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Access to information online as a condition for e-participation: the example of the Web Accessibility Directive

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I. INTRODUCTION

The ubiquitousness of digital technologies has created both opportunities and challenges for our fundamental rights and democracy. Websites (web) and mobile applications (apps) are widely used by governments to provide information and services and foster participation. However, they can create barriers and exclusion for many people, especially people with disabilities and older people, who cannot access them. Digital accessibility or web accessibility, which includes not only web but also mobile apps accessibility, means designing digital tools so that everyone is able to access information online and participate in the digital society¹. Web accessibility is a prerequisite for full and effective participation in society on an equal basis with others as required under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The European Union (EU) has adopted the Web Accessibility Directive (WAD) 2016/2102 which requires Member States to ensure that the websites and mobile applications of public sector bodies are more accessible to users, in particular persons with disabilities. About 167 million EU citizens have a disability or age-related condition which can prevent them from accessing services and information on government websites. In Sweden, around 20 percent of the population has some form of disability². The purpose of this paper is, thus, to examine the Web Accessibility Directive and how Sweden, one of the leading countries in the use of digital technologies³ and a pioneer in public access to information⁴, has implemented the Directive to ensure access to government information and services online as well as enable participation. In this paper, I argue that access to information online is a condition for participation online and thus, the importance of web accessibility. Therefore, I firstly explore the

¹ <https://www.digg.se/kunskap-och-stod/digital-tillganglighet>.

² <https://www.digg.se/kunskap-och-stod/digital-tillganglighet> et https://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/DisabilitiesFederation_Sweden39.pdf.

³ Sweden ranks 4th of 27 EU Member States in the 2022 edition of the Digital Economy and Society Index (DESI).

⁴ Sweden established freedom of the press by law in 1766 and was first in the world to do so.

interdependence between web accessibility, access to information and participation; secondly, I examine the EU Website Accessibility Directive and then the Swedish transposition of the Directive; and lastly, I look into governments' websites accessibility in Sweden.

II. BACKGROUND AND LEGAL CONSIDERATIONS

- 2 In this section, I will explore the interdependence between web accessibility, access to information and participation. I will start with some definitions of web accessibility.
- 3 There is no shared and unique definition of accessibility⁵. To understand what accessibility is and why it is important, it is necessary to understand its opposite, disability⁶. According to the UNCRPD, persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on equal basis with others. The World Wide Web Consortium (W3C) defines accessibility as the possibility for people with disabilities to “perceive, understand, navigate and interact with the web⁷. Accessibility on the web is thus about making websites accessible to those with aural, visual, or physical disabilities, or rather, constructing websites that don't exclude these people from accessing the content or services provided⁸. According to W3C, older people also have accessibility needs due to ageing⁹. The ageing process can often result in elderly people experiencing multiple functional limitations such as vision decline, hearing loss, motor skill diminishment and cognition effects. In fact, a hearing loss increases the inability to hear high-pitched sounds. Both arthritis and Parkinson's are likely to cause difficulties with the mouse use, and even other pointing devices, as well as keyboard use for some sufferers¹⁰. Whatever the disability is, there are ways to develop and implement technologies so that persons with disabilities are included¹¹. Therefore, web accessibility means making sure that people with the widest range of capabilities can easily access information and functions available on the internet¹². The inventor of the World Wide Web and W3C Director, Sir Tim Berners-Lee, launched the Web Accessibility Initiative in 1997 with the statement “The power of the Web is in its universality. It is critical that the Web be usable by anyone,

⁵ C. WADDELL, M.R. BURKS, J. THATCHER, C. HEILMANN, S. LAWTON HENRY, A. KIRKPATRICK, P.-H. LAUKE, B. LAWSON, B. REGAN, R. RUTTER, M. URBAN, *Web Accessibility: Web Standards and Regulatory Compliance*, Friends of Ed, New-York, 2006, p. 39.

⁶ H. ROBERT KING, *Thinking about web accessibility: Stumbling blocks and stepping stones to global use*, Lulu Press, Morisville, 2019.

⁷ C. WADDELL, M.R. BURKS, J. THATCHER, C. HEILMANN, S. LAWTON HENRY, A. KIRKPATRICK, P.-H. LAUKE, B. LAWSON, B. REGAN, R. RUTTER, M. URBAN, *Web Accessibility: Web Standards and Regulatory Compliance*, *op. cit.*, p 40

⁸ *Ibidem*.

⁹ <https://www.w3.org/TR/wai-age-literature/>

¹⁰ <https://www.w3.org/TR/wai-age-literature/>

¹¹ <https://issues.org/lazar-online-internet-access-people-with-disabilities/>

¹² European Parliament. Accessibility of Europarl website. <https://www.europarl.europa.eu/portal/en/accessibility>

regardless of individual capabilities and disabilities”¹³. Web accessibility is not about disability, it means that the website can be accessed and used effectively by people with and without disabilities¹⁴. Thus, Web accessibility ensures equal access to information online to all citizens including people with disabilities.

- 4 Web accessibility is a precondition to access information online for everyone. Access to Information thus can be defined as the right to seek, receive and impart information held by public bodies¹⁵. Access to information is a fundamental right, protected by most constitutions worldwide and in international human rights instruments¹⁶. The right of access to information is recognised under Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR) as an element of freedom of expression. Article 19 of the UDHR states that the fundamental right of freedom of expression encompasses the freedom “to seek, receive and impart information and ideas through any media and regardless of frontiers”. Article 19 of the ICCPR ensures the right to access information held by public bodies. It requires that states proactively disseminate information in the public interest and ensure that access is “easy, prompt, effective and practical.”¹⁷ Internet access is recognised as a means for governments to keep the public informed. It should therefore provide information in an accessible manner, including for vulnerable populations¹⁸.
- 5 The right to access public information is the cornerstone of an open and inclusive government and a crucial element to deepen trust among citizens and their governments¹⁹. It enables citizens to participate more fully in public life. Access to information allows citizens to better understand the role of government and the decisions made on their behalf; hold governments accountable for decisions and policies; and choose their representatives more effectively. For governments, access to information helps improve the lives of citizens by addressing information in relation to health care, education and other public services²⁰. The right to information is considered an enabling right, which facilitates

¹³ W3C (1997). World Wide Web Consortium launches international program office for the Web accessibility Initiative, Press Release, 22 October 1997. <https://www.w3.org/press-releases/1997/ipo-announce/>

¹⁴ C. WADDELL, M.R. BURKS, J. THATCHER, C. HEILMANN, S. LAWTON HENRY, A. KIRKPATRICK, P.-H. LAUKE, B. LAWSON, B. REGAN, R. RUTTER, M. URBAN, *Web Accessibility: Web Standards and Regulatory Compliance*, *op. cit.*, p 40.

