

L.N. 89 of 2019

**MALTA COMMUNICATIONS AUTHORITY ACT
(CAP. 418)**

**Accessibility of the Websites and Mobile Applications of
Public Sector Bodies Regulations, 2019**

IN EXERCISE of the powers conferred by articles 33(3) and 46 of the Malta Communications Authority Act, the Prime Minister after consultation with the Malta Communications Authority, has made the following regulations:-

PART I

Preliminary

1. (1) The title of these regulations is Accessibility of the Websites and Mobile Applications of Public Sector Bodies Regulations, 2019. Title and scope.

(2) These regulations implement the provisions of Directive (EU) 2016/2102 of the European Parliament and of the Council of the 26 October 2016 on the accessibility of the websites and mobile applications of public sector bodies.

2. For the purposes of these regulations, unless the context otherwise requires: Interpretation.

"accessibility" means principles and techniques to be observed when designing, constructing, maintaining, and updating websites and mobile applications in order to make them more accessible to users, in particular, but in no way limited, to persons with disabilities;

"Act" means the Malta Communications Authority Act and includes any regulations made thereunder unless the context otherwise requires; Cap. 418.

"Authority" means the Malta Communications Authority established under the Act;

"bodies governed by public law" means bodies that have all of the following characteristics:

(a) they are established for the specific purpose of meeting needs in the general interest, not having an

industrial or commercial character;

(b) they have legal personality; and

(c) they are financed, for the most part, by the State, regional or local authorities or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

"content of websites and mobile applications" shall include textual as well as non-textual information, downloadable documents and forms, and two-way interaction such as the processing of digital forms and the completion of authentication, identification and payment processes;

"items in heritage collections" means privately or publicly owned goods presenting a historical, artistic, archaeological, aesthetic, scientific or technical interest and that are part of collections preserved by cultural institutions such as libraries, archives and museums;

"measurement data" means the quantified results of the monitoring activity carried out in order to verify the compliance of the websites and mobile applications of public sector bodies with the accessibility requirements set out in regulation 4. It covers both quantitative information about the sample of websites and mobile applications tested, such as the number of websites and applications with, potentially, the number of visitors or users; and quantitative information about the level of accessibility;

"mobile application" means application software designed and developed, by or on behalf of public sector bodies, for use by the general public on mobile devices such as smartphones and tablets. It does not include the software that controls those devices or hardware;

"non-governmental organisation" means a voluntary self-governing body established to pursue essentially non-profit making objectives;

"office file formats" means documents that are not intended primarily for use on the web and that are included in web pages,

such as Adobe Portable Document Format (PDF), Microsoft Office documents or their (open source) equivalents;

"public sector body" means the State, regional or local authorities, bodies governed by public law, or associations formed by one or more such authorities or one or more such bodies governed by public law, if those associations are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;

"stakeholders" shall include persons with disabilities, organisations representing the interests of persons with disabilities and of the elderly, social partners, industry involved in the creation of accessibility software relating to websites and mobile applications, and civil society;

"standard" means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is one of the following:

(a) "international standard" means a standard adopted by an international standardisation body;

(b) "European standard" means a standard adopted by a European standardisation organisation;

(c) "harmonised standard" means a European standard adopted on the basis of a request made by the European Commission for the application of European Union harmonisation legislation;

"time-based media" means media of the following types: audio-only, video-only, audio-video, audio and/or video combined with interaction; and

"Tribunal" means the Administrative Review Tribunal established by article 5 of the Administrative Justice Act.

Cap. 490.

3. (1) These regulations lay down provisions relating to the accessibility requirements of the websites and mobile applications of public sector bodies, thereby enabling those websites and mobile applications to be more accessible to users, in particular to persons with disabilities. Scope.

(2) These regulations shall not apply to the following websites and mobile applications:

(a) websites and mobile applications of public service broadcasters and their subsidiaries, and of other bodies or their subsidiaries fulfilling a public service broadcasting remit;

(b) websites and mobile applications of non-governmental organisations that:

(i) do not provide services that are essential to the public, such as services that are directly mandated by State, regional or local authorities, or

(ii) do not provide services that specifically address the needs of, or are meant for, persons with disabilities;

(c) websites and mobile applications of schools, kindergartens or nurseries, except for the content thereof relating to essential online administrative functions:

Provided that, where such essential content is provided in an accessible manner through another website, it shall not be required to be made accessible again on the website of the establishment concerned.

