



EDF Reply to Ofcom Proposals for Access Services on Non-Domestic Channels

July 2012

“In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

Article 4 § 3 of the United Nations Convention on the Rights of Persons with Disabilities

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1. Executive Summary

The European Disability Forum (EDF) positively welcomes the Ofcom consultation on its proposals for access services on non-domestic channels. It is an effort to extend policy regarding access services from the narrow national context to a wider European context where it belongs and which seems to be the intention of the AVMS directive.

Before all, EDF would like to remind of the obligations of the State Parties that ratified the United-Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and in particular Articles 3(f), 9, 21 and 30. The EU concluded it in 2010 while most of the EU Member States ratified it. The United-Kingdom (UK) ratified the Convention and its Optional Protocol in 2009.

EDF considers that it is important to comply with the overall aim of the AVMS Directive (i.e. increase accessibility). The rules should cover as many broadcasters as possible to actually contribute to implementation of the AVMS Directive, and should not open for different interpretations. The requirements imposed on UK non-domestic channels must not be set below the requirements applying to domestic channels. In addition, EDF agrees with an approach by quotas increasing over time that broadcasters must fulfill. However, such a quantitative approach should not stand alone and qualitative elements must also be taken into consideration.

Persons with visual and/or hearing impairments require access services: audio description, sign language interpretation, subtitling and audio or spoken subtitles:

- To comply with the AVMS directive and increase the accessibility, the targets should cover subtitling of the national language and quality aspects.
- For deaf and hard of hearing people, interlingual subtitling cannot be offered as an adequate substitute for subtitles.
- There is an urgent need for audio or spoken subtitles used to translate speech in a foreign language for partially-sighted people and persons with dyslexia among others.
- If we want to allow equal access to audiovisual media and television programmes to deaf people, EDF considers that the

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requirement should cover the national sign language of the intended audience.

2. Introduction

EDF is the European umbrella organisation representing the interests of 80 million persons with disabilities in Europe. The mission of EDF is to ensure persons with disabilities full access to fundamental and human rights through their active involvement in policy development and implementation in Europe. EDF works closely to the institutions of the European Union (EU), the Council of Europe and the United Nations.

EDF positively welcomes the Ofcom consultation on its proposals for access services on non-domestic channels. It is an effort to extend policy regarding access services from the narrow national context to a wider European context where it belongs and which seems to be the intention of the AVMS directive.

3. EDF Answer to Ofcom Proposals

3.1. Access to audiovisual media services and the United-Nations Convention on the Rights of Persons with Disabilities (UNCRPD) ¹

Before all, EDF would like to provide further information and understanding on the UNCRPD and its articles concerning access to audiovisual media and television. The EU has concluded the UNCRPD on the 23rd December 2010 and it entered into force on the 22nd of January 2011. All EU Member States have signed the Convention and most of them have already ratified it or are in the process of doing so. The UK has ratified it in November 2009.

The UNCRPD recognises accessibility as both a general principle (Article 3) and a standalone provision (Article 9). This is the first time that a Human Rights Treaty includes general principles (listed under UNCRPD Article 3). They are of universal application and serve to be interpreted for the entire text of the Convention. Additionally, the overall purpose of Article 9 is to enable persons with disabilities to live independently and participate fully in all aspects of life. The UNCRPD is very clear on what States Parties should do to fulfil this obligation: they shall take

¹¹ The UNCRPD is available in PDF and html format on the [United Nations website](#).

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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”.

Thus, accessibility must be understood as a positive obligation. Refraining from violating the right to accessibility is not enough to fulfil it. This also means that dedicated resources must be invested and progressive steps must be taken to live up to UNCRPD requirements. These steps must be deliberate, concrete and targeted as clearly as possible towards meeting the obligations.

Moreover, article 21 of the UNCRPD states that freedom of expression and opinion includes the “freedom to seek, receive and impart information and ideas” with appropriate and accessible information and communication technologies (ICTs). Accessibility of ICTs is a basic requirement for persons with disabilities to exercise their freedom of expression and opinion.

Finally, article 30 of the UNCRPD provides that cultural and recreational activities (cultural life, recreation, leisure and sport) should also be made accessible to persons with disabilities on an equal basis with others. This includes provisions to “enjoy access to television programmes in accessible format” (Article 30(1)(b)).

3.2. Access Services under the Audiovisual Media Services Directive (AVMS Directive) (Questions 1, 2 and 3)

Article 7 of the AVMS Directive states that “Member States shall encourage media services providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.” EDF understands that EU Member States have the obligation (“shall”) to encourage media services providers to progressively make their services accessible, by for instance promoting e-accessibility measures and/or supporting initiatives from media services providers depending on their national specificities. The Directive also provides with some example to develop accessibility: “the means to achieve accessibility should include, but need not be limited to, sign language, subtitling, audio description and easily understandable menu navigation” (Recital 64).

