcom (GB), The National Council for Radio and Television (GR), The National Radio and Television Commission (HU), The Broadcasting Commission of Ireland (IE), The Council for Cable and Satellite Broadcasting (IL), The Autorità per le Garanzie nelle Comunicazioni (IT), The Conseil national des programmes (LU), The Radio and Television Commission of Lithuania (LT), the Council for Coordination on the Audiovisual of Moldova (MD), The Broadcasting Council of the Republic of Macedonia (MK), the Commissariaat voor de Media (NL), the Norwegian Media Authority (NO), The National Broadcasting Council (PL), The Regulatory Authority for the Media – ERC (PT), The Republic Agency Council (RS), The Swedish Radio and Television Authority and the Swedish Broadcasting Commission (SE), The Council for Broadcasting and Retransmission (SK).

The paper provides a brief overview on the general legal framework, broadcasters' obligations with regard to subtitling, signing and audio description, the role played by broadcasting regulators, the current status of implementation of Art. 3c AVMSD, hurdles and enablers of accessibility policies and, last but not least, funding issues. For more detailed information, tables have been provided as a separate annex to this paper.

## **1. General legal Framework:**

From the responses to the questionnaire, it seems that the majority (23 out of 29 answers) of regulatory authorities have some kind of provisions dealing with the access for disabled to audiovisual media services within their legal framework. Most of the provisions stem from the law (17 answers), PSB contracts (quoted 15 times) or licensing agreements (quoted 8 times).

In France, numerous provisions deal with the access to AVMS for disabled people: the law n°2005-102 of 11 February 2005 on the equality of rights and opportunities, the participation and citizenship of disabled persons, introduced measures for the access of deaf or hard of hearing persons. Further to a decision of 26 June 2007, the CSA sent amendments to the licensing conventions of commercial channels implementing these provisions. Public service broadcasting contracts (contrats d'objectifs et de moyens) and PSB terms of reference (cahiers des missions et des charges des chaînes publiques) contain provisions for the access of deaf or hard of hearing persons. In addition, the new broadcasting law of 5 March 2009 transposes Art. 3c. of the AVMS Directive.

In the UK and Ireland, based on provisions of the broadcasting and disability legislation, the regulatory authorities have developed specific codes: the Broadcasting Commission of Ireland has developed the *Access Rules Code*<sup>1</sup> while the British Ofcom has developed the *Code on Television Access Services* resulting from the Communications Act 2003<sup>2</sup>.

In Ireland, in addition to the provisions of the broadcasting and disability legislation, the EPG Licensing policy places a number of requirements on the providers of EPGs<sup>3</sup> and the BCI DTT licensing Policy requires the holder of a commercial DTT multiplex licence to carry assistive services<sup>4</sup>.

Several countries, however, do not have such provisions in their legal framework. This includes some Central and Eastern European countries (Republic of Macedonia, Poland and Hungary) but also Luxembourg and the Spanish autonomic region of Navarra.

It is worth noting that several countries have fairly general provisions which are not correlated with some concrete obligations for the broadcasting operators, either because they are not binding or would need to be implemented in a more concrete manner.

As an example, in Lithuania, the law obliges the disseminators of public information to make sure that the whole information is accessible to the disabled; however there is no implementation mechanism to fulfill this provision, therefore this is done only to a very little extent and only by the public service broadcaster.

Similarly, in Bosnia and Herzegovina, the Law on the public Broadcasting system contains an article which states that public broadcasting services shall be obliged to make news, culture, education and entertainment programmes available to hearing-impaired persons and other persons with special needs. Currently, however, the Communications Regulatory Agency's rule on definitions and obligations of public broadcasting does not include any regulation that determines an obligation for broadcasters to provide contents for disabled, but contains regulations according to which public broadcasters have to provide a certain percentage of weekly programmes intended to cover issues such as refugees and displaced persons, minorities and vulnerable groups.

