

Memo

11 October 2021
KDI/ CKAGG

The Danish Government's response to the public consultation on the WAD review

The Danish Government welcomes the public consultation on the review of the Web Accessibility Directive (Directive (EU) 2016/2102, referred to as the 'WAD'). The Danish Government agrees that the assessment of the WAD is a necessary initiative in order to achieve the policy objectives of the Regulation.

General remarks

The Danish Government considers the WAD an important contribution to the digital transformation and development towards a society where everyone has equal access to the online services provided by public sector bodies. During the recent COVID-19 pandemic, it has been emphasized how important it is that everyone may access crucial information published by public authorities.

The Danish Government believes that clarity and specification should be the guiding principles in the review of the WAD. Especially in regard of:

- Definition of the subject matter and scope
- Specification of unclear definitions
- Consequences of interpretation

Definition of subject matter and scope

The Danish Government calls on the Commission to specify the definitions presented in the WAD and to consider implications of content outside of the current scope.

Definition of the term "website"

Article 3 presents the definitions, which applies to the purpose of the WAD. However, the definition of what constitutes a website is not specified. Consequently, there is a risk of variation in the interpretation of this central term between Member States, which could result in a reduced level of harmonisation across Europe.

In Denmark, a high percentage of the communication (e.g. application processes, appointment booking and correction of personal information) between the public sector bodies and the citizens is conveyed through self-service solutions. These self-service solutions are in most cases not inherent on the website of the public sector body in question but published on a common citizen portal. Furthermore, the self-service solutions are in most cases developed on behalf of multiple public sector bodies.

It is unclear in the Directive whether these self-service solutions should be defined as a “website” or as “content” of the website. Thus, it is unclear where and who should declare accessibility issues, and likewise where the feedback from citizens should be directed.

Definition of the term “mobile application”

According to article 3 point (2), a mobile application is defined as “application software *designed and developed, by or on behalf of public sector bodies*, for use by the general public on mobile devices such as smartphones and tablet”.

The implementing and monitoring authority of Denmark is under the impression that a number of the mobile application which are provided to the citizens by the public sector bodies are neither developed by these bodies nor on behalf of them. They are designed and developed by private companies aiming at public customers. Thus, the definition of a mobile application and accessibility measures are not applicable. Consequently, a number of apps provided by public sector bodies may not be covered by the directive and hence not accessible for people with disabilities.

Specification of unclear definitions

The Danish Government calls on the Commission to revise and clarify conflicting application of content in the WAD.

Disproportionate burden

According to preamble 39, “Public sector bodies should apply the accessibility requirements set out in this Directive to the extent that they do not impose a disproportionate burden on them. This means that, in justified cases, it might not be reasonably possible for a public sector body to make *specific content* fully accessible”.

Article 5 describes the circumstances under which this derogation may be used. Point (2) b) sets forth that “frequency and duration of use of the specific *website* or *mobile application*” should be taken into account.

Thus, the article refers to the use of the website, but the preamble refers to the content. It is therefore unclear whether it should be possible to derogate an entire website or mobile application, or only specific content.

To the extent that specific content is derogated pursuant to article 5, it is furthermore unclear whether the public sector body should take the frequency and duration of the specific content or website/mobile application into consideration.

Placement of the accessibility statement for mobile applications

Article 7 presents the requirements for accessibility statements, and sets forth that for mobile applications, the statement “shall be available on the website of the

public sector body that developed the mobile application concerned, or alongside other information available when downloading the application”.

Even though it creates flexibility for the public sector body to be able to choose between the different options, it makes it more difficult for people with disabilities to find and access the statements and consequently give feedback to the public sector bodies. The Danish Government believes that this option is not conforming with the objectives of the Directive in terms of enabling websites and mobile applications to be more accessible to users, in particular to persons with disabilities.

Thus, the Danish Government urges that there should not be an optionality between the two placements of the statement for the mobile applications. For the sake of recognisability and consistency, the statement should be placed alongside other information available when downloading the application (e.g. App Store and Google Play).

Consequences of interpretation

The Danish Government calls on the Commission to consider the implications of the possible interpretations of the derogation of “third-party content”.

Article 1 point (4) specifies the content of websites and mobile applications to which the Directive does not apply. According to point (e) “third-party content that is neither funded nor developed by, nor under the control of, the public sector body concerned”.

In Denmark, this derogation has resulted in confusion amongst public sector bodies regarding content that is developed by one public sector body but published by another public sector body. In these situations, the public sector body who publishes the content has neither funded nor developed it, and is not in control of the content.

This confusion has resulted in an amendment of the Danish law, adding the specification that the derogation does not apply to content on a public sector body’s website or mobile application, that is delivered by another public sector body and which is developed, funded or controlled by this public sector body. This amendment is brought into force by 2023.

The Danish Government calls on the Commission to secure harmonisation of the implementation by specifying the derogation of third-party content, so that content which is developed, funded or under control of a public sector body is not be exempt from the requirements of the WAD.