(3) These regulations shall not apply to the following content of websites and mobile applications:

(a) office file formats published before 23 September 2018, unless such content is needed for active administrative processes relating to the services performed by the public sector body concerned;

(b) pre-recorded time-based media published before 23 September 2020;

(c) live time-based media:

Provided that live time-based media that are kept online or republished after the live broadcast shall be considered as pre-recorded time-based media without undue delay from the date of the initial broadcast or republishing of the time-based media, not exceeding the time strictly necessary to make time-based media accessible with priority being given to essential information relating to the health, welfare and safety of the public, which period of time shall in principle not exceed fourteen (14) days:

Provided further that in justified cases, such as when it is impossible to procure the relevant services in due time, such

period might exceptionally be extended to the shortest time necessary to make the content accessible;

(d) online maps and mapping services, as long as essential information is provided in an accessible digital manner for maps intended for navigational use;

(e) third-party content that is neither funded nor developed by, nor under the control of, the public sector body concerned:

Provided that where the purpose of content of websites or mobile applications of public sector bodies is to hold consultations or to organise forum discussions, that content shall not be considered as third-party content and shall not therefore be excluded from the scope of these regulations, except in the case of user-contributed content which is not under the control of the public sector body concerned.

(f) reproductions of items in heritage collections that cannot be made fully accessible because of either:

(i) the incompatibility of accessibility requirements with either the preservation of the item concerned or the authenticity of the reproduction, such as contrast; or

(ii) the unavailability of automated and cost-efficient solutions that would easily extract the text of manuscripts or other items in heritage collections and transform it into content compatible with the accessibility requirements;

(g) content of extranets and intranets, meaning websites that are only available for a closed group of persons and not to the public in general, published before 23 September 2019, until such websites undergo a substantial revision;

(h) content of websites and mobile applications qualifying as archives, meaning that such websites and mobile applications only contain content that is neither needed for active administrative processes nor updated or edited after 23 September 2019.

4. Public sector bodies shall take the necessary measures to make their websites and mobile applications more accessible by making them:

Requirements for the accessibility of websites and mobile applications.

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(a) perceivable, meaning that information and user interface components are presentable to users in ways they can perceive;

(b) operable, meaning that user interface components and navigation are operable;

(c) understandable, meaning that information and the operation of the user interface are understandable; and

(d) robust, meaning that content must be robust enough to be interpreted in a reliable manner by a wide variety of user agents, including assistive technologies.

Disproportionate burden.

5. (1) Public sector bodies shall apply the accessibility requirements set out in regulation 4 to the extent that those requirements do not impose a disproportionate burden on them for the purposes of that regulation:

Provided that for the purposes of this regulation, measures that would impose a disproportionate burden shall be understood as measures that would impose an excessive organisational or financial burden on a public sector body, or would jeopardise the capacity of the body to either fulfil its purpose or to publish information needed for or relevant to its tasks and services, whilst taking into account the likely resulting benefit or detriment for citizens, in particular persons with disabilities:

Provided further that only legitimate reasons shall be taken into account in any assessment of the extent to which the accessibility requirements cannot be met because they would impose a disproportionate burden; in particular, lack of priority, time or knowledge shall not be considered as legitimate reasons, nor shall there be deemed to be any legitimate reasons for not procuring or developing software systems to manage content on websites and mobile applications in an accessible manner.

(2) In order to assess the extent to which compliance with the accessibility requirements set out in regulation 4 imposes a disproportionate burden, public sector bodies shall take account of relevant circumstances, including the following:

(a) the size, resources and nature of the public sector body concerned; and

(b) the estimated costs and benefits for the public sector body concerned in relation to the estimated benefits for users, in particular but in no way limited to persons with disabilities,

taking into account the frequency and duration of use of the specific website or mobile application.

(3) Without prejudice to sub-regulation (1), the public sector body concerned shall perform the initial assessment of the extent to which compliance with the accessibility requirements set out in regulation 4 imposes a disproportionate burden.