¹⁵ Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR)

¹⁶ M. RIEGNER, “Access to Information as a Human Right and Constitutional Guarantee. A Comparative Perspective”, *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America*, 2017, n° 50, pp. 332-366. UNCACCOALITION. Access to information at <https://uncaccoalition.org/learn-more/access-to-information/>

¹⁷ The UN Human Rights Committee in General Comment 34, adopted in 2011 <https://www.article19.org/resources/international-standards-right-information/>.

¹⁸ Report of the Office of the United Nations High Commissioner for Human Rights, UN Doc A/HRC/49/38, 10th January 2022.

¹⁹ OECD, *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris, 2016, p. 58.

²⁰ *Ibidem*.

people to better achieve other rights, for example the right to health or the right to education, and to more effectively participate in public discussions on policy and government activities.

- 6 Access to information is the necessary precondition for open government and particularly for transparency, accountability and citizen participation to become effective. However, it is not sufficient for the government to provide information, it must make it accessible to all parts of the population²¹. For citizens to easily obtain and use the information provided by governments, the platform or website where the information is published needs to be accessible and easy to understand for all parts of society²².
- 7 Access to information as well as access to information and communication technology (ICT) are both rights recognised under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The Convention is an international human rights treaty representing a framework for accessibility, freedom of expression, opinion and access to information, communication and several other fields. It requires States parties to take all appropriate measures to provide persons with disabilities with the same information and at the same time as persons without disabilities.
- 8 Article 9 of the the UNCRPD, which focuses on accessibility, clearly enshrines accessibility as the precondition for persons with disabilities to live independently, participate fully and equally in society, and have unrestricted enjoyment of all their human rights and fundamental freedoms on an equal basis with others²³. Article 9 imposes a duty on States parties to ensure that persons with disabilities are able to access services open to or provided to the public on an equal basis with others including: to implement minimum standards and guidelines for the accessibility of public services (Art. 9, para. 2 (a)); to provide training on accessibility issues facing persons with disabilities (Art. 9, para. 2 (c)); to promote appropriate forms of assistance and support to persons with disabilities to ensure their access to information (Art. 9, para. 2 (f)).
- 9 Article 21 of the UNCRPD provides that States parties “shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice” including by: providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost (Art. 21 (a)); facilitating the use of sign languages, Braille, augmentative and alternative communication and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions (Art. 21 (b)); through the Internet, provide information and services in accessible and

²¹ *Ibidem*, p. 65.

²² *Ibidem*, p. 61.

²³ D. BIANCHINI, G. GALASSO, M. GORI. et al., Study supporting the review of the application of the Web Accessibility Directive (WAD), VIGIE 2020-0656 – Final report, Publications Office of the European Union, 2022.

usable formats for persons with disabilities (Art. 21 (c)); encouraging providers of information through the Internet, to make their services accessible to persons with disabilities (Art. 21 (d)).

- ¹⁰ Article 29 of the UNCRPD specifically prescribes persons with disabilities' right to participation in political and public life and stipulates that State parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on equal basis with others²⁴. It thus requires States to actively promote an environment in which persons with disabilities can participate fully in the conduct of public affairs. The exercise of the right to political participation is closely linked to a number of preconditions that should be in place to allow persons with disabilities to take an active role in their countries²⁵. Web accessibility is therefore a prerequisite for full and effective participation of persons with disabilities in today's digital society.

III. WEB ACCESSIBILITY LAW IN THE EUROPEAN UNION: THE WEB ACCESSIBILITY DIRECTIVE

- ¹⁰ Before tackling the Web Accessibility Directive, I will firstly explain the EU efforts that led to the Directive.

A. Background to the Web Accessibility Directive

- ¹¹ This section provides a brief overview of the efforts to improve digital accessibility in Europe. In December 1999, the European Commission launched the "eEurope – An Information Society of All initiative"²⁶ which proposes ambitious targets to bring the benefits of the Information Society within reach of all Europeans focusing among others on Government online and eParticipation for the disabled. In June 2000, the European Council of Feira adopted the Action Plan « eEurope 2002 » aiming to open the Information Society to all European specifies that « public sector Web sites and their content in Member States and in the EU institutions must be designed to be accessible to ensure that citizens with disabilities can access information and take full advantage of the potential for e-government »²⁷. On 25 September 2001, the European Commission adopted a communication entitled 'eEurope 2002: Accessibility to public websites and their content'. On 13 June 2002, the European Parliament adopted a resolution suggesting all public sector websites in EU institutions and Member States to be fully accessible to persons with disabilities by 2003 in conformity with the Web Content Accessibility Guideline (WCAG). On 2 December 2008, the European Commission issued

²⁴ EU Agency for Fundamental Rights report, "The Right to Political Participation for Persons with Disabilities: Human Rights Indicators", 2014, p. 8, <https://fra.europa.eu/en/publication/2014/indicators-political-participation-persons-disabilities>

²⁵ OSCE, *Persons with Disabilities and Ensuring their Right to Participate in Political and Public Life*, ODIHR, 2013 https://www.osce.org/files/f/documents/0/0/340246_0.pdf.

