

ETNO Reflection Document in response to BEREC consultation “Electronic communications services: ensuring equivalence in access and choice for disabled end-users”



November 2010

Executive Summary

- ETNO welcomes the opportunity to contribute to future BEREC work on the area of “ensuring equivalence in access and choice for disabled end-users”. European telecommunications operators, such as ETNO members, are willing to grant the highest possible level of equivalence in the provision of electronic communications services to their final customers with disabilities, taking into account national circumstances.
- The new Article 23a of Directive 2009/136/EC allows member states to enable national regulatory authorities (NRAs) to specify requirements to be met by undertakings providing electronic communications services to ensure that disabled end-users have equivalent access to and choice of undertakings and services that are available to the majority of end-users and provides a mechanism to apply relevant obligations to all electronic service providers.
- ETNO believes that a harmonised approach should be taken regarding the new task of NRAs in this field, allowing them to pay due attention to national circumstances. We also believe that the views of operators should be taken in the utmost account when implementing the new provisions of the Directive.

Contributions to the questions of the consultation paper:

Question 1: Are there additional legal provisions, other than those listed in Section 2, currently in place in MS with respect to end-users with disabilities regarding electronic communications? If yes, please detail the provisions and the organisation responsible for implementing or monitoring these provisions.

ETNO believes that the introduction of new Article 23a (1) in the 2002 amended Universal Service Directive (USD) is very relevant.

Indeed, new Article 23a (1) empowers NRAs to specify requirements to be met by undertakings providing electronic communications services in order to ensure that disabled end-users have equivalent access to and choice of undertakings and services that are available to the majority of end-users.

Article 23a provides a mechanism to apply relevant obligations to all electronic service providers, in addition to the universal service provider.

With reference to Article 23a (2), the effectiveness and the extent of the provision will largely depend on the national transpositions -- and in particular, on whether or not the NRAs will have responsibilities in this domain. For example, NRAs could ensure an appropriate activity to promote harmonised requirements at EU level for terminal equipments for disabled users. In this regard, it is also important to consider the active role of NRAs under new Article 21 (3), as to information to disabled subscribers. This stance is also supported by the amendments of new Article 7 of the 2009 USD.

As far as affordability measures are concerned, financial facilities, such as social tariffs and targeted bundles and packages, are in place in some member states and seem in these cases to serve the purpose.

ETNO deems that when the symmetric "all undertakings" principle is implemented, there will be less need to regulate the services directed to end-users with disabilities.

Specific reference to national measures:

➤ Austria:

Special legal provisions for equipping public payphones (building regulations according to ÖNORM "barrier-free construction" and ÖNORM "special provisions for disabled and elderly people) are in place and are also part of the national universal service regulation. Newer public payphones are equipped for wheelchair users.

➤ Czech Republic

- Disabled persons have a right to obtain a special 200 CZK (8 €) discount for fix/mobile voice service monthly fee according to the Czech Act on Electronic Communications (§ 38, subsection 3). These special discounted prices are part of USO. The loss of operators from providing discounted prices is financed directly from the state budget.

France: The Decree 2006-268 of 7 March 2006 mandates the operators to publish an annual report which presents the follow-up of actions undertaken for the adaptation and the improvement of the accessibility of mobile communications for all kinds of disabled end-users related to handsets and services.

Moreover, the operators are in charge of informing their customers on the best suited handsets and services in relation to their handicaps

➤ Italy:

In this respect, the Italian NRA introduced mandatory provisions for all undertakings in relation to free or special price services for people with physical impairments, with, inter alia, decision no. 514/07/CONS, which mandates a free-of-charge mobile offer for deaf end-users and an internet offer for blind end-users (integrated by decisions 182/08/CONS, which states that the free-of-charge SMS offer for deaf end-users regards all fixed and mobile operators, and 202/08/CONS, which extends the internet offer to all internet access typologies and billing modalities).

Other mandatory provisions outside the universal service obligation (USO): Decision 179/03/CSP (equality of treatment principle in the use of telecommunication services and measures to remove communication access barriers); 79/09/CSP (call centres accessibility by deaf users).

In conclusion, we consider that the range of listed measures fits neatly with the provisions currently in place in Member States and that they make up a sound and well-balanced tool for ensuring equivalent access to and choice of electronic communications services in relation to disabled end-users.

Question 2: Do you agree that the factors listed in sections 3.1.1 and 3.1.2 are important to consider when assessing equivalent access? Are there other factors which should be considered? Are some factors more important than others?

