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Regulating Web Content: the nexus of legislation and performance standards in the United Kingdom and Norway

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Abstract

Despite different historical traditions, previous research demonstrates a convergence between regulatory approaches in the United Kingdom and Norway. To understand this convergence, this article examines how different policy traditions influence the legal obligations of performance standards regulating web content for use by persons with disabilities. While convergence has led to similar policy approaches, I argue that national policy traditions impact how governments establish legal obligations for standards compliance. The analysis reveals that national policy

traditions influenced antidiscrimination legislation and the capacity and authority of regulatory agencies, which impacted the diverging legal obligations of standards in the United Kingdom and Norway. The analysis further suggests that policy actors mediate the reciprocal influence between national policy traditions and regulatory convergence mechanisms.

Introduction

The United Nations (UN) Convention on the Rights of Persons with Disabilities (CRPD) recognizes, in Article 9, the necessity of "access … to information and communications technologies" for persons with disabilities to "participate fully in all aspects of life" (UN, 2006). This recognition obligates States Parties to develop legislation and standards to support the use of web content by persons with disabilities. This article compares how different historical relationships or policy traditions in the United Kingdom (UK) and Norway influence the legal obligations of standards that support the regulation of web content for use by persons with disabilities. I argue that policy traditions influence disability antidiscrimination legislation and the capacity and authority of regulatory agencies. I further argue that this influence structures national responses to new social challenges, such as web accessibility. Specifically, this article asks: "How do policy traditions influence the legal obligations of web accessibility performance standards?"

In Article 9, the CRPD recognizes barriers to social inclusion stating that "to enable persons with disabilities to live independently and participate fully in all aspects of life" States Parties have an obligation to "ensure … access on an equal basis with others, to … information and communications technologies and systems" (UN, 2006). The CRPD obligates States Parties to "take appropriate measures: to develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility" of services available to the public. In practice,

ratification of the CRPD binds governments to identify and remove barriers to the use of web content by implementing public policies (e.g., laws or regulations) and encouraging market-based initiatives (e.g., through corporate social responsibility). As both countries have ratified the CRPD, the UK and Norwegian governments must take appropriate measures and report on the implementation of minimum standards for accessibility.

Web content consists of different elements (e.g., text, images, sounds, videos, or animations) of internet-based information and communication that affect the user experience (Blanck, 2014 this issue, forthcoming 2015). User experience refers to the relationship between an individual and web content. This relationship has evolved and become more abstract and interactive as technologies that structure the presentation, function, and performance of web content, continue to develop. Access to the internet and use of web content forms the foundation of the information society and the global knowledge economy (Blanck, 2014 this issue, forthcoming 2015). Providing opportunities to connect to the internet and use web content fundamentally empowers people with disabilities to participate in the economic, political, and cultural activities that come with full and active citizenship (DISCIT, 2013). As a result, if not designed and produced to reflect the diversity of user experiences, web content imposes barriers to social inclusion and active citizenship. These barriers to social inclusion disproportionately impact persons with disabilities and contribute to economic, political, and cultural exclusion.

Regulations adopted by supranational, national, and regional governments recognize the importance of performance standards in regulating web content to provide social inclusion for persons with disabilities ("Accessibility for Ontarians with Disabilities Act," 2005; Australia Human Rights and Equal Opportunity Commission, 2002; Department of Justice, 2012; EC, 2011; ictQatar, 2011; New Zealand Government Web Toolkit, 2013). Policy actors have promoted national harmonization with the World Wide Web Consortium's Web Content Accessibility Guidelines

(WCAG), a set of international performance standards (ISO / IEC 40500:2012) (ISO & IEC, 2012; W3C, 2008). Policy actors have additionally attempted to stimulate discourse on the financial benefits of web accessibility by promoting universal design (UD) in an effort to support access to the web for older persons. UD, originally an architectural concept, refers to an environment designed for and usable by everyone irrespective of age, ability or status. Policy actors have used UD to promote the means of creating web content that the widest possible population can use without modification. Despite these efforts, web content remains widely inaccessible for persons with disabilities (Blanck, 2014 this issue, forthcoming 2015; Easton, 2012, 2013; Ritchie & Blanck, 2003; Sandler & Blanck, 2005).

Implementing public policy solutions for web accessibility depends on effective monitoring and enforcement mechanisms. The CRPD requires States Parties to submit reports on the implementation of the CRPD to a monitoring body, the Committee on the Rights of Persons with Disabilities. States Parties may additionally ratify the Optional Protocol to the CRPD, which "recognizes the competence of the Committee [on the Rights of Persons with Disabilities] … to receive and consider communications from individuals or groups of individuals … who claim to be victims of a violation by that State Party" (UN, 2006). However, mechanisms for enforcing the CRPD focus on national legal accountability (Easton, 2012). This national accountability means that where violations occur, States Parties should change public policy. The implementation of these policies devolves to national regulatory agencies, and implementation requires national regulators to work with market actors to achieve compliance. However, national regulatory agencies and market actors benefit from cooperation, while simultaneously confronting incentives to avoid cooperation (Potoski & Prakash, 2011). This conflict challenges national regulatory enforcement of policies supporting the CRPD.

The equal treatment approach to disability antidiscrimination originated in the United States (US), evolved into an international policy regime, and inspired the introduction of regulations in the UK and the European Union (EU) (Department of Justice, 2012; Halvorsen & Hvinden, 2009; "Public Law 101-336: Americans with Disabilities Act of 1990," 1994; "Public Law 111-260: Twenty-First Century Communications and Video Accessibility Act 2010," 2010). Equal treatment refers to a political principle that prohibits discrimination based on disability. This prohibition requires service providers to treat persons with disabilities on an equal basis with others. The indirect influence of US policy contributed to a convergence between the approaches to antidiscrimination regulation in the UK and Norway.

As previous research demonstrates, the approaches to antidiscrimination regulation in Norway and the UK converge (Halvorsen & Hvinden, 2009). These approaches consist of similar uses of policy instruments and the delegation of policy implementation to independent regulatory agencies. This research demonstrates that convergence occurred due to the influence of international (e.g., the United States) and supranational (e.g., the EU, UN and Council of Europe) antidiscrimination policies (Halvorsen & Hvinden, 2009). However, previous research in economic regulation demonstrates that despite convergent approaches, the structure and competence of national regulatory agencies differs (Tenbücken & Schneider, 2004). Previous research also demonstrates distinctly national approaches to enforcement through litigation (Burke, 2002; Kagan, 2001).

The development of performance standards provides evidence of convergence, as standards organizations in the UK and Norway focus on broad stakeholder participation and consensus. The UK and Norwegian governments authorized independent national standards organizations to produce and sell standards. The role of web accessibility performance standards in the UK and Norway provides further evidence of convergence as governments in both cases

introduced performance standards to support social regulations instead of or along with other policy options. These policy options, such as licensing and certification, public procurement, funding research and development, and auditing, provide a range of solutions for achieving or enhancing web accessibility.