²⁶ Prodi launches "eEurope" Initiative to accelerate Europe's transformation into an Information Society, Brussels, 8 December 1999. https://ec.europa.eu/commission/presscorner/detail/en/IP_99_953

²⁷ COM 330 of 24 May 2000.

a communication « *Towards an accessible information society* »²⁸ for improving both web accessibility and e-accessibility in general²⁹.

- 12 On 23rd December 2010, the European Union formally ratified the United Nations Convention on the Rights of Persons with Disabilities, which thus became part of EU law. The EU's disability strategy for 2010-2020 focuses on empowering people with disabilities to enjoy their rights on an equal basis with others and on removing obstacles in everyday life. It also aims to help implement the provisions of the Convention in practice, both at EU and national level³⁰. In December 2012, the European Commission presented a proposal for the Directive on the accessibility of public sector bodies' websites to establish a framework in support of a harmonisation of national rules and existing practices of the Member States on web accessibility³¹. In February 2014, the European Parliament endorsed a draft law on the accessibility of websites³². On 26 October 2016, the European Parliament approved the Web Accessibility Directive, which provides people with disabilities better access to websites and mobile apps managed by public sector bodies³³.

B. An overview of the Web Accessibility Directive

- 12 The Directive (EU) 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, often referred to as 'WAD' or 'Web Accessibility Directive' was adopted on 26 October 2016.
- 13 The Web Accessibility Directive contains 15 articles. The purpose of the Directive is, according to Article 1, to improve the functioning of the internal market in terms of accessibility requirements regarding public authorities' websites and mobile applications. It aims to make public-sector websites and mobile applications more accessible, and to harmonize varying standards within the EU, reducing barriers for developers of accessibility-related products and services. This allows EU citizens, particularly those with a disability, to gain easier access to public services.

²⁸ COM 804 of 1st December 2008; Communication from the Commission to the European Parliament, the Council, the European economic and social Committee and the Committee of the regions - "Towards an accessible information society" /* COM/2008/0804 final*/ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52008DC0804>

²⁹ Council of Europe (2009) <https://data.consilium.europa.eu/doc/document/ST-7612-2009-INIT/en/pdf>

³⁰ EU ratifies UN Convention on disability rights, https://ec.europa.eu/commission/presscorner/detail/en/IP_11_4

³¹ European Commission. Proposal for a Directive of the European Parliament and of the Council on the accessibility of public sector bodies' websites. <http://ec.europa.eu/digital-agenda/en/news/proposal-directive-european-parliament-and-council-accessibility-public-sector-bodies-websites>

³² MEPs vote to make online public services accessible to everyone Press Releases PLENARY SESSION 26-02-2014 <https://www.europarl.europa.eu/news/en/press-room/20140220IPR36573/meps-vote-to-make-online-public-services-accessible-to-everyone>;

³³ https://www.europarl.europa.eu/doceo/document/A-9-2022-0209_EN.html

- ¹⁴ The Directive applies to public sector bodies, described as the state, regional or local authorities, bodies governed by public law or associations governed by public law (...) ³⁴. The Directive is not applicable to websites and mobile applications belonging to radio and television companies with missions in the public service and to non-governmental organizations ³⁵.
- ¹⁵ Article 4 provides the requirements for the accessibility of websites and mobile applications. Member States shall ensure that public sector bodies take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust. These four principles form the basis of Web Content Accessibility Guideline (WCAG) 2.0, and thereby also some parts of the EN standard. Preamble (37) of the Web Accessibility Directive explains the four principles of accessibility: perceivability, meaning that information and user interface components must be presentable to users in ways they can perceive; operability, meaning that user interface components and navigation must be operable; understandability, meaning that information and the operation of the user interface must be understandable; and robustness, meaning that content must be robust enough to be interpreted reliably by a wide variety of user agents, including assistive technologies. However, Article 5 of the Web Accessibility Directive provides that public sector bodies apply the accessibility requirements set out in Article 4 to the extent that those requirements do not impose a disproportionate burden on the public sector bodies.
- ¹⁶ Besides ensuring accessibility of websites and mobile applications, the Web Accessibility Directive, in accordance with Article 7 requires Member States to ensure that public sector bodies provide and regularly update a detailed, comprehensive and clear accessibility statement on the compliance of their websites and mobile applications with this Directive, to provide a feedback mechanism so users can flag accessibility problems or request information published in a non-accessible content. In addition, Member States are required to regularly monitor the compliance of websites and mobile applications of public sector bodies with the accessibility requirements set out in Article 4 and report on the results to the Commission every three years ³⁶.
- ¹⁷ On 11 October 2018, the European Commission approved two implementing acts, published through separate Decisions, which entered into force on 1 November 2018: Decision 2018/1523 ³⁷, establishing a model accessibility statement, and Decision 2018/1524 ³⁸, establishing a monitoring methodology.

³⁴ Article 3.1 of the Web Accessibility Directive.

³⁵ Article 1.3 of the Web Accessibility Directive.

³⁶ Article 8 of the Web Accessibility Directive.

³⁷ Commission Implementing Decision (EU) 2018/1523 of 11 October 2018 establishing a model accessibility statement in accordance with Directive (EU) 2016/2102 of the European Parliament and of the Council on the accessibility of the websites and mobile applications of public sector bodies.

³⁸ Commission Implementing Decision (EU) 2018/1524 of 11 October 2018 establishing a monitoring methodology and the arrangements for reporting by Member States in accordance with Directive (EU) 2016/2102 of the European Parliament and

IV. WEB ACCESSIBILITY LAWS IN SWEDEN

- ¹⁸ In this section, I firstly discuss the existing Swedish provisions that are relevant for web accessibility. Subsequently, I investigate how Sweden has incorporated the Web Accessibility Directive into its national laws. Before the implementation of the Web accessibility Directive, Sweden did not have provisions in law or regulation that specifically regulate accessibility to websites or mobile applications. However, there are provisions in both Swedish law and international conventions regarding accessibility that can also be applied to websites and mobile applications³⁹.