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<sup>1</sup> [http://www.bci.ie/documents/revised\\_access\\_rules\\_june\\_07.pdf](http://www.bci.ie/documents/revised_access_rules_june_07.pdf)

<sup>2</sup> <http://www.ofcom.org.uk/tv/ifi/codes/ctas/ctas.pdf>

<sup>3</sup> See section 5 (format guidelines). [http://www.bci.ie/documents/BCI\\_EPG\\_Licensing\\_policy\\_2007\\_english\\_pdf.pdf](http://www.bci.ie/documents/BCI_EPG_Licensing_policy_2007_english_pdf.pdf)

<sup>4</sup> Section 2.3 of the BCI DTT licensing Policy  
[http://www.bci.ie/documents/BCI\\_dtt\\_licensing\\_policy\\_08\\_revised\\_edition.pdf](http://www.bci.ie/documents/BCI_dtt_licensing_policy_08_revised_edition.pdf)

## **2. Broadcast Services Regulation**

### ***Existence of obligations for TV broadcasters***

The issue of the lack of correlation between general legal provisions dealing with access of the handicapped and concrete obligations for broadcasting operators is clearly illustrated in the fact that no less than 11 respondents report that TV broadcasters under their jurisdiction are not subject to specific legal obligations with regard to the level of **subtitling**<sup>5</sup>: Bosnia and Herzegovina, Germany, Spain (CoAN and CMT), Hungary, Luxembourg, Moldova, Macedonia, Poland, Portugal and Serbia.

12 respondents state that TV broadcasters under their jurisdiction do not have any specific legal obligations with regard to the level of **signing**: Bosnia and Herzegovina, Germany, Spain (CoAN and CMT), Hungary, Luxembourg, Macedonia, Norway, Poland and Portugal, the Netherlands and Serbia.

Specific legal obligations imposed upon TV broadcasters with regard to the level of **audio description** are even less widespread and do not currently exist in 18 countries: Bosnia and Herzegovina, Cyprus, Germany, Greece, Spain (CoAN and CMT), Hungary, Israel, Lithuania, Luxembourg, Macedonia, Moldova, Norway, Poland, Portugal, the Netherlands, Serbia and Switzerland.

### ***Respective obligations of PSB and commercial channels***

As a rule, public service broadcasters are subject to stricter and wider-ranging access provisions as their mission generally includes the promotion of social cohesion and public interest.

In Belgium (Walloon), Denmark, Italy and Norway, the access provisions exclusively apply to public broadcasters. The access provisions are also more stringent towards public broadcasters in Belgium (Flanders), Switzerland, Great-Britain, Norway, Sweden and Slovakia. In Ireland, "RTE is the only service required to provide Irish sign language and Audio Description<sup>6</sup>. Additional subtitling requirements are also in place. However, these additional requirements are required as a matter of policy in the BCI Access Rules and do not arise from legal requirements placed specifically on public broadcasters". In Israel, access rules applicable to PSB are not stricter when compared to the provisions targeting commercial broadcasters. They are, however, more stringent when compared to the cable and satellite multi-channel television environment.

It is interesting to note that some Mediterranean countries, such as Cyprus, Spain (Catalonia), France and Greece do not differentiate between public and private broadcasters with regard to access provisions. In France, provisions of the Law of 30 September 1986, as modified by the law of 11 February 2005, do not only apply to public service channels. Private nation-wide terrestrial channels and channels not using a frequency assigned by the CSA are also concerned. In Catalonia, according to Art. 84 (1)b of the Catalan Broadcasting Act, "(...)providers of television services have to progressively incorporate subtitles for the deaf, Catalan sign language and audio description for the blind into programming, in order to facilitate access to broadcasting services for persons with disabilities."

### ***Voluntary policy***

In the absence of binding legal provisions, some broadcasters have a voluntary policy with regard to access measures in countries such as Germany, Spain, Lithuania, Luxembourg, Macedonia, Poland and Serbia.

In Lithuania, the public broadcaster has a voluntary policy as far as signing is concerned. Unfortunately, subtitling is understood by broadcasters as an obligation only in regard to the

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<sup>5</sup> The response of the French CSA is to be interpreted in a different manner as obligations do exist but are not specific to subtitling or signing.

