

Public feedback on: Accessible web & digital content for people with disabilities – review of EU rules submitted by FREE Institute on January 8, 2021

The Directive 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies (the Directive) has been implemented in Poland in the Act of April 4, 2019 (*ustawa z dnia 4 kwietnia 2019 r. o dostępności cyfrowej stron internetowych i aplikacji mobilnych podmiotów publicznych (Dz.U. 2019 poz. 848)*).

Effective enforcement procedure

Recital (53) of the Directive states: “In order to avoid systematic recourse to court proceedings, provision should be made for the right to have recourse to an adequate and effective procedure to ensure compliance with this Directive. (...).” In Poland, the “availability of an adequate and effective enforcement procedure” provided in Art. 9 of the Directive was implemented with reference to the procedure of “complaints and requests” provided in the Code of Administrative Procedure, Title 8 (Dział VIII) (see Art. 18 Sec. 8 of the Act of April 4, 2019). The effectiveness of this particular procedure may be disputed.

According to Polish jurisprudence, if the procedure of complaints and requests is applied, it is not possible to refer the matter to an administrative court at any further stage (see *NSA 9.12.1999, III SAB 7/99 (ONSA 2001, No. 1, item 27); WSA 10.5.2005, II SA/Bk 276/05* and several academic sources). This means that it will be impossible or very difficult to independently measure the effectiveness of the procedure in which users notify public sector bodies about digital accessibility issues. Lack of judicial oversight limits the procedure to a response (or lack of response) from the public sector body. The wording of Recital (53) of the Directive may suggest that the matters can be left outside court jurisdiction. This is most probably the reason why the least effective measures were applied in the Polish implementation of the Directive.

We suggest to amend the Directive so that citizens are guaranteed the right to judicial oversight in such matters. Such an effect may be achieved with the oversight of administrative courts over the matters (which would result from applying the regular administrative procedure in digital accessibility matters in Poland). There is also the possibility to provide for an alternative by

reference to Alternative Dispute Resolution. Possibly, such an alternative would result in an implementation applying ADR to yet another matter related to information technology, allowing for the development of on-line dispute resolution (ODR) solutions, using ADR (ODR) between the public sector bodies and users (such as mediation with public sector bodies, see Art. 96a of the Polish Code of Administrative Procedure).

Comment to the Commission Implementing Decision (EU) 2018/1523 related to the model accessibility statement

The Decision 2018/1523 provides that the accessibility statement should “indicate the method used to prepare the statement” (such as a self-assessment or an assessment carried out by a third party).

In a quantitative research study carried out by the FREE Institute (Poland) in relation to accessibility statements of public sector bodies in Poland (over 600), Ireland and Malta (100 each), we found that this description is ambiguous and may be understood differently in different Member States. In Poland, it was translated into “information or a link to information on how to assess digital accessibility” (see Art. 10 Sec. 4 item 3) of the Act of April 4, 2019). This was often interpreted as a link to an automated accessibility evaluation software. Basing on other provisions of the Directive, we believe that such was not the aim of the Directive and the implementing decisions.

Research by the FREE Institute has been shortly summed up in this yearly report available on the organization’s website in Polish and English (<https://free.org.pl/wp-content/uploads/2021/01/Dostepnosc-cyfrowa.-Digital-Accessibility-2020.-Report-by-FREE-fin.pdf>).