A. A background on Web accessibility in Sweden

- ¹⁹ In 2017, the Swedish government launched a new Digital Strategy whose overarching goal is for Sweden to be the best in the world in using the possibilities of digitalisation⁴⁰. The government is creating the basic conditions to achieve the vision of a sustainable digitized Sweden. With the digitalisation, the Swedish government at national, local and regional level is increasingly relying on digital technologies to provide information, a wide range of services essential to the society, including to foster citizens participation. An example of digital tools used to interact with the citizens is the e-petition. In 2016, Sweden's second democracy inquiry recommended that e-proposals, also called e-petition or people's motions, should be introduced mandatorily at the local level in all of Sweden's 290 municipalities⁴¹. Since Swedish municipalities' websites contain information and public services, it is important that their websites are accessible to everyone.
- ²⁰ Most Swedish people today use ICT and the Internet regularly. But there are also those who are either unable or unwilling to make use of the opportunities offered by digitalisation. In Sweden, digitalisation has excluded large groups of people among others the elderly and people with disabilities⁴². Disability is often ignored as a potential reason for digital exclusion⁴³. Around 20 percent of the Swedish population has some form of disability, for example impaired vision or mobility⁴⁴. In Sweden, the predominant disabilities are mobility problems, hearing and sight impairments, reading and writing difficulties/dyslexia, and asthma/allergies.⁴⁵ About 20-25 percent of the Swedish

of the Council on the accessibility of the websites and mobile applications of public sector bodies (notified under document C(2018) 6560).

³⁹ Prop. 2017/18:299, p.10

⁴⁰ Prop. 2011/12:1, bet. 2011/12:TU1, rskr. 2011/ 12:87

⁴¹ Betänkande av 2014 års Demokratiutredning - Delaktighet och jämlikt inflytande, Stockholm, 2016, SOU 2016:5.

⁴² The state and the payments, Summary of the report of Betalningsutredningen, SOU 2023:16.

⁴³ p 106. Johansson, S., Gulliksen, J. & Gustavsson, C. Disability digital divide: the use of the internet, smartphones, computers and tablets among people with disabilities in Sweden. *Univ Access Inf Soc* 20, 105-120 (2021) p. 106. <https://doi.org/10.1007/s10209-020-00714-x>

⁴⁴ <https://www.digg.se/kunskap-och-stod/digital-tillganglighet>

⁴⁵ Swedish Institute (2007). Swedish disability policy, https://www.valdemarne.fr/extras/ENSA/en_2_2_4-sw-swedish-disability-policy.pdf?redirect=cs94

population have difficulties with reading and writing, due to neuropsychiatric impairments, cognitive difficulties, inadequate teaching, too little practice, a different mother tongue and hearing or visual impairment⁴⁶. As the Swedish Agency for Digitalisation (DIGG) explained, these users have no choice, sometimes they have to use a public website for example to carry out an errand. For them, good accessibility can be crucial to being able to access information or carry out a task⁴⁷. People with disabilities can face multiple barriers depending on their disabilities. They are thus at great risk of being digitally excluded.

- 21 According to the Swedish Internet Foundation, although over 93% of Swedes use the internet every day, there are still many who need support in tasks such as getting mobile electronic identification and an email account⁴⁸. Age has impact on internet use. Among older people aged 76 or older, only 73% use the internet⁴⁹. Older people in Sweden who have difficulties with digital technology are excluded from participating in society. The reason being that in Sweden, a majority of activities require digital tools⁵⁰. In Sweden, the BankID app, which is required for identification for numerous online services, is a good example of how digital technology may lead to exclusion since not having a BankID prevents older people or people with disabilities from participating in society on equal terms⁵¹. Therefore, these two groups of people in Sweden are increasingly at risk of being digitally excluded as it is more difficult for them to make use of the possibilities offered by digitalisation.

B. An overview of relevant Swedish legislation

- 22 There are various Swedish legislations and provisions that are relevant for web accessibility. The first relevant legislation is the Swedish law that deals with the right to access information. In Sweden, all citizens have the right to access official documents held by public authorities. This right is known as the principle of public access to information. The right to request public documents is a central part of the principle of openness. The basic provisions regarding the principle of public access to information are found in Chapter 2 of the Swedish Freedom of the Press Act (SFS1949:105) [Tryckfrihetsförordning (1949:105) or TF]. According to Chapter 2 Section 1 TF, every Swedish citizen shall have the right to access official documents, to promote the free exchange of opinions and the availability of balanced information. In accordance with Chapter 14 Section 5 TF foreign citizens also

⁴⁶ <https://www.spsm.se/funktionsnedsattningar/las-och-skrivsvarigheterdyslexi/>

⁴⁷ <https://www.digg.se/kunskap-och-stod/digital-tillganglighet>

⁴⁸ Svenskarna och internet (2020) Digitalt utanförskap. <https://svenskarnaochinternet.se/rapporter/digitalt-utanforskap-2020/>;

⁴⁹ Svenskarna och internet (2020) Digitalt utanförskap. <https://svenskarnaochinternet.se/rapporter/digitalt-utanforskap-2020/>; Fischl, Caroline (2021). (How to) support digital engagement among older people at risk of isolation, Forskningskommunikation från Jönköping University, at <https://ju.se/portal/vertikals/blogs/school-of-health-and-welfare-guest-blogger/bloggposter/2021-04-12-how-to-support-digital-engagement-among-older-people-at-risk-of-isolation.html>

⁵⁰ Sofia Alexopoulou (2023). Digitalisation excludes older adults, 2023-06-08 Örebro University, at <https://www.oru.se/english/news/news-archive/news-archive-2023/digitalisation-excludes-older-adults/>

⁵¹ <https://phys.org/news/2023-03-digitalization-excludes-older-adults.html>

have the right to access public documents. However, this right may be limited by provisions of law even if there are currently no such limiting provisions. The Swedish Public Access to Information and Secrecy Act (SFS 2009:400) [*Offentlighets- och sekretesslag (2009:400) or OSL*] regulates what official documents can be classified as secret or public record.