Though both cases adopted performance standards, the functional impact of those standards differs. In the UK, performance standards function not as technical requirements but as guidelines on processes for procuring or creating web content. Regulations in Norway, alternatively, refer to international performance standards, which function as technical requirements for achieving accessibility. The function and legal obligations of performance standards in the UK and Norway co-vary, as policy actors have promoted voluntary procedural standards in the UK and mandatory prescriptive standards in Norway. Despite convergence between the UK and Norway in the use of policy instruments, antidiscrimination legislation, and the introduction of web accessibility performance standards, the resulting functions and legal obligations of these standards vary.

In practice, policy actors may change and influence the legal obligations of performance standards and, consequently, obscure the distinction between voluntary and mandatory standards. Therefore, this study provides a detailed explanation of regulatory convergence by examining the influence of policy actors on the introduction of performance standards. As the legal obligations of performance standards in the UK and Norway contrast, voluntary and statutory respectively, this study investigates the margins of convergence established by previous research (Halvorsen & Hvinden, 2009). Despite convergence, due to the impact of international and supranational policy regimes, differences in national approaches to regulation and enforcement persist. These differences demonstrate the limited scope of convergence.

Norway presents a useful case to examine as demands for increased public sector efficiency and social justice and equity led to social benefit reforms and the introduction of antidiscrimination regulations (Hvinden, 2009). To support these regulations, the Norwegian government established and fragmented regulatory monitoring and enforcement across multiple agencies. The Norwegian government enacted disability antidiscrimination regulations to supplement historically generous social benefits, such as the provision of assistive technology. Assistive technology refers to devices used to improve the functional capabilities of persons with disabilities.

Enacting disability antidiscrimination regulations demonstrates a move towards convergence; however, despite this convergence, Norway adopted statutory web accessibility performance standards that targeted the private sector before the UK, US, and EU. This early adoption meant that the Norwegian government used performance standards to regulate private sector web content before regulatory progenitors such as the UK and US. These mandatory standards contrast with earlier policy efforts in Norway, as the government initially hesitated to adopt a legislative approach to disability antidiscrimination.

The UK presents a useful comparator to Norway because disability antidiscrimination legislation in the UK foreshadowed disability antidiscrimination regulations in Europe. The UK initially approached disability through targeted antidiscrimination legislation, convergent with the US approach and then diverged from the US approach by integrating disability as a component of equality legislation. Therefore, antidiscrimination legislation transitioned from multiple pieces of legislation, each targeting a different ground of discrimination, to a single piece of legislation targeting multiple grounds of discrimination. The UK also transitioned from the administration of multiple regulatory agencies, each targeting a single ground of discrimination, to a single regulatory agency targeting multiple grounds of discrimination. The UK government modeled this

agency on prior regulatory reforms, which had progressively authorized regulatory agencies with a wider range of monitoring and enforcement options.

This article begins by presenting a framework for regulating web design. It then describes the empirical data collection. The analysis continues by describing the themes of social regulation of disability antidiscrimination in the two cases. It then examines the events that occurred between the adoption of antidiscrimination policy and the introduction of performance standards where legislation delegated rulemaking authority for policy implementation. Finally, this article examines how policy actors respond to and reciprocally influence approaches to antidiscrimination enforcement and the legal obligations of performance standards. I conclude by summarizing and reflecting on the implications of the results, and provide recommendations for States attempting to regulate ICT accessibility, based on the experiences in the UK and Norway.

Framework for regulating web design

Previous research demonstrates that the international diffusion of ideas leads to convergence through policy learning (Hulme, 2006; Meseguer, 2005). Policy learning refers to the knowledge that policy actors acquire through the experiences of others. Policy learning generates institutional changes and a convergence of institutional norms, values, and procedures (Mahoney & Thelen, 2010; Wilensky, 2002). This convergence leads to institutional isomorphism (i.e., international compatibility), which provides evidence of convergent processes.

Alternatively, self-reinforcing historical processes, demonstrate the perpetuity or consistency of national institutions. Previous research defines these path dependent processes based on the increasing benefits that particular choices generate over time (David, 2003; Pierson, 2000). Despite substantial theoretical and empirical research examining institutional convergence and path dependency, limited empirical data exist that explores the margins and interactions of

these concepts. Therefore, this article attempts to fill this gap by applying this framework to a unique regulatory regime, web accessibility. Using empirical data from the UK and Norway, this article examines how, despite convergence from supranational and international influences, national policy traditions have persisted and as a result, influenced the legal obligations of performance standards.

Policy traditions emerge through social and political institutions that influence the preferences of policy actors in establishing the authority and capacity of regulatory agencies (Gilardi, 2004; Hall & Taylor, 1996). These institutions refer to formal or informal procedures, routines, norms and conventions. Regulatory capacity refers to the ability of an agency to pursue an objective based on human and financial capital, time or opportunity, and regulatory supervision or oversight. Regulatory authority refers to the rulemaking ability of an agency. Regulatory capacity and authority relate to agency competence, which refers to the ability of an agency to successfully engage in regulatory activities.

Social regulations attempt to influence market actors to achieve social outcomes through the use of persuasive, financial, and legislative policies (Bemelmans-Videc, Rist, & Vedung, 1998; Majone, 1993). The social regulation of web accessibility attempts to influence the actions of service providers to promote web content designed for use by persons with disabilities. Social regulation includes the application of antidiscrimination legislation to the web, which requires the design or adaptation of web content for use by persons with disabilities. The expectations and choices of policy actors, such as advocates, legislators, regulators, and representatives of standards organizations and private enterprises, influence the formation and implementation of policies promoting accessible web design. These web accessibility policies provide a regulatory basis for national and international performance standards.

Performance standards provide a reference for achieving outcomes (e.g., safety requirements for components, practices, or materials) through process- (e.g., food safety procedures), prescriptive- (e.g., measurements for building accessibility), or risk-based (e.g., potential side effects of pharmaceuticals) approaches (May, 2011). Like other regulatory institutions, private interests influence the formation of performance standards and may consequently exclude public interests and impact policy objectives (Austin & Milner, 2001; Mattli & Woods, 2011). International agreements, including arrangements within the EU, UN, or World Trade Organization, promote the convergence of national standards as a mechanism for coordinating the market for goods and services providers (Bartley, 2011).

Performance standards support the implementation of web accessibility regulations by informing compliance strategies for service providers and supporting policy beneficiaries in enforcement efforts. National governments establish the legal obligations of those standards when the legislature, the judiciary, or a regulatory agency uses the standard in statutory policies including case law and regulations (Jordana & Levi-Faur, 2004; Levi-Faur, 2011). Web accessibility performance standards emerged in the UK and Norway as a regulatory means for interpreting the requirements of antidiscrimination policies. The legal obligations of performance standards refer to whether policy actors consider the standard voluntary or mandatory. (Werle, 2002; Werle & Iversen, 2006). Voluntary standards typify indefinite legal obligations due to the indirect, vague, inconsistent or non-existent use of the standard in statutory policies. Mandatory standards typify definite legal obligations due to the clear and consistent use of the standard in statutory policies.