(4) Where a public sector body avails itself of the derogation provided for in sub-regulation (1) for a specific website or mobile application, after conducting an assessment as referred to in sub-regulation (2), it shall endeavour to make the content in question as accessible as possible and shall make other content fully accessible.

(5) Where a public sector body avails itself of the derogation provided for in sub-regulation (1) for a specific website or mobile application after conducting an assessment as referred to in sub-regulation (2), it shall explain, in the accessibility statement referred to in regulation 7, the part or parts of the accessibility requirements that could not be complied with and shall, where appropriate, provide accessible alternatives.

(6) Public sector bodies shall provide the Authority with a written report on the initial assessment referred to in sub-regulation (2) of the extent to which compliance with the accessibility requirements set out in regulation 4 imposes a disproportionate burden, and the said report shall also include a description of the accessible alternatives referred to in sub-regulation (5):

Provided that, without prejudice to his powers to initiate investigations pursuant to regulation 9, the Authority may deliver a written opinion on the initial assessment report within twenty (20) days of receipt thereof, requesting the public sector body concerned to take any measures he deems necessary in the circumstances. Such written opinion shall be communicated to the public sector body concerned by registered letter.

6. (1) Content of websites and mobile applications that meets harmonised standards or parts thereof, the references to which have been published by the European Commission in the Official Journal of the European Union in accordance with Regulation (EU) No 1025/2012, shall be presumed to be in conformity with the accessibility requirements set out in regulation 4 that are covered by those standards or by parts thereof.

Presumption of
Conformity with
the Accessibility
Requirements.

(2) Where no references to the harmonised standards referred to in sub-regulation (1) have been published, content of mobile

applications that meets the technical specifications or parts thereof that may be established through implementing acts adopted by the European Commission shall be presumed to be in conformity with the accessibility requirements set out in regulation 4 that are covered by those technical specifications or by parts thereof.

(3) Where no references to the harmonised standards referred to in sub-regulation (1) have been published, content of websites that fulfils the relevant requirements of European standard EN 301 549 V1.1.2 (2015-04) or parts thereof shall be presumed to be in conformity with the accessibility requirements set out in regulation 4 that are covered by those relevant requirements or by parts thereof.

(4) Where no references to the harmonised standards referred to in sub-regulation (1) have been published, and in the absence of the technical specifications referred to in sub-regulation (2), content of mobile applications that fulfils the relevant requirements of European standard EN 301 549 V1.1.2 (2015-04) or parts thereof shall be presumed to be in conformity with the accessibility requirements set out in regulation 4 that are covered by those relevant requirements or by parts thereof.

Additional measures.

7. (1) Public sector bodies shall provide and regularly update a detailed, comprehensive and clear accessibility statement on the compliance of their websites and mobile applications with these regulations.

(2) For websites, the accessibility statement shall be provided in an accessible format, using the model accessibility statement that may be established through implementing acts adopted by the European Commission and shall be published on the relevant website.

(3) For mobile applications, the accessibility statement shall be provided in an accessible format, using the model accessibility statement that may be established through implementing acts adopted by the European Commission and shall be available on the website of the public sector body that developed the mobile application concerned, or alongside other information available when downloading the application.

Contents of the accessibility statement.

(4) The accessibility statement shall include:

(a) an explanation concerning those parts of the content that are not accessible, and the reasons for that inaccessibility and, where appropriate, the accessible alternatives provided for;

(b) a description of, and a link to, a feedback mechanism enabling any person to notify the public sector body concerned

of any failure of its website or mobile application to comply with the accessibility requirements set out in regulation 4, and to request the information excluded pursuant to sub-regulation (3) of regulation 3 and regulation 5; and

(c) a link to the enforcement procedure set out in regulation 9 to which recourse may be had in the event of an unsatisfactory response or of a lack of a response to the notification or the request.

(5) Where a public sector body receives a notification or a request pursuant to sub-regulation (4)(b), it shall provide an adequate response to such notification or request within fifteen (15) working days.

(6) The Authority shall adopt measures to facilitate the application of the accessibility requirements set out in regulation 4 to websites and mobile applications other than those of public sector bodies and, in particular, to websites and mobile applications covered by existing national laws on accessibility.

Time within which a public sector body must reply to a notification or a request.

(7) The Authority shall promote and facilitate training programmes relating to the accessibility of websites and mobile applications for relevant stakeholders and staff of public sector bodies, designed to train them how to create, manage and update the accessible content of websites and mobile applications.