- 23 As a matter of fact, the Freedom of the Press Act (SFS1949:105), which regulates the right of access to official documents, only endorses the citizens with the right to access documents after a request been made, and not with the right to access documents that are proactively “pushed out” by public authorities⁵². In other words, the Swedish law only obliges the public authorities to disclose information after the submission of a request and does not oblige these authorities to disclose information proactively. In addition, there is no right in Sweden for a person making a request to choose the format. For example, the law cannot oblige the public authorities to give access to the requested documents digitally. According to Patricia Jonason, in practice, Swedish public authorities extensively publish information and documents on their websites⁵³. Thus, publishing documents online certainly may constitute a useful tool for increasing transparency of the administration and improving public participation in public life⁵⁴.
- 24 A legislation key in accessibility for disabled people is the Swedish anti-discrimination legislation, called the Discrimination Act (2008:567), [*Diskrimineringslagen (2008:567) or DL*]⁵⁵. It was adopted on 5 June 2008 and came into effect on 1 January 2009⁵⁶. In January 2015, inadequate accessibility for people with impairments was introduced as a new form of discrimination in the Discrimination Act, due to Sweden’s commitment to comply with the UN Convention on the Rights of Persons with Disabilities. The Convention which was adopted by the UN General Assembly in 2006 has applied in Sweden since 2009. According to the Discrimination Act (Chap.1 Section 4, first paragraph, point 3), inadequate accessibility means that a person with an impairment is being disadvantaged because reasonable measures for accessibility have not been taken to enable the person to enjoy conditions comparable with those enjoyed by people without this impairment. In other words, the term inadequate accessibility means when a person with disability is disadvantaged through a failure to take measures for accessibility.
- 25 According to the Regulation (2001:526) on the Responsibility of State Authorities for the Implementation of the Disability Policy [*Förordning (2001:526) om de statliga myndigheternas ansvar för genomförande av funktionshinderspolicen*] Section 1, government authorities have the obligation to

⁵² P.JONASON (2017). Online Proactive Disclosure of Personal Data by Public Authorities. A balance between transparency and protection of privacy, in P. JONASON & A.ROSENGREN (eds), *The Right of Access to Information and the Right to Privacy: A Democratic Balancing Act*, Huddinge, Södertorns högskola Stockholm, 2017, pp. 111-137.

⁵³ *Ibidem*, p.111

⁵⁴ *Ibidem*.

⁵⁵ Prop. 2017/18:299.

⁵⁶ The Discrimination Act merged the previous seven civil law acts against discrimination regarding different areas of society and different grounds of discrimination into a single piece of legislation.

consider the disability policy objectives when designing and conducting their activities. The Swedish Local Government Act (2017:725) [*Kommunallag (2017:725) or KL*] Chapter 4 Section 23 states that municipalities and county councils must work to ensure that elected officials with disabilities can participate in the handling of matters on the same terms as other elected officials. The provision includes the possibility to access meeting documents as well as participate in the deliberations that precede decision-making⁵⁷.

- 26 There are provisions with respect to discrimination and participation in the Swedish Constitution. Chapter 1, Article 2 of the Instrument of Government [*Regeringsformen, (1974:152), RF*] provides that public power shall be exercised with respect for the equal worth of all and the liberty and dignity of the private person. This constitutional provision ensures the participation of every citizen in political activities. All public power in Sweden proceeds from the people and Swedish democracy is founded on the free formation of opinion⁵⁸. The freedom of expression is constitutional in the Swedish Freedom of Expression Act. The Constitution stipulates that public institutions shall promote the ideals of democracy as guidelines in all sectors of society (...) and promote the opportunity for all to attain participation and equality in society and combat discrimination of persons on grounds of (...) functional disability, age or other circumstance affecting the private person⁵⁹.
- 27 The Act (2008:568) concerning the Equality Ombudsman [*Lag om Diskrimineringsombudsmannen (2008:568)*] sets out the Equality Ombudsman (DO), [*Diskrimineringsombudsmannen, DO*] as responsible for ensuring compliance with the Discrimination Act (2008:567). The Equality Ombudsman, established in 2009, works to combat discrimination and promote equal rights and opportunities. The Equality Ombudsman supervises compliance with the Discrimination Act, investigates complaints of discrimination and is entitled to bring a case in the courts on behalf of an individual who considers himself or herself to have been discriminated against⁶⁰.
- 28 In a 2021 case, *Equality Ombudsman (DO) v. Sweden*⁶¹ Social Insurance Agency [*Försäkringskassan*], the DO had been successful in the district court in asserting inadequate accessibility due to the Swedish Social Insurance Agency's failure to take reasonable measures in 2015-2016 to adapt its website so that it could be used by a screen reader. According to the district court, *Försäkringskassan* had not taken reasonable measures to make it possible for the woman to search digitally and found that *Försäkringskassan* had violated the discrimination act's prohibition against lack of accessibility. The Court of Appeal changes the district court judgment on lack of accessibility. On appeal, the Appeal Court reversed the trial court's judgment, holding that the evidence presented was insufficient to

⁵⁷ Prop. 2017/18:299.

⁵⁸ Chapter 1, Article 1 of the Instrument of Government (1974:152); Also, the freedom of expression is constitutional in the Swedish Freedom of Expression Act (*Yttrandefrihetsgrundlag (1991:1469)*).

⁵⁹ Chapter 1, Article 2 of the Instrument of Government (1974:152).

⁶⁰ Chap.4, § 1 DL and the Equality Ombudsman Act (2008:568) [*Lagen (2008:568) om Diskrimineringsombudsmannen*].