National governments define the legal obligations of compliance by adopting performance standards and delegating rulemaking authority for regulatory monitoring and enforcement to regulatory agencies (Werle & Iversen, 2006). For regulatory agencies and the judiciary, performance standards provide a means for assessing and monitoring compliance and offer

evidence for holding noncompliant organizations accountable. Regulatory monitoring and enforcement of prescriptive standards requires public sector investment in technical competence, and can provide an efficient means for settling disputes as measurable threshold criteria and specifications restrict broad interpretation (Gilad, 2011; May, 2011). Alternatively, procedural standards require comparatively less technical competence and public sector investment and may result in broader interpretation as organizations adopt rules based on process specifications (Gilad, 2011; May, 2011).

Despite similar approaches to regulating web accessibility in the UK and Norway, substantive differences in disability policy traditions and the legal obligations of performance standards exist. To understand the influence of policy traditions, I compare the UK and Norway as most similar cases and examine how different disability policy traditions contribute to different outcomes in the legal obligations of performance standards (George & Bennett, 2005). To preclude intervening variables, the analysis traces the differences in policy traditions to the differences in the legal obligations of performance standards in both cases through the use of policy analyses and semi-structured interviews with policy actors.

Description of data collection

This comparative case study applies new evidence to define and discuss how national policy traditions operate in a distinct regulatory regime. Qualitative data collection and analysis empirically supports this case study. To assess policy traditions, this study uses a document analysis of primary source statutory and non-statutory policies. These policies include fundamental pieces of disability rights legislation in the UK and Norway and associated national and supranational policies. To assess the relationship between policy traditions and policy actors, this study uses the results of semi-structured interviews conducted with a purposive sample of 21

participants recruited in the UK (n=11) and Norway (n=10) via snowball sampling and the social networking website LinkedIn. The analysis uses a random four digit identification (ID) number for each participant. Participants represented advocacy organizations (ID 0510, 4351, 4566, 5103, and 5987), government agencies (ID 0931, 4335, 6903, and 8850), private enterprises (ID 2618, 6001 and 6370), standards organizations (ID 2011 and 8058), regulatory agencies (ID 7252 and 8417), civil society organizations (ID 2522 and 6497), quasi-public agencies (ID 9903), subject matter experts (ID 6943), and public-private sector coalitions (ID 3789). While not routinely requested to provide information on disability, six participants self-identified as blind or partially sighted.

The interview guide included questions related to the (1) role of ICT Accessibility in the public and private sectors; (2) relationships among private enterprises, standards organizations, advocacy organizations, regulatory agencies and policymakers; (3) relation between technology innovation and practice; (4) barriers and incentives to web accessibility; (5) role of standards in web accessibility; (6) resources needed to achieve broader and higher levels of web accessibility; and (7) lessons learned from national experiences. The semi-structured interviews pursued varying lines of inquiry based on the participant's knowledge and the information provided.

Social regulation in disability antidiscrimination

The similarities in approaches to disability antidiscrimination demonstrate convergence between the UK and Norway (Halvorsen & Hvinden, 2009; Hvinden, 2009). In the UK, disability policy first emerged in response to the charity and medical models of disability, which necessitated rehabilitation and public beneficence (Bickenbach, Chatterji, Badley, & Ustün, 1999). These models prompted legislation such as the Disabled Persons Act 1944, which obligated private enterprises to employ persons with disabilities. As a basis for social policy, the social and rights models of disability focused on eliminating social barriers to realize rights for persons with

disabilities and replaced the medical and charity models (Barnes & Mercer, 2009; Oliver & Barnes, 2012; Shakespeare, 2006). Reflecting this changing conceptualization of disability, policies such as the Chronically Sick and Disabled Persons Act 1970 and the Disabled Persons Act 1981 aimed to promote accessibility by eliminating barriers to the built environment.

In response, the UK disability rights movement, advocated for a comprehensive law that made discrimination against persons with disabilities illegal and recognized the social barriers and exclusion that confronted persons with disabilities (Roll, Lourie, & Great Britain Parliament House of Commons Library, 1995). Contiguously, the Conservative Party leadership of the UK government aimed to reduce public spending and encourage voluntary compliance with regulations (Enable, 1994; Roll et al., 1995). The efforts of the disability rights movement and the Conservative Party leadership of the UK government culminated with the Disability Discrimination Act 1995, the first comprehensive disability antidiscrimination policy in the UK to promote equal treatment by regulating employment and the provision of goods, facilities, and services. The Disability Discrimination Act 1995 represented a paradigmatic shift centered on a regulatory approach to comprehensive disability antidiscrimination law. This approach supported the realization of disability rights and required minimal direct public sector financial investment.

The Equality Act 2010 repealed the Disability Discrimination Act 1995 and aimed to harmonize antidiscrimination policies, reduce inequality, eliminate discrimination, and increase equality of opportunity on a variety of grounds. Upon repeal, legislators transposed the provisions of the Disability Discrimination Act 1995, which remained largely unchanged, to the Equality Act 2010. However, rather than transposing guidelines applicable under the Disability Discrimination Act 1995 to the Equality Act 2010, UK regulators chose to selectively replace guidance documents.

The obligation under the Disability Discrimination Act 1995 to anticipate and remove barriers to information and services by making reasonable adjustments forms the legal foundation

for web accessibility (Lawson, 2008). Lawyers and advocates in the UK applied the principles of reasonable adjustment to the web to promote web accessibility. Under the Disability Discrimination Act 1995, regulatory guidance required service providers to make their websites accessible. However, regulations did not mandate compliance with performance standards. The updated guidelines based on the Equality Act 2010 also included web accessibility requirements, and subsequent policies from the UK government clarified the requirement by promoting the use of performance standards, though voluntary, as consistent with the Equality Act 2010. Pursuant to this application, the British Standards Institution, authorized as the national standards body of the UK, developed BS 8878:2010, a code of practice, which focused on a business process approach to web accessibility (BSI, 2010).