Training programmes.

(8) The Authority shall take the necessary measures to raise awareness of the accessibility requirements set out in regulation 4, of their benefits to users and to owners of websites and mobile applications, and of the possibility of giving feedback in the case of any failure by public sector bodies to comply with the requirements of these regulations as set out in this regulation.

Raising awareness.

8. (1) The Authority shall periodically monitor the compliance of websites and mobile applications of public sector bodies with the accessibility requirements set out in regulation 4, on the basis of the monitoring methodology that may be established through implementing acts adopted by the European Commission.

Monitoring and reporting.

(2) By 23 December 2021, and every three (3) years thereafter, the Authority shall prepare and submit to the European Commission a report on the outcome of the monitoring, including the measurement data. Such report shall be drawn up on the basis of the arrangements for reporting referred to in sub-regulation (4), and it shall also cover information on the use of the enforcement procedure set out in regulation 9.

(3) In relation to the measures adopted pursuant to regulation 7, the first report shall also cover the following:

(a) a description of the mechanisms set up for consulting with relevant stakeholders on the accessibility of websites and mobile applications;

(b) procedures to make public any developments in accessibility policy relating to websites and mobile applications;

(c) experiences and findings from the implementation of the rules on conformity with the accessibility requirements set out in regulation 4; and

(d) information on training and awareness-raising activities:

Provided that, where significant changes have been made in relation to the above elements, the Authority shall include in subsequent reports information concerning those changes.

(4) The content of all the reports, which need not list the websites, mobile applications or public sector bodies examined, shall be made public in an accessible format in accordance with the arrangements for reporting by Member States that may be established through implementing acts adopted by the European Commission.

Investigations
and complaints.

9. (1) The Authority shall initiate investigations on the website or mobile application of a public sector body where he has reason to believe that such public sector body has acted or is acting in breach of these regulations.

(2) The Authority shall also initiate investigations on the website or mobile application of a public sector body upon the receipt of a complaint in writing by any person alleging that such public sector body provided an unsatisfactory response or failed to provide a response to a notification or request within the time period specified in sub-regulation (5) of regulation 7, or has otherwise acted or is acting in breach of the provisions of these regulations.

(3) When commencing an investigation pursuant to sub-regulation (1) or (2), the Authority shall notify all the parties concerned in accordance with the methods of service set out in regulation 13, that it intends to carry out an investigation. When notifying the public sector body concerned, the Authority shall inform it that the Authority has reason to believe that that public sector body acted or is acting in breach of these regulations, and shall grant the

public sector body concerned fifteen (15) days from the service to reply in writing to the Authority, stating whether that public sector body considers the complaint to be justified, which course of action it will be taking to remedy the situation, as the case may be, and a reasonable time line within which it will implement the course of action as indicated.

(4) By means of a notice in a format accessible to the intended recipient, the Authority may, if so required for the purpose of carrying out an investigation, request any person –

(a) to provide it with any information that may be described in the said notice;

(b) to produce any documents in possession or control of that person relating to the investigation:

Provided that a person shall not be obliged to give information or produce a document requested if that person is deemed to be exempt from providing that information or producing the document before the Court in civil proceedings.

(5) The Authority shall communicate its decision stating whether or not the public sector body concerned has failed to comply with, or has otherwise acted or is acting in breach of, any of the requirements set out in these regulations to the parties concerned, in accordance with the methods of service set out in regulation 13. In its decision of the Authority shall give the reasons for its finding of a breach of these regulations, and shall request the public sector body concerned to undertake any remedial action the Authority deems necessary in the circumstances within a specified time limit and inform the public sector body that, in default, the Authority shall proceed to undertake compliance measures as provided for in these regulations:

Provided that the Authority may, upon receipt of a request by the public sector body concerned made in writing or by electronic means within seven (7) days of service of the decision, decide to extend the time limit for compliance with the decision if the Authority considers that the circumstances of the case so warrant.