⁶¹Stockholms tingsrätts dom den 11 september 2018 i Mål nr T 16972-16, <https://lagensomverktyg.se/wp-content/uploads/sites/4/2018/09/Stockholms-TR-T-16972-16-Dom-2018-09-11.pdf>

establish discrimination under the law⁶². The Court of Appeal judged that at the relevant time there was no support in law or other constitution to demand that Försäkringskassan adapt the web services. And since the rectification of the accessibility errors was not of an easy nature, it was not reasonable to demand that Försäkringskassan correct the errors. The woman had also been told that she could not get access to the information she needed to handle her case in Braille⁶³.

- 29 The Swedish Agency for Participation (MFD)⁶⁴ was established to provide support to the Government in the implementation of disability policy. In 2015, the Swedish Agency for Participation and the Equality Ombudsman got the assignment from the Government to work together to increase knowledge and awareness of the public, the employees in the public sector, the private sector, concerning the content of the UN Convention on the Rights of Persons with Disabilities⁶⁵. In addition, all government agencies have been specially commissioned to implement the disability policy within their respective sectors. These authorities must work actively to ensure that the disability perspective becomes an integral part of the authority's overall area of activity⁶⁶.

C. The transposition of the Web Accessibility Directive into Swedish law

- 30 In 2000, Sweden set the policy goal to become the first country to be an 'Information Society for all'. According to the 24-hour Public Administration Strategy, public information and services should, to the maximum degree, be electronically available 24 hours a day, seven days a week. In January 2008, Sweden put in place the Action Plan for eGovernment. The 'eGovernment Delegation' (*E-delegationen*) was established in March 2009 to lead and coordinate the development of eGovernment in the country. Sweden joined the Open Government Partnership (OGP) in 2011, which reaffirmed its commitment to open government efforts, both in principle and in practice. To meet the challenges that exist both internationally and nationally, the Swedish Government wished to make use of the opportunities offered by digitisation, and therefore took a decision to adopt the 'ICT for Everyone - A Digital Agenda for Sweden' in 2011. In the second national OGP Action Plan for years 2014 - 2016, the focus was on eGovernment and enhanced access to information⁶⁷.

⁶² P. LAPPALAINEN, Country report : Non-discrimination : Transposition and implementation at national level of Council, Sweden, 2023. Directives 2000/43 and 2000/78 : Sweden, Brussels: European Commission, 2021., s. 118P 33. <http://www.diva-portal.org/smash/get/diva2:1651385/FULLTEXT01.pdf>

⁶³ DO, 2021. Hovrätten ändrar tingsrättsdom om bristande tillgänglighet, Nyhet publicerad 12 march 2021, <https://www.do.se/om-do/pressrum/aktuellt/2021/2021-03-12-hovratten-andrar-tingsrattsdom-om-bristande-tillganglighet>

⁶⁴ Myndigheten för delaktighet. formerly known as Swedish Agency for Disability Policy Coordination (Handisam) was established by the Swedish Government on 1 January 2006.

⁶⁵ <https://www.do.se/>

⁶⁶ Equally Unique's answers to the questionnaire for the Special Rapporteur on the rights of persons with disabilities

⁶⁷ OECD, OECD Reviews of Digital Transformation: Going Digital in Sweden, OECD Reviews of Digital Transformation, OECD Publishing, Paris, 2018, <https://doi.org/10.1787/9789264302259-en>

- 31 In 2017, the Swedish Government appointed an inquiry commission tasked with considering how to implement the Web Accessibility Directive in Sweden. In 2018, the Directive was implemented in Swedish law.
- 32 Sweden has transposed the Web Accessibility Directive through two instruments: the Act on the Accessibility of Digital Public Services (2018:1937), [*Lag (2018:1937) om tillgänglighet till digital offentlig service*] or (DOS Act)] and the accompanying ordinance [*Förordning (2018:1938) om tillgänglighet till digital offentlig service*]. The Act on the Accessibility of Digital Public Services (2018:1937) came into effect on 1 January 2019.
- 33 The Act on the Accessibility of Digital Public Services (2018:1937) means that digital service provided by a public actor through a technical solution that is under the actor's control must be available in accordance with the accessibility requirements in regulations that have been announced in support of the law. In addition, digital services provided by a public actor through a technical solution that is under the control of a third party must, as far as possible, meet the same requirements. The law's scope of application includes state and municipal authorities, decision-making assemblies in municipalities and county councils, publicly governed bodies and associations of these actors. The law also covers private actors, who with public funding carry out professional activities in preschools, schools, health care and care. The same applies to individual education providers with permission to issue degrees, and which for the most part have government subsidies as funding for university education at first level or advanced level or for education at postgraduate level.
- 34 The above-mentioned requirements for accessibility are primarily expressed in Section 10 of the law, which means that digital services provided by a public actor through a technical solution that is under the actor's control must comply with the accessibility requirements according to regulations that have been announced with the support of the law, as well as Section 11 which means that digital service provided by a public actor through a technical solution that is under the control of a third party must, as far as possible, comply with the accessibility requirements according to regulations issued in support of the law.
- 35 The government or the authority designated by the government may issue regulations on which technical requirements shall apply. From Section 12 it follows further that a public actor does not have to fulfil the requirements according to the law if it is unreasonably burdensome to fulfil the requirements. According to Section 13, the public operator must provide an accessibility report. This must contain a function that makes it possible for an individual to notify the relevant operator that its digital service does not meet the accessibility requirements. If a public actor assesses that it is unreasonably burdensome to fulfil the accessibility requirements, the assessment must be reflected in the report. That assessment can in turn be met by a request for making it available. That is, the person who, due to a disability, cannot access content, for which the actor claims that it is unreasonably burdensome to meet the law's accessibility requirements, can request that the content be made available. If the request is rejected in whole or in part, the public actor is obliged to submit a written

decision on the request containing the reasons that determined the outcome. As a rule, the decision can be appealed to the general administrative court⁶⁸.