In Norway, regulatory policies for disability antidiscrimination emerged later than in the UK. These policies initially incorporated disability related provisions in employment policies such as the Working Environment Act 2005, which repealed the Act Relating to Worker Protection and Working Environment 1977 ("Working Environment Act," 2005). These policies signified a period when advocacy organizations and disabled peoples organizations (DPOs) in Norway focused primarily on improving welfare benefits. DPOs refer to advocacy organizations led and operated by persons with disabilities. The Norwegian government hesitated to impose regulations at the time, which absolved the government from negotiations between trade unions and employers (Halvorsen & Hvinden, 2009). Rather than regulating web accessibility through legislation, the Norwegian government instead enacted persuasive policies such as eNorway 2009, which aimed to influence the role of ICT (Norwegian Ministry of Modernisation, 2005). Persuasive policies such as Norway Universally Designed by 2025 also situated the accessibility of the built environment as a component of UD (BLID, 2009). In 2010, the Norwegian government adopted disability regulatory policies in direct response to EU legislation. These policies included regulations for

accessible bus, boat, and train transport and antidiscrimination (BLID, 2010; JD, 2010; Ministry of Transport [Samferdselsdepartementet], 2011, 2013).

In Norway, convergent processes introduced by the indirect influence of disability antidiscrimination policy in the US and EU mediated the regulatory approach to disability antidiscrimination. Similar to the UK, contiguous and prevailing policy discourses led to the enactment of the Antidiscrimination Accessibility Act 2008. Policy actors attempted to progressively strengthen equality of target groups through a domestic antidiscrimination policy regime (BLID, 1978, 2008a; KRD, 2004). Government and advocacy organizations in Norway focused on realizing these rights, including accessibility of ICT, through international obligations with the EU, Council of Europe, and UN (Council of Europe, 1952, 1965; Council of the European Union, 2000, 2004; Law Commission [Lovutvalget], 2005; United Nations, 1988). Private enterprises supported this regulatory approach to avoid overlapping policy applications (Appointed Committee [Utvalg oppnevnt ved kongelig resolusjon], 2002).

A separate discourse occurred within the public sector, where demands from the aging population and increased costs of social benefits promoted economically efficient and sustainable policy solutions (Hvinden, 2009). These discourses resulted in the Antidiscrimination Accessibility Act and a paradigmatic shift that situated accessibility and UD within antidiscrimination regulations. This approach attempted to prevent discrimination against persons with disabilities, while addressing the aging population through UD, without increasing expenditure for social benefits.

The Antidiscrimination Accessibility Act, established the general obligation to promote the UD of publicly available goods and services including ICT (BLID, 2008a). This obligation functioned similarly to the reasonable adjustment provisions of the Disability Discrimination Act 1995 and demonstrates the convergence between disability policy instruments in the UK and Norway. In

response to the Antidiscrimination Accessibility Act, the Norwegian government adopted regulations for the UD of ICT (FAD, 2013). The regulations require the design of websites to conform to international accessibility performance standards (WCAG 2.0 / ISO / IEC 40500:2012 level A and AA).

Delegating authority for policy implementation

The introduction and implementation of comprehensive disability antidiscrimination legislation and the authority and capacity of national regulatory agencies provides a framework for understanding how the UK and Norwegian governments promoted performance standards as a component of social regulatory policy. Both governments promoted performance standards instead of, or along with, other policy options, such as licensing, training, compliance testing, public procurement, or auditing. Antidiscrimination legislation demonstrates a convergence in the approach to disability policy as legislation in both cases involves the recognition and realization of disability rights and efforts to promote public sector economic efficiency and financial restraint. In both the UK and Norway, the conjuncture of separate policy discourses and changes in policy goals led to paradigmatic shifts in disability policy (Hall, 1993). These shifts generated changes in regulatory capacity and authority. However, regulatory authority and capacity vary between and within each case. The next sections present these changes and identify where policy traditions contribute to variation between the UK and Norway.

Initial agency design and oversight

In the UK, enactment of the Disability Discrimination Act 1995 authorized the National Disability Council (NDC) “to advise the Secretary of State” and provided the NDC the capacity to monitor “matters relevant to the elimination of discrimination”, “measures … to reduce or eliminate such discrimination” and “matters related to the operation of [the Disability

Discrimination Act]" ("Disability Discrimination Act," 1995; Roll et al., 1995). The UK government limited the authority of the NDC "with respect to the investigation of any complaint that may be the subject of proceedings" ("Disability Discrimination Act," 1995). The UK government authorized the NDC to issue Codes of Practice at the request of the legislature that, though not legally binding, litigants could use in civil proceedings (Roll, Great Britain Parliament, & House of Commons Library, 1999). A 1999 Green Paper stated that the NDC "did not have the powers of enforcement" and criticized the NDC's limited authority, which prevented the agency from investigating complaints that may lead to trial (Roll et al., 1999).

As the UK government limited public sector regulatory enforcement authority, the efficacy of and compliance with the Disability Discrimination Act 1995 relied heavily on the institutional capacity of DPOs and civil society organizations to use judicial enforcement. A UK standards organization representative describes the relationship between the Disability Discrimination Act 1995 and the judiciary stating, "The only way you could ever say someone was DDA compliant, was if it's gone through the due legal process and the judge has said you've complied with the law in this case, that's the only way" (ID 2011). This dependence on judicial advocacy demonstrates how despite the creation of a new regulatory agency, the Disability Discrimination Act 1995 relied on a previously established tradition for policy enforcement. Though relying on established judicial enforcement institutions, this approach to antidiscrimination also represented a departure from policy traditions that established other agencies in the UK such as the Equal Opportunities Commission and the Commission for Racial Equality, which the government authorized to enforce relevant antidiscrimination legislation.

The Norwegian government enacted the Discrimination Act 2004 to prohibit discrimination based on protected characteristics and, in conjunction, established the Equality and Anti-discrimination Ombud (LDO) under the Ministry of Children, Equality, and Social Inclusion

(BLID). The legislation that established the LDO represented the first instance that the Norwegian government explicitly included disability in antidiscrimination policy. The Norwegian government authorized and provided the capacity for the LDO to monitor and "contribute to the implementation" of national and supranational legislation including, upon enactment, the Antidiscrimination Accessibility Act (BLID, 2005). The LDO acts as a first point of contact for individual discrimination complaints and has the regulatory authority to issue nonbinding statements on the application of the law. Additionally, the Antidiscrimination Tribunal, authorized to hear appeals from LDO statements and make binding decisions, reinforced public sector enforcement capacity. The Norwegian government established the LDO and the Antidiscrimination Tribunal based on the Equality Ombud and the Equality Tribunal, which the Norwegian government established under the Equality Act 1978 to promote the equal opportunity of women. This replication of previously established regulatory agencies demonstrates that Norway relied on prior enforcement policy traditions in establishing new regulatory authority and capacity. However, a Norwegian advocate describes the limitations to this approach stating, "the Ombud has no power … they have no means for punishment or fines or anything … I think you can go to [court], but nobody does. That costs a lot of money and you lose" (ID 5987).