<sup>6</sup> This entails a requirement to meet a cumulative target of 1% of audio described and 1% signed programming across both RTÉ television services by end February 2008. The provision of audio description and Irish Sign Language were limited to RTÉ on account of the costs associated with the provision of these types of access services and because of technological difficulties associated with their provision.

language but not for the convenience of the disabled. The Macedonian Radio and Television also has a voluntary policy towards providing special programmes for hearing disabled as well as other categories of disabled. The three private operators in Navarra (no public operator) broadcast, once a week, a programme adapted to sign language.

In Germany, both private and public broadcasters conduct voluntary access policies<sup>7</sup>. Some programmes, mainly provided by the public broadcasters, have subtitles or audio description.

Several broadcasters, from countries where binding rules apply, also have developed a voluntary policy, as in Sweden, Norway and Italy.

The Norwegian Media Authority notes that: "The State owned PSB NRK has news in sign language daily on weekdays on its main channel NRK1. In addition, NRK has a digital sign language channel. For other broadcasters, the answer is no, at least not for reasons concerning access for the disabled. But in Norway, foreign programmes are normally subtitled instead of dubbed (dubbing is mainly used for children's programmes). Both public and commercial broadcasters subtitle foreign programmes.

This remark about the subtitling of foreign programmes is likely to apply to several other countries, especially in Central and Eastern Europe where subtitling of programmes in foreign language is relatively common. The MeAC study of 2007 notes on this point that: "Where this is the case, people who rely on subtitling face a very unequal situation with regard to access to national language programmes<sup>8</sup>".

### ***Intention to impose obligations in the future?***

The regulatory authorities from Spain (CMT), Macedonia, Poland and Portugal mention that it is envisaged to impose access obligations on TV broadcasters in the future. In Macedonia, the Protocol on the obligations of the operators of the public communications networks regarding transmission of programme services and on providing audiovisual services on demand signed between the Broadcasting Council and the operators envisages the future implementation of new measures and also contains a provision according to which "*The providers of services on demand are obliged to make an effort to make their services accessible for the hearing and sight disabled, using subtitling and audio description systems.*"

A general change in the Broadcasting Act on access for disabled to audiovisual media services is also considered likely in Norway. In Luxembourg, the Service des médias et des communications indicated that future provisions concerning the access for disabled to audiovisual media services will be based on encouraging operators to impose such obligations on themselves.

## **3. Regulation of accessibility of end-user TV Equipment**

Only two respondents reported on regulations addressing the accessibility of end-user TV equipment for the disabled.

In France, the arrêté of 27 December 2001 on the specificities of reception equipment for the services broadcast by DTT stipulates in its Art. 3 that "*reception terminals mentioned by Art. 1 shall select and display subtitles if they are included in the received signal, pursuant to Standard IEC/CENELEC 62216-1, notably those aimed at aurally impaired people.*"

In Italy, pursuant to Art. 8 of the PSB contract, "RAI will provide access to its TV and multimedia offer to people with sensory or cognitive disabilities including specific programmes with audio description and telesoftware method transmission for people with visual impairments, and subtitled with special teletext pages that can be recorded on VCR and DVD media supports on its own Internet portal and through the translation of sign language (LIS). "

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<sup>7</sup> See for instance Phoenix news with signed language, Stimme der Hoffnung/Hope Channel which provides a programme called "library for the blind"

<sup>8</sup> Measuring progress of eAccessibility in Europe" (MeAC), p. 46  
[http://ec.europa.eu/information\\_society/activities/einclusion/library/studies/meac\\_study/index\\_en.htm](http://ec.europa.eu/information_society/activities/einclusion/library/studies/meac_study/index_en.htm).

In Switzerland, there are no regulations addressing directly the accessibility of end-user TV equipment. However: "the ordinance on Radio and Television provides some obligations for the telecommunications service provider. Therefore, if the provider requires its customers to get a specific set-top-box, the customers have to be able to receive specific coupled services by using this set-top-box".

The British Ofcom states that European regulations preclude the setting of national standards that interfere with the Single European market and that therefore they can only encourage manufacturers to make their equipment accessible.