ETNO agrees with the definition proposed in the consultation document, i.e., that “equivalent” in this context means that equal access to and choice of electronic communications services should be achieved for end-users with disabilities, albeit that this might be achieved in different ways for end-users with disabilities in comparison with other end-users.

ETNO agrees with the statement according to which “in order to assess if access and choice is equivalent for end-users with disabilities, the status with respect to other end-users should be known, so that comparisons can be drawn and any issues, as relevant, identified and highlighted”. Should a NRA decide to apply the accessibility measures to reach this goal, ETNO deems that the measures should be symmetrically applied to “all undertakings”, evaluating if they may constitute proportionate burdens on operators.

Specific reference to national measures:

➤ Austria:

1) Public Payphones: Special technical equipment designed to support hearing aids. They are equipped with special earphones that enable electro-magnetic coupling for hearing aids.

In addition the key pad has a raised point on the number "5", which helps facilitate the dialling-process for the visually impaired.

2) In addition to traditional voice telephony multi-media payphones provide the hearing impaired with public Internet access and

communication via email and SMS (text messaging). Thus, the terminals are also suitable as means of communication for the hearing impaired.

3) Together with the Austrian Association for the Blind and Visually Impaired (ÖBSV) A1 Telekom Austria developed and implemented special telephone numbers and directory services for the blind (either for free or at reduced rates).

➤ **France:**

Orange France Telecom Group is fully and spontaneously committed:

- to adapt its offers considering various handicaps,
- to design dedicated services according to its principle of "Design for all",
- to foster the dialogue with disabled consumers associations and the development of partnerships (relationship with associations, participation in events focused on handicap: "Autonomic" in Paris in June 2010, more than 30000 visitors, "Autonomic" in Metz in September 2010)

France Telecom's blind customers can access free of charge directory enquiry service. France Telecom provides on demand and free of charge information and invoices available in Braille or in large print format.

Public payphones are adapted for visually and hearing impaired people (amplified sound). More than 5000 public payphones are adapted for people with limited mobility.

A catalogue offering products and services adapted to various handicaps is published twice a year. It is also available on audio CD.

France Telecom has designed real time solutions using a written format for telephone communications dedicated to hearing or speaking impaired people (for example Orange messenger by Windows Live, MOTAMO which is a package for SMS/MMS and unlimited calls).

Moreover, France Telecom has opened:

- 200 shops dedicated to disabled end-users offering suited facilities with specifically trained staff.
- Telesales services accessible for hearing impaired people
- Web site dedicated to disabled people

➤ **Italy:**

- As for the availability of accessible terminal equipment, the concept of “Design for All” is being studied by Telecom Italia, which is actually working with associations representing end users with disabilities. It should be noted that Telecom Italia is developing these kinds of services even when not mandated, considering end-users with disabilities a separate market with specific needs.

- The pricing aspect should be treated as suggested, allowing disabled people to buy their own equipment with state financial assistance. In this respect, it should be noted that in Italy the price of the telephone service for disabled people is regulated as follows¹:

1) deaf residential subscribers and residential subscribers in whose family there is a deaf person are exempt from the payment of the standard telephone service monthly fee. In addition, for the mobile service a minimum of 50 SMS a day free of charge is mandated by the Italian NRA;

2) internet access providers at a fixed location shall provide blind users and household where there is a blind person with at least 90 (ninety) hours per month of free Internet surfing regardless the connection speed chosen by customers, both in the offers by volume and through a 50% reduction of the flat “only internet” offers’ monthly fee or part of the Internet monthly fee in case other services be included. In any case, the first change of tariff plan will be free of charge.

- The billing problems can be solved together with the access ones providing a format tailored on the different kind of disability.

- As for the difficulty in accessing the service, the service maintenance and online directories, we suggest that the information about the available providers and services for disabled customers be published on the NRA website (with link to the operator website for further information) to be updated on a regular basis.

Question 3: Do you agree that the factors listed above (section 3.2.1 and 3.2.2) are important to consider when assessing equivalent choice? Are there other factors which should be considered? Are some factors more important than others?

ETNO agrees with the consideration that, in order to choose among different providers, disabled customers should be offered by all parties present on the market equivalent services or packages with accessible handsets. We deem that the best way to assess the needs of end-users with disabilities is to consult with their representative

¹ Decisions no. 314/00/CONS, 514/07/CONS (annex A), 182/08/CONS, 202/08/CONS.

associations. ETNO considers that services for end-users with different disabilities should be dedicated through appropriate terminal equipments and, when required, technological platforms. Switching between operators and services could be complex in practice and could increase technical solutions cost.

