

**Electronic communications services:  
ensuring equivalence in access and choice for  
disabled end-users**

**Response by Telecom Italia**

**20<sup>th</sup> November 2010**

## Electronic communications services: Ensuring equivalence in access and choice for disabled end-users

**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.*

TI does believe that the gamut of listed measures [legal provisions in place in Member States with regard to end-users with disabilities in relation to electronic communications] is exhaustive and quite satisfactory.

Beyond the regulatory framework provided for in the 2002 Universal Service Directive (in particular Articles 7.1 and 7.2), TI deems of outstanding importance the introduction of new Article 23a (1) of the 2009 Universal Service Directive, entitled “*Ensuring equivalence in access and choice for disabled end-users*”.

Indeed, new Article 23a (1) allows Member States to enable 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.<sup>1</sup>

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) according to which “*Member States shall encourage the availability of terminal equipment offering the necessary services and functions*” the effectiveness and the extent of the provision will hugely depend on the national transposition, in particular on whether or not the NRAs will have responsibilities on this matter. In our opinion, NRAs could ensure an appropriate activity to promote harmonised requirements at EU level for terminal equipments for disabled users. This is also important in order to increase their availability and to decrease their costs. In this regard, it is also important to consider, in the context of the new framework, 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.

Furthermore, one should point out that, beyond the 2009 Review, the specific provisions currently in place in MS, listed in paragraph 2.2 of the Consultation, seem to be effective as well. With regard to accessibility of the US to end-users with disabilities, we reckon the availability of specialist terminal equipment, the special services for disabled users, the provision of clear billing and contractual information in accessible formats, the access and use for persons with disabilities of public payphones, the facilitated directory enquiry services, all necessary issues.

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<sup>1</sup> Article 23a of the Directive 2009/136/CE entitled “*Ensuring equivalence in access and choice for disabled end-users*” states that: “*1. Member States shall enable relevant national authorities to specify, where appropriate, requirements to be met by undertakings providing publicly available electronic communication services to ensure that disabled end-users: (a) have access to electronic communications services equivalent to that enjoyed by the majority of end-users; and (b) benefit from the choice of undertakings and services available to the majority of end-users*”.

As far as affordability measures are concerned, financial facilities, such as social tariffs as well as special price packages, are yet in place in most MS and seem to serve the purpose.

Nonetheless, TI deems other initiatives outside the USO significant too: in particular we wish to underscore the relevance of other means of intervention, in particular those based on a symmetric “all undertakings” criterion, irrespective of the USP rule. In this respect, the Italian Authority 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 Decision 182/08/CONS, which states that the free-of-charge SMS offer for deaf end-users regards all fixed and mobile operators, and Decision 202/08/CONS, which extends the internet offer to all internet access typologies and billing modalities).

Other mandatory provisions outside USO: Decision 179/03/CSP (equality-of-treatment principle in the use of telecommunication services and measures to remove communication access barriers); Decision 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 MS 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.

Telecom Italia 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.

**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?*

Telecom Italia 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”*.

Telecom Italia 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 the NRAs decide to apply the accessibility measures to reach this goal, TI deems that they should be symmetrically applied to “all undertakings”, consistently with the proportionality principle.

We believe that a possible increase of impacts and costs on operators could be detrimental also to existing voluntary initiatives in favour of disabled end-users.

Herewith, a brief analysis of the factors indicated in the Consultation with respect to assessing the equivalence of access.

1. 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. To be noted that Telecom Italia is

developing these kinds of services even if not mandating, since it considers end-users with disabilities a separate market with specific needs.

2. The price aspect should be treated as suggested, allowing disabled people to buy their own equipment with State financial assistance. In this respect it is to be noted that in Italy the price of the telephone service for disabled people is regulated as follows<sup>2</sup>:
  - 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 Agcom;
  - Internet access providers at a fixed location shall provide blind users and households 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. This is to be applied:
    - to the offers by volume; and
    - to the flat offers, through a 50% reduction of the monthly fee for the “internet only” or part of the Internet monthly fee in case other services (e.g. internet + voice).

In any case, the first change of tariff plan will be free of charge.
3. The billing problems can be solved together with the access ones providing a format tailored on the different kind of disability.
4. 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.

Moreover, we think another disputed aspect ought to be addressed. Often, proposals and suggestions come from Disabled People’s Associations. Actually, some Associations are more influential than others: Telcos and manufacturers may have limited information about the needs of “less represented” disabled people; this fact, in turn, can correspond to a barrier to access. This should be addressed by the NRAs at national level.

**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?*

TI 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 Associations.

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<sup>2</sup> Decisions no. [314/00/CONS](#), [514/07/CONS](#) (annex A), [182/08/CONS](#), 202/08/CONS.

As for the assistance that could be offered, we could mention that Telecom Italia Mobile has implemented, inter alia, the following two<sup>3</sup>:

- 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, and accessible switching procedures 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 website available to visually impaired users.

TI considers that services for end-users with different disabilities have to be dedicated and customised, through appropriate terminal equipments and, when required, technological platforms. Switching between operators and services could be complex in practise and could increase technical solutions costs.