#### **4. Scope of broadcasters' obligations**

Accessibility obligations imposed on broadcasters, may be expressed in terms of programme genres or in terms of targets (i.e. percentage of accessible output).

With regard to **programme genres**, the analysis of broadcasters' obligations (public and private alike) reveals some areas of priority:

- **News/information programmes**  
(E.g. Cyprus, Greece, Moldova, Belgium Walloon and Flanders, Sweden)  
*As an example, in Greece, general interest TV channels should broadcast news in sign language with subtitling with a duration of 7 min. at least between 16:00 and 22:00. Similarly, in Cyprus, TV broadcasters are obliged to broadcast news bulletins comprehensible to deaf people, which have a minimum duration of 5 min. and are shown between 18:00 and 22:00.*
- **Election and party political programmes** (Denmark)  
*In connection with general elections, all party presentation programmes, party leader rounds and the election night must be fully subtitled (including live broadcasts). Such programmes must in addition be provided with sign language interpretation.*
- **Talk-show and entertainment** (Greece)  
*Subtitling of talk-shows and entertainment programmes should be provided with a duration of 4 hours a week at least*
- **Events of major social importance** (Moldova, Denmark)  
*In Moldova, there is a requirement for at least 20 min of signing "translation" of news programmes and programmes of major importance (e.g. Olympic Games, international music contests)*  
*In Denmark, DR shall aim at providing all transmissions of events of major social interest with subtitles or sign language interpretation, where possible.*
- **Children' programmes** (Sweden)
- **Teletext information including job offers** (Belgium Walloon)
- **Cultural content** (Sweden).

**Targets** usually specify a gradually rising proportion of accessible output and may also be combined with programme genres. Targets may apply exclusively to public service broadcasters, as in Belgium Walloon, Italy, Slovakia, Sweden and Denmark, or to both public and private broadcasters, as in the Netherlands, Belgium Flanders, France, UK or Ireland.

In the UK, the Code on Television Access Services has just been reviewed and, as a result, 80 channels will be required to provide television access services in 2009. 10 year quotas are required of broadcasters who have an audience share of at least 0.05% and can afford<sup>9</sup> to supply the services. The quotas are:

- Subtitling: 80% in year 10, i.e. 2014 (quotas start at 10% in year 1)
- Audio Description: 10% in year 10 (2014)
- Signing: 5% in year 10 (quotas start at 1% in year 1)

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<sup>9</sup> Affordability = 1% or less of a broadcaster's relevant turnover.

In Ireland, the Access Rules specify percentage targets and 10 year timeframes in relation to the level of subtitling, Irish Sign Language and audio description to be provided by broadcasters. These rules apply to the four free-to-air services (RTÉ 1, RTÉ2, TG4 and TV 3) and to further licensed services – also recently including two community services. For the latter, a 2% target is to be achieved by February 2010 and is to be revised at this point.

A similar policy applies in Israel where quotas of subtitling and signing of the Cable TV and satellite Broadcasting licensees are being increased gradually until 2013, in which all Hebrew and Arabic recorded broadcasts will be accompanied by subtitles. By 2015, all the live broadcasts will be accompanied by subtitles. In 2005, the Council for Cable TV and Satellite Broadcasting selected five major channels that are required to fulfill full quotas of the law provisions.

Slovakia is a particularly interesting example, being the only country from Central and Eastern Europe (out of the respondents to this questionnaire) with obligations with regard to accessibility. A distinction is made between PSB channels, on which stricter provisions are imposed, and private broadcasters. A further distinction is made between analogue and digital broadcasts. Digital broadcasts of the PSB are subject to a quota of 50% subtitling, 3% signing and 20% of audio description.

Targets often concern almost exclusively subtitling, as in the Netherlands or Belgium Walloon. The RTBF Management contract stipulates a minimum level of subtitling of 800 hours/year for 2009 rising to 1000 hours/year in 2011, with a priority for information programmes, especially the evening news, and messages of general interest. In the Netherlands, the amount of subtitled programmes should grow from 80% in 2008 to 95% in 2011. National private broadcasters should subtitle at least 15% in 2008 to reach a percentage of 50% in 2011.