(6) In the event that the public sector body concerned, having been served with the decision of the Authority as provided in sub-regulation (5), fails to take the necessary action within the specified time limit, the Authority shall in the first instance proceed to undertake a compliance measure consisting of the publication of the name of the public sector body and of the decision of the Authority in accordance with the provisions of regulation 11:

Provided that, prior to taking of any such compliance measures pursuant to this sub-regulation, the Authority shall issue a final warning to the public sector body concerned in accordance with the methods of service set out in regulation 13, stipulating a further time-limit which may not exceed fifteen (15) days from service of such warning within which the public sector body must comply with its decision, and specifying the compliance measures that will be taken if the public sector body concerned remains in default of such compliance:

(7) If notwithstanding the publication of the name of the public sector body and of the decision of the Authority as provided for in sub-regulation (6), the public sector body persists in not complying with the aforesaid decision, the Authority may then impose an administrative fine in accordance with the provisions of regulation 11.

Role of the Authority.

10. (1) The Authority shall be responsible for monitoring and enforcing the application of the provisions of these regulations in order to ensure the compliance of websites and mobile applications of public sector bodies with the accessibility requirements set out in regulation 4.

(2) The Authority may seek the advice of, and may consult with, any other competent body or entity in the exercise of its functions under these regulations.

Compliance measures.

11. (1) Subject to the provisions of regulation 9(6), where a public sector body does not comply with any of its obligations pursuant to these regulations, then the Authority may in the first instance publish the name of the public sector body and the decision of the Authority taken pursuant to regulation 9(5) in any such manner as it considers appropriate in the circumstances.

(2) If notwithstanding the compliance measure taken by the Authority under sub-regulation (1), the public sector body still fails to comply with the decision of the Authority, then the Authority may, if such a decision has not been appealed by the public sector body, impose an administrative fine not exceeding twenty thousand euro (€20,000):

Provided that before proceeding to impose any such fine the Authority shall write to the non-compliant public sector body warning it of the fine that may be imposed, the reasons there for, giving that public sector body a period of seven (7) days in which to make its written submissions. The Authority shall then proceed to decide whether to impose a fine and if it decides to impose a fine the amount thereof. In doing so the Authority shall state its reasons there

for.

(3) For the purposes of these regulations the Authority may when undertaking a compliance measure which includes the publication of a decision, at its discretion publish only a summary consisting of the salient points of its decision such as it may consider appropriate in the circumstances.

12. (1) The public sector body concerned or the complainant as the case may be, may lodge an appeal before the Tribunal from a decision of the Authority issued pursuant to these regulations. Right of appeal

(2) The effects of a decision by the Authority which is appealed from shall not, except where the Tribunal or the Court of Appeal, as the case may be, so orders, be suspended by virtue of the appeal:

Provided that any administrative fine imposed by the Authority shall not apply until the public sector body on whom the administrative fine is imposed has exhausted the right of appeal that it may exercise in accordance with these regulations, or if the public sector body to whom the decision is addressed has permitted the applicable time-limits to contest such a fine expire without availing itself of the said right of appeal.

13. (1) Where the Authority exercises its powers pursuant to these regulations, the decision of the Authority shall forthwith be served on the public sector body to whom the decision is addressed and on the complainant, as the case may be, either by registered post to the official address of the public sector body and to the last known business or private address of the complainant, or by electronic means that provide a reliable record of when service took place. Methods of service.

(2) In the case of service by electronic means, the decision shall be deemed to have been served upon the public sector body to whom the decision is addressed, and on the complainant as the case may be, when the Authority has received:

(a) an electronic receipt automatically generated by the e-mail server when the communication is read; or

(b) a written confirmation by return electronic mail from an employee of the public sector body to whom the decision is addressed, and from the complainant as the case may be.

(3) If service is not effected within a week of issuing the decision for any reason attributable to the public sector body to whom the decision is addressed, or to the complainant as the case may be, the

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Authority shall publish a notice in the Gazette and in one or more daily newspapers, stating that a decision has been taken in respect of the public sector body to whom the decision is addressed, or the complainant as the case may be, and inviting it or him to collect the decision from the Authority. In any such case, service shall be deemed to have been effected on the third day after the date of publication of the last notice.

Application.

14. These regulations shall apply as follows:

(a) to websites of public sector bodies not published before 23 September 2018, from 23 September 2019;

(b) to websites of public sector bodies not covered by paragraph (a), from 23 September 2020; and

(c) to mobile applications of public sector bodies, from 23 June 2021.