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

**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?*

TI regards as positive the introduction of new Article 23a (1) of the 2009 Universal Service Directive, entitled "*Ensuring equivalence in access and choice for disabled end-users*".

We support the possibility for NRAs, following MS' consent as envisaged by the new provision, 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 other end-users.

As a consequence, the planned system envisaging (universal) obligations to all electronic service providers, as to equivalent access for disabled people, is warmly welcomed by TI.

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<sup>3</sup> Telecom Italia's [2009 Sustainability Statement](#).

All in all, this new provision (all undertakings in addition to the 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 the incumbent is currently responsible for USO.

With reference to financial impact and funding mechanism, TI deems necessary to highlight the poor performance of the scheme envisaged in Article 13 b of 2002 USD had in some MS, as regards financing of USO.<sup>4</sup>

This outcome was generally brought about by muddled compensation processes and dysfunctional sharing mechanisms.

TI deems the USO burden (as is) to be in conflict with the goal to promote competition and not to create a distortion of market dynamics.

In complete accordance to letter a of Article 13, TI 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).<sup>5</sup>

In our opinion, alternative systems of funding, e.g. 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 that represent end-users with disabilities, by using specialised publications and all the information services 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 deregulated through the RTT&E Directive and, as a fact, terminal manufacturers are mainly transnational and extra-EU companies.

In that 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.

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<sup>4</sup> 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.”

<sup>5</sup> Indeed, with regard to Italy, a specific fund for the financing of the USO is currently established and electronic communications network and service providers must contribute to it.



Besides, some services for disabled users could also have an impact on network platforms and, in that cases, EC should let the European standardisation Body (i.e. ETSI) evaluate and define suited international technical standards.

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

Telecom Italia believes that, bearing in mind the considerations about the transposition of article 23 (II), NRAs, along with users Associations, should promote terminal equipments' customisation for disabled end-users.

**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?*

Telecom Italia believes that the consultation document analysis regarding terminal equipments is comprehensive. 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.

Besides, 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?*

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.

We deem that the undertakings will continue to meet the market needs through competition and that no further regulation is necessary. NRAs should coordinate the works carried out by the undertakings in cooperation with Customers Associations and help resolve the disputes 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.

**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?*

The powers given to NRAs as to terminal equipment will depend on the transposition of Article 23a (ii) at national level.

Common EU guidelines could harmonise a minimum common set of features to be provided by all operators.

Regarding terminal equipments, NRAs, when enabled, could evaluate the possibility to impose obligations on manufacturers, since operators generally do not produce terminal equipments; in that case it could be easier also for operators to make available improved services for disabled users.

In our opinion, “terminal equipment” issues are generally not related to operators and, therefore, NRAs, when enabled, should verify the possibility to influence the 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 this should be considered in the implementation of art. 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?*

Telecom Italia believes that public procurement, via public tenders, should be the privileged tool to identify the supplier/suppliers of accessible terminal equipments qualified to satisfy the needs of disabled end-users.

As a fact, a public tender allows purchasing a large amount of goods in one solution, directly from the producer/supplier; furthermore, a public tender is a sort of competition among suppliers, and as a consequence it sets the price at the lowest level available on the market. All in all, public tenders allow cutting down the expense amount and, consequently, public funding. Aiming at ensuring better choice, tenders may identify more than one supplier.

The process of a public tender launched by the State, or by Public Entities, should involve essentially manufacturers and not concern Telecom Operators.

In addition, it is worth the while to underline that NRAs should maintain a role in the process, i.e. setting the technical standards for terminal equipment as requirements to participate in the tender. Also Telecom Operators can have a role in this process.

**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?*

As to Italy, service up-take reached the expected threshold, both for services provided under NRA Decisions (see answer to questions 2 and 3) and for offers developed autonomously by TI 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, TI supports the use of public funding to compensate undertakings for the net costs resulting from equipment provision, discounts and special tariffs.



In particular, TI considers direct payment to the user as the most appropriate funding mechanism, in order to facilitate equivalent access for disabled people.

As a matter of fact, a form of direct payment ensures, more than any other mechanism, freedom of choice for disabled end-users allowing them to select freely the most convenient offer/product.

As a consequence, 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 one 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.

This is another reason why TI is firmly convinced that, irrespective of the actual mechanism to allocate them, the resources to compensate operators for such obligations should come from public funding.

**Question 13:** *Are there any details available on the cost per user of implementing any of the measures mentioned in the report?*

At present, no details are available on the costs per user.

**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?*

TI believes that, while considering what measures should be implemented in respect of Article 23a (1), NRAs ought to mainly linger on the determination of factors to assess equivalent access and choice; nevertheless they should dwell upon 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 ought to definitely take into due account what is stated in Article 33.

In particular it is important to underscore that 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 set for 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, TI shares the BEREC viewpoint according to which *“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”*.

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

In conclusion, TI considers the BEREC proposal for a review of the current legal framework in MS to be 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, TI believes that when the market adequately addresses the needs of end-users with disabilities, the NRAs should merely introduce soft regulatory instruments, such as codes of practice or guidelines, rather than measures beyond the USO.