In France, legal obligations do not specify any particular accessibility device for deaf and aurally disabled people; they do not make a distinction between subtitling and signing. Channels whose average annual audience is higher than 2,5% of the total audience of television services, are under the obligation to make their entire programmes accessible to the aurally impaired by 2010 (not including advertising and notwithstanding derogations justified by the specificities of some programmes). With regard to channels broadcast via terrestrial television whose total audience is less than 2.5 %, the accessibility quota is 40%, whereas licensed channels not using a frequency assigned by the CSA are subject to a quota of 20%.

As a rule, broadcasters have significantly less obligations in the field of signing or audio description.

*With regard to signing:*

The Ofcom (UK) notes that, from 2009, they required low audience channels to begin providing 30 min. of sign presented programming a month OR enter into an alternative arrangement to improve access to sign presented programming. 59 broadcasters have funded a trust to provide sign presented programming in a Sign Zone on the Community Channel. In Denmark, DR shall provide sign language interpretation of at least two of the regular newscasts on DR1 and/or DR 2 during the period from 17.00–24.00 on its digitally broadcast channels.

*With regard to audio description*

In the UK, the Ofcom has required broadcasters to reach the 10 year target (10%) in 5 years (2009), because of the low percentage target. They will be looking to establish whether an increase in the quota should be recommended to Government as part of the 2009 Access Services Review. In France, further to the Broadcasting Law, contracts between the CSA and the licensed broadcasters shall foresee "for the services broadcast via DTT whose average annual audience is over 2.5% of the total audience of television services, proportions of programmes which, by adequate means and in particular at peak audience time are accessible for the blind or visually impaired". In December 2008, the CSA signed a Charter for audio description which foresees the implementation of qualitative devices enabling the access of

audiovisual programmes to the blind or visually impaired. In Denmark, DR will carry out experiments during its contract term. As from 1 January 2009, DR shall propose a target figure for audio description broadcasts by the end of the contract period<sup>10</sup>. In Slovakia, PSBs, if broadcasting digitally, shall provide 20% of its programmes with audio description. Private broadcasters, if broadcasting digitally, shall provide 3% of its programmes with audio description.

#### **Subtitling targets for PSBs – some examples:**

Denmark: 100% of programmes subtitled on the PSB DR by 2012.

Ireland: 100% for the main PSB channel (RTÉ 1) should be reached in 2014.

Belgium Flanders: 95% of subtitled programmes in 2010 for PSB

Netherlands: 95% of subtitled programmes in 2011 for PSB

## **5. Role played by RA**

Most of the regulatory authorities (21 out of 29) who returned the questionnaire play a role in the field of access for people with disabilities. However, this is not the case, at least so far, for the Bosnian CRA, the Navarran Council, the Hungarian ORTT, the Lithuanian LRTC, the Polish KRiTT and the Serbian RBA. In Lithuania, access issues are within the remit of the Ministry of Culture. In Macedonia, even though the Law on Broadcasting Activity and Legal framework applicable in the Rep. of Macedonia does not contain any provisions concerning the access for disabled to audiovisual media services, the Broadcasting Council is following the situation and, within the legal possibilities, is planning to introduce new measures, as a part of future amendments to the law.

The most widespread role of regulators (quoted 15 times) is the **monitoring of broadcasters' obligations**.

15 authorities report that they have the power to set **rules, recommendations or codes** dealing with the issue of access, though not often applying to PSBs. In Sweden, it is the Radio and TV Authority, and the government (concerning PSBs) that set up regulations regarding accessibility for TV broadcasters in the licensing agreements. In Norway, the Media Authority has not contributed to developing the PSB remit for NRK or the licence terms for TV2. However, the NMA generally has an advisory role concerning changes to the legal framework for broadcasting. In Catalonia, the CAC is currently elaborating a general instruction addressed to broadcasting service providers to guarantee access to content for persons with disabilities.