As a consequence, ETNO believes that the availability of a plurality of dedicated and customised services for disabled end-users, provided by different operators, should be the main goal.

Specific reference to national measures:

➤ Italy:

As for the assistance that could be offered, we could mention that Telecom Italia Mobile has implemented, inter alia, the following two²:

- TIM Mobile care, free-of-charge multimedia video service for hearing-impaired customers to translate into the Italian Sign Language all necessary information on how to use mobile services. This service was developed with the Deaf Protection National Body (Ente Nazionale per la protezione dei Sordi, ENS).

- Tim Mobile speak, software to allow visually-impaired customers to use all mobile functions through an electronic voice which reads the display according to the user's indications. This software was developed with Loquendo (TI Group company) and the Italian Union of the Blind and the Visually-impaired (Unione Italiana Ciechi e Ipovedenti).

This has been made in cooperation with the associations which represent end-users with different disabilities.

Since the information on price, contract terms, accessible switching procedures etc. is essential for a knowledgeable choice, it should be published on the provider website to be updated on a regular basis. To date this information has been managed directly with representative associations for disabled users. Telecom Italia has made its web side available to visually impaired users.

² Telecom Italia's 2009 Sustainability Statement.

➤ Poland

TP Group has launched “b-Link” which is a human-computer interface controlled by the blinking of an eye. The system, created in cooperation by the technical University in Lodz and TP R&D, is designed for people with limited use of their limbs, who are not able to use traditional interfaces such as a mouse or a keyboard.

Question 4: In your view, should the obligations currently in place under USO, for end-users with disabilities, be placed on all service providers? If no, what types of service providers, considering factors such as financial impact (cost), should the obligations be placed on? What is your view in relation to alternative mechanisms for funding?

The planned system envisaging (universal) obligations to all electronic service providers, as regards equivalent access for disabled people, is welcomed by ETNO.

Overall, this new provision (all undertakings in addition to the designated universal service provider) is close to the text of Article 8 of 2002 USD and fully compliant with the designation method there illustrated. As a matter of fact, in a number of member states, only a single universal service provider is designated and responsible for the USO. Therefore equivalent choice can only be guaranteed for disabled end users if all undertakings are obliged to provide services for them.

With reference to financial impact and funding mechanism, ETNO would like to point out the poor implementation of the mechanism envisaged in Article 13 b of 2002 USD had in some Member States, as regards financing of the USO.³ As evident by the long delays in compensation and/or legal disputes, the implementation and operation of the financing mechanisms in a number of member states are dysfunctional. We believe that many of these problems stem from conceptual flaws in the Directive -- in particular: the complexity of the

³ Article 13 of the 2002 USD entitled “Financing of universal service obligations” envisages that: “1. Where, on the basis of the net cost calculation referred to in Article 12, national regulatory authorities find that an undertaking is subject to an unfair burden, Member States shall, upon request from a designated undertaking, decide: (a) to introduce a mechanism to compensate that undertaking for the determined net costs under transparent conditions from public funds; and/or (b) to share the net cost of universal service obligations between providers of electronic communications networks and services.”

decision making related to financing (articles 12 and 13); the provisions related to cost calculation methods; and the required assessment of an unfair burden.⁴

In accordance with paragraph (a) of Article 13, ETNO believes the best practice to fund USO -- in relation to disabled users and in general to all end-users -- would be to introduce a mechanism to compensate the designated undertakings for the determined net costs under transparent conditions from public funds (in particular an ex ante funding could be foreseen).⁵ In our opinion, alternative systems of funding, such as mixed public-private funding or funds from the sector under specific conditions, would generate malfunctioning and delays in reimbursements.

Question 5: In what form should the information provided by service providers to inform end-users with disabilities of details of products and services designed for them and information regarding pricing and contracts be provided in?

We believe the information should be provided in a coordinated way through the associations which represent end-users with disabilities, using specialised publications and the information channels of the associations themselves.

Question 6: Do you consider it appropriate that NRAs have a role in encouraging the availability of terminal equipment, in accordance with Article 23 (a) (ii)? If yes, what do you consider that NRAs could do to achieve this?

The terminal equipment sector is highly competitive, liberalised in the 1990s through the RTT&E Directive. In fact, terminal manufacturers are mainly transnational and extra-EU companies.