- 36 The authority appointed by the government exercises supervision over the law. The supervisory authority must also monitor that digital services provided by a public actor meet the requirements of the law. The government or the authority designated by the government may further issue regulations on how the monitoring is to be carried out. Anyone who believes that a public actor does not meet one or more of the accessibility requirements may report this to the supervisory authority. The supervisory authority can, in turn, through monitoring or after notification through remarks or similar procedures, try to correct any deficiencies. If the efforts according to the first paragraph do not lead to correction, the supervisory authority may decide to instruct the public actor to take measures to fulfil the requirements. A new injunction on the same matter may be accompanied by a fine. These decisions can also be appealed to the general administrative court.
- 37 Under the Act on the Accessibility of Digital Public Services, the Agency for Digital Government (DIGG) is the supervisory authority. DIGG has decided on regulations on accessibility to digital public services (MDFFS 2019:2). The Agency for Digital Government coordinates and supports digitalisation within public administration to make it more efficient⁶⁹. DIGG provides the government with data and analyses for the development of digitalisation of society and public administration, advice and recommendations for the digitalisation. For example, DIGG has developed the site called webbriktlinjer.se, the official guidelines on working with websites in the public sector in Sweden⁷⁰. DIGG has gathered on the site all necessary knowledge to support designers, content creators, developers, digital managers who want to develop accessible websites and apps⁷¹.

V. ACCESSIBILITY OF GOVERNMENT WEBSITES IN SWEDEN

- 38 In this section, I will examine the accessibility of governments websites in Sweden. In 2022, the Agency for Digital Government submitted a report entitled 'Monitoring by digital public service in Sweden 2020-21' to the European Commission. The reporting is in accordance with article 8 of the Directive 2016/2102 of the European Parliament and of the Council on the availability of public sector bodies' websites and mobile applications which requires Member States to monitor compliance with the Directive and submit reports on the results to the Commission. Monitoring shall be carried out in accordance with Implementing Decision (EU) 2018/1524.
- 39 Under the Act on the Accessibility of Digital Public Services, the Agency for Digital Government is responsible for the monitoring. Among other things, DIGG carries out a comprehensive analysis and

⁶⁸ Prop. 2017/18:299, p. 20.

⁶⁹ <https://www.government.se/government-agencies/the-agency-for-digital-government/>

⁷⁰ <https://www.digg.se/en/knowledge-and-support>

⁷¹ <https://webbriktlinjer.se/>

follow-up of the digitalisation of municipalities and regions as well as the digital maturity of state authorities. DIGG reviews digital public service to see if it meets the accessibility requirements. During 2020 and 2021, DIGG has reviewed websites for increased accessibility.

- 40 The first report submitted to the European Commission describes the results of Sweden's monitoring of digital public services during the monitoring period 2020-2021⁷². The monitoring has covered 301 websites, of which 282 simplified and 19 in-depth, as well as 2 mobile applications. In addition, there are 184 municipal websites, which generally represent all the activities of the municipal council. Monitoring was carried out in accordance with the manual for supervision under the Digital Public Service Accessibility Act⁷³. According to the report, no websites/digital services audited were fully compliant with the requirements of the Directive or the Swedish law⁷⁴. Shortcomings include among others, lack of competence and knowledge and ambiguity in the term accessibility.
- 41 The follow-up procedure under Article 9 of Directive (EU) 2016/2102 is carried out by Section 18 of the Act on the Accessibility of Digital Public Services (2018:1937), according to which anyone who considers that a public operator does not meet one or more of the requirements of the Act or wants an assessment of disproportionate burden to be examined, may notify the supervisory authority. From the beginning of the monitoring period until November 2021, the supervisory authority has received 163 notifications, 43 of which were eligible. Many of the ineligible notifications concern difficulties in accessing digital public services⁷⁵. However, DIGG regularly has recently reviewed digital public service 9 out of 10 government websites have improved their availability since deficiencies were pointed out⁷⁶.
- 42 In 2023, a study conducted by Webperf found out that 61% of the municipalities' websites in Sweden have accessibility deficiencies despite current legislation⁷⁷. The following deficiencies and their occurrence are what they discovered on 27,000 investigated pages of the 290 municipalities that composed Sweden. About 32.4% of websites have shown that the contrast between background colour and foreground colour is not great enough, which means that it can be difficult to perceive the text on the page. About 18.6% of websites have shown that links on the page lack text or names that can be understood by assistive devices. If links have text that is comprehensible, an automatic testing tool cannot judge. About 8% of websites have shown that the page's image element lacks alt attributes, which means that the screen reader cannot reproduce what the image represents. An automatic test tool cannot assess whether the alt text contains a relevant and correct description of the image's

⁷² <https://digital-strategy.ec.europa.eu/en/library/web-accessibility-directive-monitoring-reports>

⁷³ The Agency for Digital Government, Monitoring by digital public service in Sweden 2020-21, p.8 at <https://digital-strategy.ec.europa.eu/en/library/web-accessibility-directive-monitoring-reports>

⁷⁴ *Ibidem*, p.12.

⁷⁵ The Agency for Digital Government, 2020-21, p.14 at

⁷⁶ <https://www.digg.se/en/analysis-and-follow-up>.

⁷⁷ M. ÖSTERBERG, M. LEXELIUS and M. JOHNSON, Kommuners tillgänglighet 2023: "61% av kommunernas webbsidor har tillgänglighetsbrister trots gällande lagstiftning", Webperf, 2023, <https://webperf.se/articles/kommuners-tillganglighet-2023/>.

content. Most of the websites of the municipalities contain some form of lack of accessibility. The most common is that there is a lack of contrast between foreground and background. In short, there are quite high demands on the users' vision⁷⁸. According to Article 4 of the Web Accessibility Directive, Member States shall ensure that public sector bodies take the necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust. This study has shown that about one year after DIGG's monitoring report, more than half of Swedish municipalities websites still do not fully comply with the Directive or the Swedish Act on the Accessibility of Digital Public Services (2018:1937).