12 regulators mention that they play a role by **setting or contributing to a policy framework**. In the Netherlands, the CvdM was involved in discussions before the adoption of legal arrangements and, in 2007, has elaborated some rules on programme quotas in its policy guidelines. The Norwegian Media Authority is in charge of an ongoing project to improve the offer of subtitled TV programmes. The Norwegian public service broadcasters NRK and TV2 are also participating in the project, whose main objective is to enable subtitling of directly broadcast news programmes through the development of speech recognition technology. The project is referred to as TTT (Tale Til Tekst: speech to text).

Only three authorities (out of the 29 consulted) seem to have the remit to set **presentational/technical requirements or standards**: the Portuguese ERC, the Irish BCI and the British Ofcom. The Ofcom Guidelines on the provision of television access services provide best practices, such as technical examples on subtitling (colour, screen font, layout, synchronisation, speed of subtitling), signing and audio description<sup>11</sup>.

<sup>10</sup> <http://www.bibliotekogmedier.dk/english/radio-and-tv/drs-public-service-contract/>

<sup>11</sup> [http://www.ofcom.org.uk/tv/ifi/guidance/tv\\_access\\_serv/guidelines/guidelines.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/guidelines/guidelines.pdf)

Since 2003, the French CSA is under the obligation to deliver a yearly report to Parliament (Assemblée nationale and Sénat) on the volume of subtitled and signed TV programmes. The report shall also provide information relating to the costs incurred for broadcasters. The new Law, which transposes the AVMSD, foresees further reporting obligations for the CSA. At the latest on 31 December 2011, the CSA shall submit to the Parliament a report highlighting the progress of TV operators concerning audio description, subtitling and other measures aimed at improving the access for the deaf, the blind as well as aurally and visually impaired persons. In addition, the CSA, after consulting with TV operators and disability interest groups, has adopted a decision on 26 June 2007, which lists a series of principles to be observed by private broadcasters with regard to subtitling. The CSA is also required to consult annually with the National Advisory Council for Disabled People. This consultation deals with the level of subtitling and signing obligations in the licensing agreements and PSB contract, the nature and extent of derogations justified by the type of certain programmes and on the broadcasters' commitments in favour of deaf and hard of hearing persons.

## **6. Implementation of Art. 3c AVMSD**

### **Accessibility in the AVMSD and ECTT**

One of the innovations of the AVMSD concerns the introduction, following from a suggestion of the European Parliament, of provisions aiming at facilitating the access for disabled people to AVMS. Further to Art. 3c: *"Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability"*.

In addition to Art. 3c, recitals 64 and 67 also mention the issue of accessibility:

(64) *The right of persons with a disability and of the elderly to participate and be integrated in the social and cultural life of the Community is inextricably linked to the provision of accessible audiovisual media services. The means to achieve accessibility should include, but need not be limited to sign language, subtitling, audio-description and easily understandable menu navigation.*

(67) *Since the objectives of this Directive, namely creation of an area without internal frontiers for audiovisual media services whilst ensuring at the same time a high level of protection of objectives of general interest, in particular the protection of minors and human dignity as well as promoting the rights of persons with disabilities, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve these objectives.*

The draft revised ECTT will also contain very similar provisions. The drafting Group proposed to insert in the ECTT: *"an article encouraging Parties to take measures to ensure access for disabled persons to audiovisual media services, taking into account feasibility criteria (in particular for small broadcasters) and containing a reporting obligation to the T-TT in view of a general assessment"*.

### **Binding character of the provisions**

According to most legal experts<sup>12</sup>, the formulation of Art. 3c points towards a politically, but not legally, binding provision. The task assigned to the Member States is to ENCOURAGE which, in comparison to other articles, is a far less binding task. As the wording of the provision is not clear, precise and unconditional, Art. 3c does not seem to have a direct effect.

### **Transposition of Art. 3c by Member States**

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<sup>12</sup> See for instance, Castendyk/Dommering/Scheuer, *European Media Law*, Alphen a/d Rijn: Kluwer law international, 2008, p. 877-886 (Author: Jörg Ukrow).