⁴ For ETNO's position on universal service reform, see "ETNO Reflection Document on universal service principles in e-communications," RD324 (May 2010), <http://www.etno.eu/Default.aspx?tabid=2243>

⁵ Indeed, with regard to Italy, a specific fund for the financing of the USO is currently in place; electronic communications network and service providers must contribute to it.

In this context, the requirements for terminal equipments are substantially limited to EC mark certification and possible new normative requirements should be compliant with RTT&E Directive.

In addition, some services for disabled users could also have impact on network platforms. In such cases, the European Commission should defer to the European standardisation bodies (e.g. ETSI) to evaluate and define suited international technical standards.

We deem intervention regarding terminal equipments (which is intended to improve the particular features of terminals used by disabled people) to be more related to manufacturers than operators.

Question 7: In addition to the services, features and types of terminal equipment listed are there any others which you consider necessary to ensure equivalent access?

ETNO believes that consultation document's analysis is complete regarding terminal equipments. As proposed in response to answer 6, new normative requirements on terminal equipments should be evaluated in compliance with the RTT&E Directive, within the current de-regulated EU regime.

In addition, with regard to the improvement of terminal equipments availability, NRAs' initiatives have served the purpose. Likewise, EC initiatives could be useful to improve the harmonisation of terminal equipment provisions at national level

Question 8: Where services, features or terminal equipment suitable for end-users with disabilities have been provided voluntarily, has there been encouragement from NRAs Government or other parties, or does it appear that the market is delivering and will continue to deliver of its own accord?

ETNO is of the view that the undertakings will continue to meet the market needs of their own accord and that no further regulation is necessary. NRAs should coordinate the work carried out by the undertakings in cooperation with customers associations and help resolve the controversies that may come about.

At EU level, a harmonisation initiative to identify common guidelines for member states regarding terminal equipments requirements for disable end users could be important. Such a harmonisation could improve voluntary availability by manufacturers, since they could sell similar equipments in more countries.

Specific reference to national measures:

➤ Czech Republic

Special handset - Telefónica O2 Czech Republic voluntarily provides the special handset - model Emporia Talk Premium with attractive tariff. It is a very simple and easy-to-use mobile handset designed with senior users or people with disabilities in mind, who would find it difficult to use a standard mobile telephone. Emporia offers easy access to individual functions via lateral buttons. All keys and buttons are large and the backlit display makes it very easy to read digits and letters. The handset also has an improved sound transmission technology. Telefónica O2 markets this handset in an economical bundle with half-price credit or the O2 Neon S tariff (for seniors) at a discount. From each Emporia handset sold, Telefónica O2 donates CZK 100 as a support of Helpline for Senior Citizens.

Deaf assistance service - Telefónica O2 Czech Republic is voluntarily operating a nonstop line on which specially trained operators help and assist the deaf and the hearing-impaired people to communicate with normal people. This service could be used with text telephone, fax machine, SMS or email. The line's operators act as interpreters and provide users with assistance in an entire range of common situations. The most frequent situations include communication with state institutions and bureaus, doctors, ordering goods and services, as well as regular private messages and communication with family and friends.

The principle of the functionality of the service is very simple. An operator on the line receives instructions from a hearing-impaired customer in the form of an email, fax, or SMS and then the operator communicates directly with hearing users in line with hearing-impaired customer requests. In the same manner, the operator can interpret information to other hearing-impaired customers. In this case the operator writes the content of the conversation and sends it in the selected format to the other hearing-impaired customer.

The assistant service of operator is free of charge for customers of all operators. Customers pay only for sending SMS messages according to their tariff.

➤ France

Orange is one of the French mobile operators to have signed the Access Charter for disabled people.

On its side, ARCEP, the French regulator, highlights on its website that mobile operators and manufacturers take actions by their own and provide competitive adapted offers.

From their side, manufacturers such as Alcatel, Motorola, Nokia, Samsung, Sony Ericsson participate to the Global Accessibility Reporting Initiative (GARI), a project which was developed to provide a central information source to learn about accessibility in mobile devices.

➤ Italy:

Telecom Italia has introduced on its own accord a specific paragraph on end-users with disabilities in its 2010 "Service Charter", point 8, and developed specific services in cooperation with Associations which represent end-users with disabilities.

Question 9: What consideration should be given to NRAs mandating undertakings to provide services, features or terminal equipment for end-users with disabilities as part of the standard services and packages they offer?

In our opinion, "terminal equipment" issues are generally not related to operators and, therefore, NRAs, when enabled, should verify the possibility to influence manufacturers' world.