In 2004, antidiscrimination policies in Norway, including the Discrimination Act, had not explicitly named disability as a protected ground. Nevertheless, the Norwegian government authorized the LDO to hear discrimination complaints on the grounds of disability. As antidiscrimination policies had not previously targeted persons with disabilities, the creation of the LDO did not directly involve DPOs. Nevertheless, advocacy organizations largely supported establishing the LDO (BLID, 2005). The lack of explicit recognition of disability as a protected ground led to a 2005 White Paper published by a legislative committee on improving accessibility

for all. This White Paper included a draft law prohibiting discrimination on the basis of disability (Law Commission [Lovutvalget], 2005).

Advancing antidiscrimination through agency reform

In the UK, agency reform established the Disability Rights Commission (DRC), which replaced the NDC, and expanded the regulatory authority of the public sector to enforce the Disability Discrimination Act 1995. Despite widespread support, DPOs and advocacy organizations expressed two areas of concern regarding the regulatory capacity of the agency: funding and membership. These areas conflicted with the concerns of private enterprise representatives. Private enterprises argued against the majority disability membership requirement and additionally that cooperative agreements should not constitute a legal obligation (Roll et al., 1999).

The UK government authorized the DRC with a flexible range of enforcement options. These options included the formal authority to conduct investigations of noncompliance, issue notices of noncompliance, apply for a court order to end persistent noncompliance, and provide legal assistance. The UK government authorized the DRC with comparatively fewer participatory approaches to enforcement, including the authority to enter into agreements in lieu of enforcement and to provide conciliation services. Therefore, the DRC's authority predominantly consisted of formal administrative approaches to enforcement. The authority and capacity of the DRC also demonstrates where the UK relied on prior policy traditions, which established other antidiscrimination regulatory agencies (e.g., the Commission for Racial Equality). Nevertheless, the focus on administrative enforcement efforts limited the competence of the DRC. A UK advocate articulates this dilemma stating, "[the DRC has] not done anything to bring the rest of the nation onside so they know this is their problem" (ID 4351).

The UK government also authorized the DRC to issue statutory Codes of Practice, which offer practical guidance for service providers. However, rather than issuing a Code of Practice detailing web accessibility requirements based on international performance standards, the DRC commissioned the British Standards Institution in 2005 to produce the procedural standard PAS 78:2006 (Easton, 2012). The British Standards Institution appointed a steering group to develop PAS 78 as a non-consensus guideline. This procedure requires stakeholder participation but not unanimous agreement (BSI, 2012). The steering group included representatives from DPOs, advocacy organizations, media companies, UK government agencies, regulatory agencies, technology companies, universities, private enterprises, and professional associations. The British Standards Institution produced PAS 78 as a guidance document for business to business procurement of website design (BSI, 2006).

In 2003, the UK government issued a consultation and review of antidiscrimination regulatory agencies that led to a White Paper proposing to establish the Equality and Human Rights Commission (EHRC) (Great Britain Dept. of Trade and Industry & Great Britain Dept. for Constitutional Affairs, 2004). This White Paper as well as broader government initiatives introduced an emerging framework for enforcing web accessibility obligations in the UK (Gershon, 2004). This framework emphasized efficacy and efficiency and promoted stakeholder engagement and strategic solutions. The DRC recognized the need for harmonized regulation but stressed that the government should adequately resource the EHRC to promote active roles for disability representatives, balance awareness and enforcement, and realize the objectives of the agency. Private enterprise representatives supported establishing the EHRC as a simpler, efficient, and owing to agency guidance, a more effective means for achieving compliance (Keter & Great Britain Parliament House of Commons, 2005).

In 2006, the EHRC replaced the DRC and two other antidiscrimination regulatory agencies. This composite regulatory agency based on existing regulatory institutions, illustrates where the UK again relied on policy traditions to determine the capacity and authority of regulatory reform. New formal (e.g., inquire into potential noncompliance, require action plans on notice, and intervene in judicial review) and participatory (e.g., provide grants, and collaborate with other human rights based organizations) approaches expanded the regulatory flexibility of the EHRC. The EHRC also retained the authority to issue Codes of Practice, admissible as evidence in civil proceedings, and disseminate information, undertake research, and provide education and guidance. However, this organizational reform effort led to mixed results.

A UK standards organization participant discusses the impact this reform had on agency competence stating,

> In terms of regulatory function, the EHRC's budget is drastically being reduced, its remit is being tightened and reduced, its staffing levels are being reduced … they will focus on big high level strategic legal cases that they see as having the most impact for the most people. That's fine for a national regulatory function, the problem with that is where does all the other little stuff go? (ID 2011)

In 2011, the UK government initiated a public consultation on reforming the EHRC, and in response, the government agreed to proceed with legislative efforts to reduce the authority and capacity of the EHRC to "clarify the EHRC's remit and improve its … value for money" (Government Equalities Office, 2012).

Unlike the iterative reform efforts in the UK, agency reform in Norway occurred as separate initiatives. The Norwegian government established the Delta Centre prior to the LDO as a state project and then as a government agency to promote social policy objectives and inform the National Council for the Disabled (Delta Centre [Deltasenteret], 2002). The National Council for the

Disabled acts as a public sector advisory agency. As the Norwegian government established the Delta Centre based on a state project, this reform relied on previously established public sector competence.

A 2001 White Paper formed the basis for the Delta Centre's objectives, which included eliminating barriers for persons with disabilities through the use of ICT (Appointed Committee [Utvalg oppnevnt ved kongelig], 2001). A Norwegian standards organization representative describes the regulatory role of the Delta Centre stating, "today you have a lot of guidelines on ICT for instance the Delta Centre guideline … they are the most active members of my committees by the way" (ID 8058). Though the Norwegian government limited the authority of the Delta Centre to providing information and training, the capacity of the agency to produce and disseminate knowledge, enabled the Delta Centre to develop competence in the application of UD to ICT (Delta Centre [Deltasenteret], 2002).

In 2008, a budget and resource reallocation established the Agency for Public Management and eGovernment (difi) under the Ministry of Government Administration Reform and Church Affairs (FAD). The Norwegian government established difi with the capacity to strengthen the implementation of ICT in the public sector by emphasizing quality, efficiency, participation and effectiveness. Establishing difi centralized national ICT policy by combining three separate agencies authorized to advise the public sector, establish quality criteria for public sector websites, and increase the use of the web in public service provision. In establishing difi, the Norwegian government adopted the goals of previously established regulatory agencies and, similar to establishing the EHRC in the UK, relied on policy traditions to develop a centralized approach to regulatory capacity and authority.

Fundamentally, the Delta Centre and difi supported the public sector's capacity for regulating the design of ICT, including the web, through performance standards. A Norwegian

government agency representative articulates the role of public agencies in standardization stating,

> I think it's important to have the government, governmental institutions for instance difi, in Norway, in the standardization committee, so they know what is going on, so they can say after the standard is made that they want to point to that standard and say that it should be used (ID 8058)

In 2008, the Ministry of Children, Equality, and Social Inclusion proposed a law prohibiting discrimination on the basis of disability (BLID, 2008b). The proposal suggested that Standards Norway develop national performance standards through a multi-stakeholder process including the Delta Centre and difi.

