

TAG Response to the BIS Consultation on “Implementing the revised EU Electronic Communications Framework – Overall approach and consultation on specific issues”

TAG welcomes the opportunity to respond to this BIS consultation. As a consortium of the full range of national and regional organisations in the UK working on behalf of deaf people, TAG promotes equality of access to electronic communications, including telecommunications and broadcasting, for deaf, deafened, hard-of-hearing, deafblind people and sign language users. In this response the word “deaf” will be used to cover the complete range of hearing loss unless otherwise specified.

More information about TAG may be found at <http://www.deaftag.org.uk/>

Annex 2: Response Form

It is for the individual to decide whether they respond using this form or not. An electronic form is available at: www.bis.gov.uk/Consultations/revised-eu-electronic-communications-framework

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 3rd December 2010.

Please provide your name and contact details:

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To enable us to assess the impact of proposed implementation on different groups of respondents it would be helpful if you could indicate the kind of organisation on behalf of whom you are responding;

Charity or social enterprise

Appeals

Q1 The Government welcomes views on whether an enhanced form of Judicial Review (duly taking account of the merits) would: prevent the risk of regulatory gridlock under the new Framework by reducing the number and nature of appeals against Ofcom decisions; and whether there are any disadvantages in such an approach.

Comments: TAG believes that the appeals procedure should work as quickly as possible so that decisions are not dragged out. This is particularly important in the rapidly-changing telecommunications marketplace where, in the worst case, the product or technology under consideration could be obsolete before a decision is reached on the dispute. If the use of judicial review would speed up the appeals procedure without compromising its quality then TAG would be in favour of it.

Q2 We welcome views on whether there are steps the Government could take to ensure that appeals are focussed on determining whether Ofcom has made a material error.

Comments: TAG has no comment to make on this Question.

Facilities Sharing

Q3 Do respondents believe that a detailed inventory of infrastructure would be desirable in order to facilitate infrastructure sharing and if granted access, would this inform investment decisions?

Yes No Not sure

Comments: TAG has no comment to make on this Question.

Q 4 Do respondents believe that requiring undertakings to provide information to enable Ofcom to compile a detailed inventory of the nature, location and capacity of all UK infrastructure is proportionate, or should the powers only be exercised where there is an imminent prospect of infrastructure sharing in that particular location?

Yes No Not sure

Comments: TAG has no comment to make on this Question.

Q5 Do respondents believe it is appropriate for Ofcom to be the sole authority that is able to require this additional information from undertakers in relation to infrastructure? If not, which authorities should be able to require this additional information?

Yes No Not sure

Comments: TAG has no comment to make on this Question.

Q6 Do respondents believe that commercial confidentiality could be compromised by a 'national journal' approach and are there ways to mitigate this?

Yes No Not sure

Comments: TAG has no comment to make on this Question.

Security and Resilience of Networks and Services

Q7 The Government welcomes any general observations on its proposed approach as set out in this section of this document and in particular the proposals in paragraph 111 to implementing Articles 13a and 13b of the Framework directive which address "Security and Integrity of Networks and Services". We would also welcome your views on what needs to be covered in any Ofcom guidance.

Comments: TAG has no comment to make on this Question.

Dissuasive Sanctions

Q8 What do respondents think would be a dissuasive level of sanction for failure by a person to comply with an information request?

Comments: TAG believes that Ofcom should have flexibility in its application of sanctions within a particular limit. This limit should not be a fixed monetary sum but proportional to some appropriate financial parameter of the person or organisation involved.

Universal Service Order

Q9 Do respondents have any views on the proposed changes to the Universal Service Order?

Comments: In its current form, the Universal Service Order defines “Relay Service” in a way that precludes video relay services from being provided under the Order. The text probably also precludes the special type of text relay service known as captioned telephony. The Order should be re-drafted so that it encompasses all types of relay service. There are many possible relay services and, no doubt, other ones will be devised in the future; we feel that Ofcom should have the power to choose which ones should be mandated.

Equivalence

Q10 Do respondents agree the approach outlined in paragraphs 189-193 is appropriate to implementing Article 23a (2) and encouraging the development of terminal equipment suitable for disabled users?