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Therefore, EDF considers that it is important to comply with the overall aim of the AVMS Directive (i.e. increase accessibility). The rules should cover as many broadcasters as possible to actually contribute to implementation of the AVMS Directive, and should not open for different interpretations. The requirements imposed on UK non-domestic channels must not be set below the requirements applying to domestic channels. In fact, as the UK has been leading the development of access services in Europe they should be used to raise the level further.

With regard to the transitional period for broadcasters to level up to the requirements set by Ofcom, EDF considers that there is no need to allow this 'ramping up' period for access services provided in the English language, at least for subtitles and audio description, because there will be little or no start-up costs or difficulties. Existing English language access services could be broadcast to a foreign and English-speaking audience as they are, without the need for any translation or modification. This already happens in fact. For instance, Sky Ireland carries the same English channels as in the UK with the same access services. It would therefore be no impediment for broadcasters to immediately meet the same targets for English subtitling and audio description to foreign markets as applied domestically. The same cannot be said for signing however, because the British Sign Language is different from the Irish or national ones.

In addition, EDF agrees with an approach by quotas increasing over time that broadcasters must fulfill. However, such a quantitative approach should not stand alone and qualitative elements must also be taken into consideration. For instance, television broadcasters could provide subtitling to the level set by Ofcom but the quality of some subtitling could be so poor that deaf and hard of hearing people remain unable to watch the programme. It would be necessary to somehow secure the quality of the service from the perspective of persons with disabilities².

3.3. Accessibility Needs of Persons with Disabilities (Questions 5)

Persons with visual and/or hearing impairments require access services to be able to watch television and audiovisual media with their non-

² For detailed information please refer to EDF Position on Indicators to Check and Assess Accessibility of Television for Persons with Disabilities, February 2011, which is available in word format on [EDF website](#).

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disabled peers. Such access services could be audio description, sign language interpretation, subtitling and audio or spoken subtitles.

Subtitling and Interlingual Subtitling

Subtitling from a foreign language to the national language of the intended audience should not be counted, it is already in place. To comply with the AVMS directive and increase the accessibility, the targets should cover subtitling of the national language and quality aspects such as colour coding reflecting who is speaking and sounds.

Interlingual subtitling cannot be offered as an adequate substitute for subtitles for deaf and hard of hearing people. These are two totally different things with different purposes for different audiences. Interlingual subtitling only translates spoken dialogue and written signs. Although it is true that subtitles for deaf and hard of hearing repeats this content, it crucially also conveys other programme sounds which are very often absolutely essential for the understanding and enjoyment of the programme. For example, a gunshot, a telephone ringing, a car screeching to a halt outside, a distant scream, a dog barking, an alarm bell, music being played, etc. Thus, EDF does not consider that interlingual provide full and equal access to deaf and hard of hearing people, only subtitles intended for deaf and hard of hearing people does.

There should be no need to place the subtitles for these other sounds in another part of the screen. If the interlingual subtitles are provided in a closed format, which they ought to be even for the benefit of the viewers that need them, the subtitles for deaf and hard of hearing people (which includes the dialogue translation) can just replace them. Nothing prevents from offering a choice between both solutions, as long as subtitling for deaf and hard of hearing people is provided.

Audio or Spoken Subtitles

There is one service that is not covered in the UK. That is audio or spoken subtitles that could even be good for the domestic UK audience to deliver translation in minority languages and welsh. Audio subtitles are considered the least expensive access service and should be covered.

For partially-sighted people and persons with dyslexia, among others, there is an urgent need for audio or spoken subtitles used to translate speech in a foreign language. For instance, the requirement for spoken subtitles has been an important issue for decades in Sweden where the majority of the content in commercial channels is usually in English.

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Spoken or audio subtitles are also described in Making TV accessible from the International Telecom Union Focus Group on Audiovisual Media Accessibility³.

Sign Language Interpretation

Sign language is the mother tongue of deaf people. If we want to allow equal access to audiovisual media and television programmes to deaf people, in particular deaf children unable to read subtitles, EDF considers that the requirement set on domestic and non-domestic channels should cover the national sign language of the intended audience. For instance, if a channel broadcast TV programmes for the British viewers, the sign language should be British sign language. If a channel broadcast TV programmes for Swedish viewers, the sign language should be Swedish sign language. This would also sign language users from the intended audience and country to watch television as anyone else.

In the context of a progressive realisation of e-accessibility for persons with disabilities, EDF supports the idea of a transitional period starting with subtitling and moving to sign language. However, subtitling should not remain the only form of access and adequate sign language access should be provided once the transitional period is over, as this would mean equal access for deaf people.

³ Further information can be found online : <http://www.itu.int/en/ITU-T/focusgroups/ava/Pages/default.aspx>.

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4. APPENDIX

- 4.1. EDF Position on Indicators to Check and Assess Accessibility of Television for Persons with Disabilities, February 2012, is available in word format on [EDF website](#).
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- 4.3. EDF Toolkit for the Transposition of the Audiovisual Media Services Directive into National EU Member States Law, September 2008, is available in word format on [EDF website](#).

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More information about EDF is available on www.edf-feph.org.

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