Antidiscrimination legislative reform

In the UK, a 2007 Green Paper recommended establishing a single legislative framework, aligning the objectives of the EHRC, and furthering the goals of efficacy, efficiency, and partnership by enacting the Equality Act 2010 (Great Britain Dept. for Communities and Local Government, 2007). The Green Paper endorsed the business case for equality, which promotes voluntary compliance with antidiscrimination policies, and stated that the Equality Act 2010 intended to improve the efficacy of antidiscrimination legislation by harmonizing and simplifying the law. As mentioned, the Equality Act 2010 replaced the Disability Discrimination Act 1995 and other antidiscrimination legislation. This legislative reform illustrates the development of antidiscrimination legislation from a policy tradition where regulations, such as the Disability Discrimination Act 1995, targeted discrimination based on separate grounds.

Though the Equality Act 2010 did not change the authority of the EHRC, the legislation impacted the relevance of previous guidance established by the DRC and EHRC. The EHRC delayed

issuing regulatory guidance on the transition to the Equality Act 2010, and rather than transposing the guidelines applicable under the Disability Discrimination Act 1995 to the Equality Act 2010, the EHRC chose to selectively replace specific guidelines and Codes of Practice. As these regulatory policies impact compliance efforts, the actions of the EHRC demonstrate the influence of policy actors on institutional enforcement under the Equality Act 2010.

In 2010, EHRC guidance under the Disability Discrimination Act 1995 stated that service providers must make their websites accessible (EHRC, 2010). While guidance documents did not define web accessibility, the EHRC referred to WCAG as the international standard for achieving accessibility. After enactment of the Equality Act 2010, the EHRC introduced updated guidelines based on the new law; however, the EHRC referenced web accessibility standards as separate guidance under the Disability Discrimination Act 1995. A UK private enterprise representative articulates this inconsistency stating, “I think we have gone a step backwards … there are certain parts of the Equality Act which … tend to confuse the issues. And I think web accessibility certainly is one of those” (ID 6370).

In Norway, the adoption of the Antidiscrimination Accessibility Act strengthened legal protections on the basis of disability. The enactment of this legislation expanded the authority of the LDO; however, the Antidiscrimination Accessibility Act did not clarify the obligation for the UD of ICT specifying only that “Public undertakings are to make active, targeted efforts to promote universal design” (BLID, 2008a). Similar to the enactment of the Discrimination Act and authorization of the LDO, enacting the Antidiscrimination Accessibility Act demonstrates the policy tradition of expanding regulatory authority with the introduction of antidiscrimination regulations.

The 2008 Ministry of Children, Equality, and Social Inclusion proposal, discussed previously, recommended that difi provide guidance and enforce regulations for paragraph 11 of

the Antidiscrimination Accessibility Act on the UD of ICT (BLID, 2008b). A Norwegian advocate articulates a fundamental limitation to these regulations stating,

> They didn't understand the ICT world, universal design at all, so it came in late in the process of the legislation and … when people know what is the requirement they won't do anything more and that's not universal design, … we cannot reach the goal of equal participation and universal design of ICT only through law, only through legislation, it's impossible. (ID 4351)

The proposed regulations additionally recommended, due to the Delta Centre's competence in accessible ICT, that difi and the Delta Centre collaborate in regulating and enforcing the law (BLID, 2008b).

Though the proposal did not delegate any formal rulemaking abilities to the Delta Centre, the proposal recommends shared responsibility in regulating web content and contributes to a division of regulatory authority in the public sector. The Antidiscrimination Accessibility Act also indicates that enforcing the UD of ICT will include penalties for noncompliance. However, this unprecedented use of financial instruments for regulating web accessibility, located outside of the authority of the LDO, further contributes to the division of regulatory authority in the public sector.

Promoting performance standards

Leading up to the introduction of BS 8878, the UK government and industry advocates collaborated to argue in favor of establishing the EHRC and adopting the Equality Act 2010 (Great Britain Dept. for Communities and Local Government, 2007; Great Britain Dept. of Trade and Industry & Great Britain Dept. for Constitutional Affairs, 2004). The development of BS 8878, a code of practice for web accessibility, focused on a business process approach to web design. The

British Standards Institution developed BS 8878 as an update to PAS 78, and appointed a committee (IST / 45) to develop BS 8878 as a consensus standard. Consensus refers to leadership and decision making that includes stakeholder agreement as a substantive criterion (BSI, 2008). IST / 45 included many of the same representatives that participated in developing PAS 78 including DPOs, media companies, technology companies, universities, private enterprises, advocacy organizations, legal service providers, professional associations, and the UK government. This development process demonstrates where the British Standards Institution relied on consensus, a previously established institutional procedure, and used PAS 78 as a basis to develop BS 8878.

In the UK, instead of technical requirements, BS 8878 provides guidelines on processes for procuring and creating web content. Therefore, the formation and introduction of BS 8878 as a procedural standard did not conflict with contiguous efforts to establish prescriptive standards in the EU through M376. After the British Standards Institution published BS 8878, the EHRC referenced the standard and WCAG as guidance applicable under the Disability Discrimination Act 1995. In 2011, the UK government and the EHRC recognized the role of BS 8878 as a procedural standard for web accessibility and promoted BS 8878 as "consistent with" the Equality Act 2010 (Parliamentary Office of Science and Technology, 2012). The UK government acknowledged that obligations under the CRPD, EU law, and the Equality Act 2010, require reasonable adjustment for private sector websites to achieve accessibility (Parliamentary Office of Science and Technology, 2012). These obligations demonstrate where the UK government relied on a policy tradition for reasonable adjustment established under the Disability Discrimination Act 1995 to justify and encourage the voluntary adoption of BS 8878.

Despite regulatory approval, the EHRC has not referenced BS 8878 as part of its Code of Practice for service providers under the Equality Act 2010 (Great Britain & EHRC, 2011). Though the EHRC has the authority and capacity to promote a legal obligation to comply with BS 8878, the

standard remains unconnected to regulatory policy and policy actors and the UK government consider the standard voluntary. Consequently, while allowable in civil proceedings, the judiciary has the responsibility for determining if compliance with the standard constitutes reasonable adjustment. The decision by the EHRC and UK government to limit the standard's legal obligation further restricts the authority of agencies and organizations involved in evaluating or auditing compliance. A UK private enterprise representative discusses the limits of voluntary compliance stating, "It [BS 8878] only means something when people use it. And I think, precisely, the issue is that there is no driver as such which would actually convince web developers and organizations to make use of that standard" (ID 6370).