Yes **No** Not sure

Comments: TAG believes that Ofcom’s obligation to promote accessible terminal equipment is insufficient because something stronger than “promotion” is required to ensure equivalent access to services. For example, deafblind users require specialised terminals that are very expensive and outside the reach of users without some form of subsidy.

The Directive requires Member States to “encourage” the availability of terminals; no amount of encouragement will make unaffordable terminals affordable. This matter is probably better handled by government than by Ofcom and it should be discussed with some urgency by the eAccessibility Forum.

Breach of Personal Data

Q 11 We welcome suggestions as to how the provisions of the Directive could be better enforced.

Comments: TAG has no comment to make on this Question.

Cookies

Q 12 We welcome views on our proposed approach to implement the amendments to the Directive in relation to cookies by way of copying out the Directive text.

Yes No Not sure

Comments: TAG has no comment to make on this Question.

Impact Assessments and Equality Impact Assessment

Q 13 The Government invites respondents views and comments on the impact assessments and equality impact assessment which have been produced to support implementation of the revised electronic communications Framework.

Comments: The Impact Assessment for “Provisions on Access and Choice for Disabled Users” concentrates mainly on the provision of terminals. We cover terminal-related matters in our reply to Question 10. The impact assessment should also cover the effect on the lives of deaf people of having a choice of high-quality relay services available to them. The use of improved relay services will improve the quality of life for deaf people and will enable them to take advantage of new opportunities. Inability to use the telephone has historically been a barrier to employment of deaf people and continues to be so today. Modern relay services, such as video relay and captioned telephony relay, permit deaf people to use the telephone in a way that is almost as fluent as other people, so allowing them access to a wider range of employment opportunities. In the case of video relay, sign language users can use their first language instead of relying on a second language. We believe that this effect will provide a considerable net gain to the exchequer by increasing tax income and reducing benefit expenditure.

At present, video relay services can, in some cases, be funded by the Access to Work mechanism. Inexplicably, this funding is only available to those in work and is not available to help with finding work. This sort of anomaly should be avoided in future.

General comment

Q 14 Do respondents have views on the technical and practical issues that Government will need to take into account when implementing the review, bearing in mind that many of the changes are mandated?

Comments; Article 23a requires that Member States ensure that disabled users have equivalent access to services and equivalent choice of service to those enjoyed by the rest of the population. Paragraph 190 implies that

existing provisions under General Condition 15 and the Universal Service Order are sufficient. Sadly, this is not true; existing relay services fall a long way short of equivalence for sign language users, deafblind users, hard-of-hearing users and profoundly deaf users with good speech. Any future relay services will have to be properly funded so that they keep up with the pace of new technology.

There may be sufficient powers in the new legislation to provide true equivalence but it is not clear to TAG how it can be achieved. Ofcom will have to consult on this matter but the government should take a lead in indicating how the legislation can be used to achieve the aims of the Directive.

Access to services is only part of the issue; the Directive also mandates user choice. It is incorrect to assume that if a disabled user has access to the same range of telecoms providers as the rest of the population then there is choice. A deaf user's telecoms service is primarily the relay service not the service that provides access to it. There has to be a choice of relay services before true choice is available. Without such a choice, there is no competition and therefore little incentive to provide improvements to services. The government and Ofcom must find a way to ensure that choice is available for deaf users.

It is true that access to the emergency services is provided by BT's Text Relay, and more recently, by an SMS access. Unfortunately, sign language users have no mechanism to make emergency calls in their native language (bear in mind that BSL is an official language of the United Kingdom). If additional relay services become available, it should be mandated that they provide access to the emergency services. There may be other ways of providing access. Also note that the SMS access to the emergency services, whilst extremely valuable, is not as good as access via a good relay service or some other conversational mechanism.

The UN Convention on the Rights of Persons with Disabilities includes provisions that are similar to those in the Framework Directives. Care should be taken when drafting text that both sources of law are taken into account.

TAG understands that the government does not wish to "gold-plate" the Directives when they are transposed into UK law but, equally, it should make sure that the transposition does not water down the text of the Directives.