Only a few countries report that Art. 3c has been implemented in their national framework so far. This includes France (as previously mentioned), Belgium (Flanders and Walloon), the Netherlands and Slovakia. Concerning the French speaking Community of Belgium, the renewed legal framework simply specifies that the CSA's advice chamber (a coregulation body) must set the rules regarding accessibility. There is no planning of this process so far and it is not to be expected until September. In the UK, access service provisions for linear services have been incorporated into the national legal framework since 2003. The UK government is still considering how to implement Art. 3c in relation to non linear services. In Ireland, decision-making on this issue rests with the Government Department of Communications, Energy and Natural Resources. Broadcasting legislation is currently making its way through the Houses of Parliament, which will require the new Broadcasting Authority of Ireland to implement rules in this regard.

In Denmark, it is unlikely that any transposition would imply a further strengthening of access rules as it is generally considered that "they already do what is feasible". In Sweden, the implementation process is ongoing but "*suggestions are that Art. 3c will be implemented. That is, the writers of the new suggestion for a new Swedish and Radio TV law have done so*".

Many consultations with disability groups with a view of implementing Art. 3c were conducted by ministries (e.g. Lithuania) or through hearings in parliament (e.g. Belgium Flanders). In Lithuania, the Ministry of Culture held meetings with representatives of the disability society and discussed problems and ways to solve them; however no results have been achieved as yet.

## **7. Hurdles & enablers concerning accessibility to disabled**

### **Issue of costs<sup>13</sup>**

The vast majority of the respondents consider the issue of costs as the major hurdle with regard to accessibility for disabled people. In Denmark, Israel, Sweden and the Netherlands, however, this is not seen as a crucial obstacle.

One of the main problems is that the costs are the same for broadcasters serving large and small countries, thus implying that the cost per user in small countries is much higher. As an example, the Norwegian NMA reports that as a small country with the language only spoken by approx. 5 million people, it is therefore very expensive to develop a system for subtitling programmes simultaneously as they are sent. In addition, there are a lot of different dialects in Norway, which is also a challenge for developing this technology.

Aware of the costs issue, the French CSA has stated in its decision of 26 June 2007 that the selling of a programme (that the broadcaster has subtitled) to another broadcaster shall include subtitling.

### **Technology-related issues**

Technology-related issues are also often quoted (though less frequently than costs) as a hurdle with regard to accessibility for disabled people. No further explanation was provided in this context.

### **Other hurdles**

The BCI reports that "in Ireland, broadcasters have argued that **lack of indigenous industry** providing access services limits the attainment of targets. Human and technical resources a key issue: The **downturn in economy** and consequent drop in advertising income has also been highlighted by broadcasters as a limiting factor. These issues and others are being examined in the context of BCI review of Current Access Rules".

In Germany, the issue of the **quantity of content** is seen as particularly problematic.

The Belgian (Walloon) CSA also mentions **regulatory shopping** as an additional hurdle. As some of the main private national operators have put themselves outside the national regulatory framework, they are out of the authority's reach.

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<sup>13</sup> For detailed information on economics, repartition of costs etc., see the EBU Access services report 2004, p.7.

### **Digital technology developments as the main facilitator**

Digital TV has the potential to increase access to information for people with disabilities. It can carry services such as audio description, subtitling and captioning much more easily than analogue transmission. In Denmark, DTT has provided channels with the capacity for direct sign-translation of major early news on DR1, DR2, and TV2 (17:00-19:30).

### **Subtitling/voice recognition software**

Subtitling and voice recognition softwares are also quoted as a further enabler by the Catalan CAC. A Danish voice-recognition software was developed in 2003, financed by DR, TV2, Ministries of Science (responsible for aiding people with disabilities) and of Culture. In DR and TV2 it enables easier subtitling of programmes, including live transmissions.

### **Other non-technical enablers**

Denmark, Ireland and the UK mention their legal framework as another non-technical facilitator of services accessibility.

The CSA of the French speaking Community of Belgium also mention that: "the penetration of French Channels in our landscape is a good incentive because the French regulation is stronger than ours on these matters, so our audiences benefit from these stronger constraints".