Though the UK government used BS 8878 to encourage voluntary compliance, efforts to disseminate the standard through the EHRC or the British Standards Institution have not yet resulted in widespread adoption. The development of BS 8878 illustrates the evolution of the voluntary approach to regulatory compliance, a policy tradition that the UK conservative government advocated for prior to the adoption of the Disability Discrimination Act 1995 (Enable, 1994; Roll et al., 1995). However, this approach differs from other antidiscrimination regulatory approaches in the UK, which directly reference performance standards produced by the British Standards Institution ("The Building Regulations," 2000).

In 2010, in Norway, difi commissioned Standards Norway, responsible for national ICT standards, to report on the introduction of mandatory standards for the web (Rudolph Brynn & Standards Norway [Standard Norge], 2010). The report stated that promoting performance standards for the UD of web content would have a positive social and economic impact. In 2012, difi published information and guidance on the UD of websites, which identified the need for regulations connected to performance standards (difi, 2012). Difi referred to WCAG (version 2.0)

as a standard for achieving UD of web content. However, difi stated that achieving UD may require national guidance.

In 2012, four years after the enactment of the Antidiscrimination Accessibility Act, the FAD proposed regulations pursuant to the UD of ICT. The proposed regulations leveraged the capacity of the Delta Centre, and authorized difi to monitor and audit compliance of paragraph 11 of the Antidiscrimination Accessibility Act, pertaining to the UD of ICT (FAD, 2012). A Norwegian standards organization representative articulates concerns about the delay in issuing the regulations stating, "I'm worried about the lack of encouragement by the government right now for private enterprises, because it's not a good signal that you're postponed the regulations for such a long time even for the public sector" (ID 8058). The public consultation included as part of the FAD proposal represented a variety of policy actors; however, the majority represented government agencies. Advocacy organizations and DPOs also contributed to the consultation, and trade associations, private enterprises, universities and research institutes, though essential for the participation of a wide range of interests, represented a minority. The public consultation from the FAD proposal included a submission by Standards Norway to provide national performance standards for the UD of web content (Rudolf Brynn, Lindelien, & Mehus, 2013).

The FAD proposal coincided with a proposed EU directive on the accessibility of public sector websites. The proposed directive includes a request (M 376) for the European standards organizations to develop standards for accessible ICT (EC, 2005). The European standards organizations aim to develop performance standards to promote the harmonization of the European economy (EC, 2005; Standards Norway [Standard Norge], 2013). As members of the European standards organizations, the British Standards Institution and Standards Norway may not develop standards that conflict with the proposed EU directive. In 2013, the Norwegian government approved the FAD proposal as part of the regulations pursuant to the

Antidiscrimination Accessibility Act. However, rather than referring to the development of a national standard, the regulations refer to prescriptive international standards (WCAG 2.0 / ISO / IEC 40500:2012 level A and AA). Policy actors in the US and EU anticipate that the standards emerging from M 376 will harmonize with WCAG. By referring to WCAG, the FAD regulations harmonize with EU policies, and this harmonization demonstrates convergence in the approaches to web accessibility between Norway and the EU.

Legal obligations and approaches to enforcement

While the UK and Norway may share similar approaches to the use of policy instruments for antidiscrimination regulation, the authority and capacity of regulatory agencies diverge. These institutional differences impact the social inclusion of persons with disabilities because regulatory agencies support enforcement mechanisms that influence the remediation of barriers to inaccessible web content. Therefore, enforcement challenges may implicate States Parties, given the obligation under the CRPD to ensure access to ICT for persons with disabilities. Regulatory enforcement in the UK resembles the adversarial and legalistic traditions of the US (Burke, 2002; Kagan, 2001). The UK typifies these traditions as policy actors rely on the use of lawyers, legal threats, and legal contestation. Nevertheless, antidiscrimination policies in the UK have not resulted in influential web accessibility litigation.

As previously demonstrated, the constrained authority of the NDC exclusively limited enforcement options to pre-existing arrangements of judicial enforcement. This dependence on judicial enforcement meant that plaintiffs experienced high financial and administrative costs in bringing complaints against private enterprises due to the costs of legal assistance; delays caused by formal procedures for filing complaints and opportunities for judicial appeal; and uncertainties

inherent in the unpredictable, variable, and reversible character of the common law system. Therefore, DPOs and advocates encountered barriers to asserting disability rights.

The enactment and initial implementation of the Disability Discrimination Act 1995 lacked the prescriptive detail that regulations and case law provide. Despite the emergence of case law in the UK detailing and interpreting obligations for reasonable adjustment under the Disability Discrimination Act 1995, policy actors could not expect the judiciary to immediately or efficiently harmonize around new applications of reasonable adjustment (e.g., obligations related to web accessibility). Therefore, unfavorable or nationally fragmented judicial outcomes became a further risk for policy proponents. These barriers demonstrate how regulatory and enforcement institutions influenced policy actors' (i.e., DPOs and regulatory agencies) expectations of compliance.

In response to the challenges of enforcing the Disability Discrimination Act 1995, the UK adopted an administrative approach to enforcement through the authorization of a centralized regulatory agency for disability antidiscrimination, the DRC. The UK government created the DRC because policy actors, including the NDC, advocated for stronger enforcement of the Disability Discrimination Act 1995 (Roll et al., 1999). The UK centralized enforcement capacity and authority within the DRC to remediate the institutional constraints on public sector enforcement.

The DRC's capacity and authority to engage in formal enforcement procedures, and the application of these procedures reduced and avoided the costs of litigation by providing guidance on how to interpret the law. This guidance, including Codes of Practice, reduces the uncertainty of litigation by informing service providers of their obligations and defining those obligations for advocates. The DRC also lowered the expense of legal advocacy by providing legal assistance. These formal enforcement procedures exposed private enterprises to increased legal risks, and motivated compliance efforts based on the risk of litigation (Easton, 2012). The impact on private

enterprises illustrates where regulatory institutions influenced policy actors within private enterprises. The increased risk of litigation confronting private enterprises also influenced industry advocates to argue for more efficient compliance mechanisms, which prompted regulatory reform efforts. Industry advocacy efforts, specifically by business and professional associations, demonstrate the influence of policy actors on subsequent regulatory and enforcement institutions.

Establishing the DRC and operating three separate equality and human rights commissions also exposed the UK government to inefficiencies. These inefficiencies led to financial constraints on the UK treasury, which contributed to the justification for establishing the EHRC (Great Britain Dept. of Trade and Industry & Great Britain Dept. for Constitutional Affairs, 2004). Public sector inefficiencies generated by the combination of a bureaucratic and legalistic approach to disability antidiscrimination led to reform efforts, which attempted to reduce public sector costs for antidiscrimination regulation. These reform efforts illustrate where the institutional arrangement of regulatory agencies influenced the preferences of policy actors, specifically the UK legislature.