With reference to services, NRAs already have the power to mandate all undertakings to apply special prices on services used by specific end-users categories, e.g. SMS for deaf users, and that should be considered in the implementation of Article 23.

Question 10: What is the role for public procurement of accessible terminal equipment, as it is likely that NRAs may have no powers with respect to design or supply?

ETNO believes that public procurement via public tenders is an efficient means to identify the supplier/suppliers of accessible terminal equipments qualified to satisfy the needs of disabled end-users.

Public tenders launched by public entities should be addressed essentially to manufacturers and should not concern telecommunications operators.

In addition, it is important to consider the value of a NRA maintaining a role in the process, i.e., setting the technical standards for terminal equipment after consultation with industry..

Question 11: Where a subsidy is available for services, features or terminal equipment needed for disabled end-users is the up-take as expected and are there any barriers to take-up? If yes, what are the barriers?

Specific Reference to specific national measures:

➤ Italy:

As regards to Italy, service take-up reached the expected threshold, both for the ones provided under NRA decisions (see answer to questions 2 and 3) and the offers developed autonomously by Telecom Italia against specific request of the Associations which represent end-users with disabilities.

Question 12: If funding is provided to facilitate equivalent access for disabled people, is it best targeted at purchase of equipment, discounts on tariffs, by subsidising special services such as relay services or by direct payment to the user?

As stated in previous answers, ETNO supports the use of public funding to compensate undertakings for the net cost resulting from equipment provision, discounts and special tariffs.

ETNO considers direct payment to the user (e.g., vouchers) as the most appropriate funding mechanism to facilitate equivalent access for disabled people. Direct payment, more than any other mechanism, ensures freedom of choice for disabled end-users allowing them to select freely the most convenient offer/product. Accordingly, it is a measure that does not distort competition, leaving the market free to choose the most appropriate product/solution.

At the same time, it is the only mechanism which ensures, without exception, to make disabled end-users aware of their rights and of the opportunity to benefit from special offers and services. In fact, with this method, end-users would receive the information about these measures directly from the public bodies.

Question 14: Are you in agreement that the steps, as proposed above, are appropriate for NRAs to consider when preparing to implement Article 23a? Are there any additional factors that should be considered?

ETNO believes that NRAs when considering what measures should be implemented in respect of Article 23a (1) should focus on the determination of factors to assess equivalent access and choice; nevertheless, they should also give due consideration to the identification of proportionate measures and make consultations with interested parties.

With regard to ensuring equal access and choice, it is crucial to first define the equivalence of factors between end-users with disabilities and other end-users.

In addition, NRAs should evaluate, as far as access is concerned, price, number of additional suppliers, accessible billing and accessible directory services. With reference to choice, the most relevant aspects seem to be the assessment of range of services/service providers and the occurrence of choice of packages with accessible handsets, accessible contracts terms and accessible switching procedures.

As for availability of accessible terminal equipment, the role of NRAs, as widely known, will depend on the way of transposition.

During implementation of the provisions of Article 23a of the 2009 USD, NRAs should take in due account of Article 33, i.e., NRAs “should take account of the views of end-users, consumers (including, in particular, disabled consumers), manufacturers and undertakings that provide electronic communications networks and/or services on issues related to all end-user and consumer rights”.

Moreover, as provided in Article 23 (1) II paragraph, NRAs should “establish a consultation mechanism ensuring that in their decisions on issues related to end-user and consumer rights concerning publicly available electronic communications services”.

In this regard, ETNO shares the BEREC view that “it is proposed, in line with regulatory procedure, that NRAs would consult on the measures proposed under article 23a”. On the other hand, the consultation process is also promoted in Recital 49 of the 2009/136/EC Directive, where is provided for that “in order to overcome existing shortcomings in terms of consumer consultation and to appropriately address the interests of citizens, Member States should put in place an appropriate consultation mechanism”.

In addition, aiming at consistently implementing Article 23a, NRAs should act in compliance with Article 8 of the 2009 Framework Directive, as regards the adoption of proportionate measures.

In conclusion, ETNO considers the BEREC proposal for a review of the current legal framework in Member States absolutely comprehensive. Without considering the instruments yet in place, a consistent implementation of the provisions of Article 23a, could in fact engender a number of new obligations.

With regard to other measures, ETNO believes that when the market adequately addresses the needs of end-users with disabilities, the NRAs should solely introduce self-regulatory instruments, such as codes of practice or guidelines.