## **8. Funding of accessibility measures to disabled**

Whereas the issues of costs is considered crucial, only very few schemes for the funding of accessibility measures have been reported by the consulted regulatory authorities.

As a rule, broadcasters are expected to bear all the required costs. However, accessibility obligations are usually modulated according to their audience share and revenues. As an example, in the UK, the access code applies to the most popular channels, i.e. those with an average audience share in all UK households of 0.05% over a 12 month period - which can afford to meet the access service targets by paying up to 1% of their total revenues.<sup>14</sup> Ofcom's own regulatory impact assessment indicates that the annual cost for broadcasters could amount to £0.3 million a year, rising from that level as obligations increase. In Ireland, the BCI has also examined the likely financial impact of any requirement to comply with targets and timeframes set for the provision of access services. In particular, the BCI examined the type of programming across various schedules, including the number of repeat programmes as this has a bearing on the costs.

Several authorities, such as these from Denmark, Ireland<sup>15</sup> and Switzerland, mentioned that public service obligations (which generally encompass accessibility rules) imposed on PSB are funded through the licence fee.

In Norway, the aforementioned TTT project is partly financed by the Ministry of Culture and Church Affairs.

The Hungarian National Radio and Television Commission – through the broadcasting fund – issued tenders for television broadcasters of a total value of about 86.000 EUR for the funding of subtitling in television programmes. Approximately 59.310 EUR worth of subsidies were awarded to broadcasters.

The Belgian (Walloon) CSA described an attempt to fund access programmes in local television services in 2002. However, in the absence of clear legal provisions, the beneficiaries have never been able to reach an agreement on common standards to use (subtitling or sign language, mainly) so the attempt failed.

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<sup>14</sup> For a full list, see: [http://www.ofcom.org.uk/tv/ifi/guidance/tv\\_access\\_serv/](http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/).

<sup>15</sup> See section 2(5) <http://www.bci.ie/documents/2003fundingact.pdf>

According to the Belgian (Flanders) VRM, Art. 151, 4 of the new Mediadecree stipulates that the Flemish government will provide subsidies (and the criteria) for every technique to make television services accessible.

## **9. Questions for debate**<sup>16</sup>

### **Accessibility policies targeting media services**

How can broadcasters be persuaded to provide (more) access services? If legal provision is usually the most effective way to increase access service availability, obligations towards broadcasters regarding accessibility may vary in a diversity of ways.

Who sets the rules: the legislator, the Government or the regulatory authorities? How are the targets set (percentages, hours of programmes, and types of programmes)? Are the rules progressive, and if so, according to what criteria? What differences are made between private sector and PSB regarding access services? How is the application of these measures monitored?

### **Cost structures**

One of the biggest restraints on better propagation of access services is their cost.

What are the different possible ecosystems and financing schemes for access services? Is state intervention unavoidable? Can a progressive approach be practical to impose levels of availability? If so, what criteria should such a progressive approach be based on (budget, audience, and programme format)?

### **Digital switchover as an opportunity and as a threat**

Digital switchover can potentially lead to better accessibility to media services, through better technology like DVB Subtitles. However, these aspects need special attention from the authorities in order to deliver any benefit. Moreover, without appropriate care or consideration from the authorities, digital switchover is more likely to actually result in lower availability and quality of access services.

What are the conditions for a fruitful approach to digital switchover regarding accessibility? Beyond access services availability, what other parts of the television value chain need to be taken into account (interoperability of terminals, common standards for access services implementation)?

### **European level benchmarking**

When evaluating the level of availability of access services, quantitative comparison with other countries is often seen as a good method. However, there is no common measurement methodology so far for establishing and comparing the levels of availability of access services, making any comparison potentially misleading. National media regulation authorities are in a good position to contribute to status monitoring due to their central position in the audiovisual media landscape.

To what extent is it possible to set a common status monitoring methodology for access services availability that would take into account factors such as access technology, population reach, time of availability, type of programs, or market size?

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<sup>16</sup> As formulated by the Working Group Content Producer, Bernard Dubuisson, CSA (BE).