The UK legislature reformed the DRC and established the EHRC, as the public sector's single point of contact for private sector equality duties. In keeping with principles of efficiency and effectiveness, the EHRC concentrated on strategic, low cost, and effective enforcement. Following agency reform, a series of national research and consultation processes with interest groups, including industry advocates, promoted a unified approach to antidiscrimination legislation (Keter & Great Britain Parliament House of Commons, 2009). The resulting enactment of the Equality Act 2010 further promoted efficient regulatory oversight at the EHRC.

In response to these changes, policy actors in the UK, including the EHRC, approached enforcement through negotiation and problem solving among stakeholder coalitions. The EHRC's approach to enforcement required voluntary participation by private enterprises. However, as

relevant research had not empirically demonstrated the costs and benefits of web accessibility, private enterprises had little financial incentive to participate. This approach signified a shift in compliance strategy towards an informal approach that focused less on judicial and formal administrative enforcement, and more on informal participatory enforcement. The change in compliance strategy demonstrates where enforcement institutions influenced the actions of policy actors, specifically the approach to compliance by private sector policy actors and the EHRC.

Contiguous with the enactment of the Equality Act 2010, the British Standards Institution published BS 8878. The change to an informal approach to enforcement that came with the Equality Act 2010 supported the voluntary adoption of BS 8878. The approval of BS 8878 by the EHRC and the UK government provides a regulatory basis, though voluntary, for the adoption of the standard. However, the absence of a regulatory mandate for standards avoids imposing a legal obligation to comply with defined processes or technical specifications. The lack of a clear legal obligation for BS 8878 demonstrates the influence that policy actors within standards organizations and regulatory agencies have on institutional enforcement.

In contrast, Norway presents a less formal and less legalistic regulatory enforcement tradition. Despite fragmented antidiscrimination authority and mandatory prescriptive standards, Norway has also not yet experienced substantial litigation. The authority of public sector officials to control the processes and standards of antidiscrimination policy through the LDO and difi and the comparatively informal procedures for registering complaints partly explains the absence of judicial advocacy. The Norwegian government promoted the capacity of the LDO by reinvesting existing budgets and increasing competence in pre-existing institutions (BLID, 2004). While the LDO provided the opportunity for persons with disabilities to register officially recognized complaints against private enterprises on the basis of disability discrimination, the prevailing antidiscrimination legislation at the time did not directly reference disability as a basis for

discrimination. Consequently, this limitation constrained the authority of the LDO to issue statements on the application of the law to disability related complaints.

In response, the Norwegian government adopted the Antidiscrimination Accessibility Act, which required the UD of ICT. The Antidiscrimination Accessibility Act did not authorize a regulatory agency to oversee paragraph 11, the UD of ICT. The Antidiscrimination Accessibility Act required that the LDO have authority to enforce antidiscrimination regulations on the grounds of disability; however the competence of the LDO did not include the technical and procedural knowledge required to enforce regulations for the UD of ICT. In response, the Norwegian legislature opted to restrict the enforcement of the Antidiscrimination Accessibility Act (paragraph 11), which constrained the authority of the LDO. This enforcement constraint demonstrates where the policy traditions for regulating antidiscrimination through the LDO, established with the Discrimination Act and perpetuated by the Antidiscrimination Accessibility Act, impacted policy actors such as the LDO and persons with disabilities. This enforcement constraint also led to the proposed FAD regulations, which promoted the competence of difi to regulate the UD of ICT.

Contiguous with the regulatory reforms that established the LDO and the Antidiscrimination Accessibility Act, the Delta Centre and difi promoted their competence among service providers. These active promotion efforts established a framework for aligning public and private sector objectives in UD and ICT. Initially, the Norwegian government authorized difi to consolidate national ICT policy by advising public sector agencies, establishing performance criteria, and promoting the use of the web. The government authorized the Delta Centre to promote accessibility and UD. Difi and the Delta Centre introduced voluntary policies that, due to the symbolic authority of the agencies, indirectly influenced public and private sector service providers. Specifically, the two agencies established performance criteria that provided a voluntary mechanism for the adoption of, and compliance with, performance standards. These

agencies also promoted UD of ICT, which introduced service providers to new investments by encouraging the procurement and development of web-based ICT solutions. Despite a voluntary approach to compliance, these agency efforts provided a basis for the introduction of performance standards. The FAD regulations promoted the institutional competence of difi to regulate the UD of ICT through statutory performance standards. The formation and development of difi and the Delta Centre demonstrates where policy actors influenced regulatory enforcement institutions.

Conclusion

The legal obligations of performance standards varies between the UK and Norway (i.e., voluntary and statutory respectively). This difference challenges evidence of convergence as regulatory approaches to web accessibility, while appearing similar, substantively diverge. This article contributes empirical evidence demonstrating that despite supranational and international influences contributing to convergence, national policy traditions for regulatory enforcement may have a stronger influence on the legal obligations of web accessibility performance standards. These policy traditions interact with the expectations and choices of policy actors involved in legislatures, regulatory agencies, advocacy organizations, standards organizations, and private enterprises. Regulatory agencies influenced the development and institutionalization of both voluntary and statutory standards, and the differences in the authority and capacity of regulatory agencies in the UK and Norway have consequently influenced the legal obligations of the standards.

In the UK, the regulatory authority and capacity of the EHRC and the formation and implementation of the Equality Act 2010 influenced the legal obligations of BS 8878. The UK government initiated these regulatory reforms based on the NDC, DRC, and Disability

Discrimination Act 1995. In Norway, the regulatory authority and capacity of the LDO, the Delta Centre, and difi and the formation and implementation of the Antidiscrimination Accessibility Act influenced the development of the FAD regulations, which legally obligates service providers to comply with international performance standards (WCAG 2.0 / ISO / IEC 40500:2012 level A and AA). The Norwegian government established the LDO based on prior regulatory reforms, while the government established difi and the Delta Centre to increase public sector capacity and authority.

The CRPD obligates States Parties to ensure access to the web for persons with disabilities. However, to establish effective national regulatory enforcement mechanisms, policy actors must consider the barriers to web accessibility and how current approaches to antidiscrimination fail to adequately ensure access to ICT for persons with disabilities on an equal basis with others. The results of this study provide a basis for policy actors involved with the national and international development and implementation of performance standards to consider how obstacles related to national regulatory capacity and authority impact the legal obligations of performance standards.

These obstacles also reveal a pertinent and broader question for future research. To what extent can standardization support social regulation? Recommendations provided by the interview participants provide a useful starting point for addressing this question and suggest,

- adopting a partnership approach to achieving web accessibility by including persons with disabilities in the legislative process, in standardization, and in testing or compliance certification
- integrating policies that provide assistive technology with broad-based antidiscrimination legislation that refer generally to international performance standards
- implementing these regulations through a centralized agency with the capacity to raise public awareness and the authority to effectively monitor and enforce the law through a low threshold complaint mechanism

These recommendations provide guidance for governments seeking to ensure the active participation of persons with disabilities in the economic, political, and cultural activities that the information society and global knowledge economy has to offer.

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