VI. DISCUSSION AND CONCLUSION

- ⁴³ Digital technologies such as the Internet are an essential tool to access and provide information and services. Web technology allows governments to provide a variety of information to the public and the citizens to participate. However, the problem is often the accessibility of information on governments websites. While the law requires access to information to everyone, there are still barriers to access to consider when governments are using digital means. Web accessibility is essential for persons with disabilities and useful for everyone. While accessibility focuses on ensuring equal access for people with disabilities, it also benefits people who may not currently have disabilities. Since 2016, the Web Accessibility Directive requires public sector bodies within the EU to take the necessary measures to make their websites and mobile applications more accessible by making content perceivable, operable, understandable and robust. The Web Accessibility Directive required Member States to transpose the Directive into national law by 23 September 2018. Sweden has transposed the Web Accessibility Directive in 2019.
- ⁴⁴ However, this paper has shown that key government sites, despite all efforts, still do not implement the standards set by the EU Directive. Many of government websites were not compliant and were thus inaccessible for people with disabilities and older people. Studies have shown that the main problems include among others, lack of knowledge and competence on web accessibility, lack of resources allocated to web accessibility. Lack of web accessibility is a form of discrimination according to the Swedish Discrimination Act. Web accessibility is a right for people with disabilities so that they can access information and actively participate in the society, according to the UNCRPD. Web accessibility is an obligation for public authorities according to the Web Accessibility Directive. It is therefore important to identify the specific barriers to achieving and maintaining web accessibility. Considering the national monitoring report submitted to the European Commission, greater commitment to accessibility is required by public sector bodies in Sweden but also that the monitoring body requires more effective enforcement procedures, including penalties.

⁷⁸ M. ÖSTERBERG, M. LEXELIUS and M. JOHNSON, cit.

- 45 The Swedish government's digital ambition is for Swedish state authorities, municipalities and county councils to be the best in the world at using the possibilities of digitalisation⁷⁹. However, most of the government websites are not fully accessible. The Swedish government aims to make it easy for people and companies to contact public authorities digitally in Sweden and access information⁸⁰. According to Sweden's digital policy, all people, women and men, girls and boys, regardless of social background, functional ability and age, must be offered the conditions to take part in digital information and services from the public sector and participate in an equal way in society⁸¹. Everyone must have the opportunity to communicate with the public sector and to receive the service they might need, regardless of digital skills. However, people with disabilities and older people are still at risk of being digitally excluded. For them, good accessibility can be crucial to being able to access information or contact the authorities. Although Sweden is one of the most digitalized countries in Europe and in the world, digital exclusion still exists. Although Sweden is the first country in the world to have a legislation on the right to access information, digital technologies seem to pose a challenge for the country to ensure equal access to information. If Sweden still aims to become the best in the world at using the possibilities of digitalisation, it must make sure that everyone has equal opportunity to access information and public services on government websites and apps as well as actively participate in the digital society.

⁷⁹ Prop. 2011/12:1, issue omr. 22, bet. 2011/12:TU1, rskr. 2011/ 12:87. Skr 2017:18:47, p 4.

⁸⁰ Skr. 2017/18:47 p. 24.

⁸¹ Skr. 2017/18:47 p. 9.

RESUME:

Au cours des dernières décennies, les technologies numériques telles que les sites web et les applications mobiles sont devenues essentielles pour les gouvernements afin de fournir des informations, des services et de renforcer la participation du public. Cependant, ces technologies créent également des obstacles et favorisent l'exclusion de nombreuses personnes, notamment les personnes en situation de handicap et les personnes âgées, qui les trouvent inaccessibles. L'accessibilité numérique ou web consiste à concevoir des outils afin que tout le monde puisse accéder aux informations et participer à la société numérique. L'accessibilité web est une condition préalable à une pleine et effective participation à la société sur la base de l'égalité avec les autres, comme l'exige la Convention des Nations Unies relative aux droits des personnes handicapées (CDPH). Cet article discute de l'interdépendance entre l'accessibilité web, l'accès à l'information et la participation du public. Il examine la Directive sur l'Accessibilité du Web (DAW) adoptée par l'Union européenne (UE), qui exige que les sites web et les applications mobiles du secteur public soient accessibles à tous les utilisateurs, notamment ceux en situation de handicap. L'article explore aussi comment la Suède, un leader en technologie numérique et en accès à l'information, a mis en œuvre la Directive sur l'Accessibilité du Web pour améliorer l'accessibilité des informations et des services gouvernementaux, facilitant ainsi une plus grande participation publique. Cet article montre que de nombreux sites web gouvernementaux en Suède n'étaient pas conformes à la Directive et étaient donc inaccessibles aux personnes handicapées et aux personnes âgées.

SUMMARY:

In recent decades, digital technologies like websites and mobile apps have become essential for governments to provide information, services, and increase public participation. However, these technologies also create barriers and exclusion for many, especially people with disabilities and older adults, who find them inaccessible. Digital or web accessibility involves designing tools so everyone can access information and participate in the digital society. Web accessibility is a prerequisite for full and effective participation in society on an equal basis with others, as required by the UN Convention on the Rights of Persons with Disabilities (UNCPRD). This paper discusses the interdependence between web accessibility, access to information, and public participation. It examines the Web Accessibility Directive (WAD) adopted by the European Union (EU), which mandates that public sector websites and mobile applications be accessible to all users, particularly those with disabilities. The paper also explores how Sweden, a leader in digital technology and public access to information, has implemented the Web Accessibility Directive to make government information and services more accessible, thereby facilitating greater public participation. This paper shows that many government websites in Sweden were not compliant to the Directive and were thus inaccessible for people with disabilities and older people.