

**BEREC Report on the outcome of the
public consultation on the draft BEREC
Report on Member States' best practices
to support the defining of adequate
broadband internet access service**

11 June 2020

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Executive Summary

BEREC organised a public consultation on the draft Report on Member States' best practices to support the defining of adequate broadband IAS, which ran from 11th December 2019 until 27th January 2020, with the objective of gathering stakeholders' comments and observations on the content of the draft BEREC Report (BoR (19) 260). This report summarises the responses received to the public consultation on the draft BEREC Report on Member States' best practices to support the defining of adequate broadband IAS.

In accordance with Article 84(3) of the European Electronic Communications Code¹, (hereinafter referred to as "the EECC"), *"each Member State shall, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within the territory of that Member State, and taking into account the BEREC report on best practices, define the adequate broadband internet access service for the purposes of paragraph 1 with view to ensuring the bandwidth necessary for social and economic participation in society."*²

Article 84(3) of the EECC requires that by 21 June 2020, BEREC shall draw up and publish a report on Member States' best practices to support the defining of adequate broadband internet access service (IAS). The report will be updated regularly to reflect technological advances and changes in consumer usage patterns.

The Report on Member States' best practices to support the defining of adequate broadband IAS examines how Member States (MS) have introduced a broadband universal service obligation (USO) to date. It is worth pointing out that these MS did so under the current legislative framework and not under the EECC as the measures for the transposition of the EECC become applicable on 21 December 2020 in MS. The current legislative framework is provided for in Directive 2002/22/EC (amended by Directive 2009/136/EC), which includes *"functional internet access."* The best practices report offers insight into the practices of the nine MS (Belgium, Croatia, Finland, Latvia, Malta, Slovenia, Spain, Sweden and the United Kingdom)³ which have to date introduced broadband under a USO.

In response to the consultation on the draft Report on Member States' best practices to support the defining of adequate broadband IAS, BEREC received 8 contributions from the following stakeholders:

1. eir
2. Fastweb
3. GSMA - ETNO
4. Liberty Global

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code.

² Paragraph 1 of Article 84 states: *"Member States shall ensure that all consumers in their territories have access at an affordable price, in light of specific national conditions, to an available adequate broadband internet access service and to voice communications services at the quality specified in their territories, including the underlying connection, at a fixed location."*

³ The United Kingdom left the European Union on 31 January 2020. In accordance with the Agreement on the Withdrawal of the United Kingdom from the EU, UK is a third country to the EU. During the transition period (until 31 December 2020, subject to extension) EU law continues to apply to the UK. At the time of the data collection and drafting of this best practices report (2019) UK was a Member State of the EU and its data is included and referred to in this report.

5. Open Fiber
6. PIKE
7. RIPE NCC
8. Vodafone Group

The non-confidential submissions to this BEREC consultation can be read in full on the BEREC website⁴ and may be useful to consider in conjunction with this summary report for further details on respondents' views.

In general, stakeholders welcomed the opportunity to comment on the draft BEREC Report on Member States' best practices to support the defining of adequate broadband IAS.

BEREC thanks all respondents for their submissions, which have been carefully considered in relation to the Report on Member States' best practices to support the defining of adequate broadband IAS.

The following sections outline the comments, observations and recommendations expressed within the submissions to the public consultation, and a BEREC response, where appropriate.

⁴ <https://berec.europa.eu/> - the submissions will be published in June alongside this summary Report and the Report on best practices

1. General comments

A number of themes were raised across several of the submissions to the consultation on the Report on Member States' best practices to support the defining of adequate broadband IAS, which are outlined below, starting with those themes raised by the most respondents.⁵ Some of the points raised are outside of the scope of the best practices report to support the defining of adequate broadband IAS and therefore will not be dealt with in this report.

- The importance of **technology neutrality** in the implementation of a broadband USO (eir, Fastweb, GSMA-ETNO, Liberty Global, Vodafone).
- The importance of avoiding undue **market distortion** in particular and protecting competition (eir, GSMA/ETNO, Liberty Global, PIKE, Vodafone).
- Broadband USO should be **limited to primary residences** (eir, GSMA/ETNO, Liberty Global, Vodafone).
- USO should be implemented as a **measure of last resort** or safety net (eir, GSMA/ETNO, Liberty Global and Vodafone).
- The risk of USO potentially impacting upon the rollout of **High Capacity Networks** (eir, GSMA/ETNO, Liberty Global, PIKE).
- Broadband USO should be **publicly funded** (eir, GSMA/ETNO, Liberty Global, Vodafone).
- The importance of considering current and future commercial and public **rollout plans** before implementing a broadband USO (eir, GSMA/ETNO, Liberty Global, Vodafone).
- **Affordability, availability and adequacy are separate and discrete considerations** and should be assessed separately (eir, GSMA/ETNO, Liberty Global, Vodafone).
- **Delays in funding** for Universal Service Providers (USPs) should be avoided (PIKE, GSMA/ETNO, Vodafone).
- Affordability measures should take the form of **social welfare payments** or vouchers, rather than lower commercial rates (eir, GSMA/ETNO, Liberty Global).
- The way in which the Report refers to speed, and the terms '**used**' vs '**enjoyed**' **bandwidth** (eir, GSMA/ETNO, Liberty Global).
- Broadband USO should be implemented in the most **cost effective** manner (eir, GSMA/ETNO, Vodafone).

⁵ For the purpose of the General Comments Section, those themes which were raised by 3 or more respondents were included in this section.

2. Question 1 – criteria used by MS

In the consultation, BEREC presented the following table regarding Question 1:

Questions		
	<p>The table below contains all the criteria that the different Member States with broadband universal service obligation in force took into account when they defined it. Please rate them (1-5) in terms of their importance to define the adequate broadband internet access service, and explain the rationale behind it. When rating, please take into account the following graduation:</p> <p>1: Not relevant at all 2: Less important 3: Important 4: High importance 5: Indispensable.</p>	
Evaluation criteria	Rating 1: Not relevant at all 2: Less important 3: Important 4: High importance 5: Indispensable.	Rationale
1	Where the data rate in question is used at national level by: i) at least 50% of all households; and ii) at least 80% of all households with a broadband connection.	
	Expected availability of broadband without public intervention	
	Geographic survey	
	Market distortion	
	Estimation of the potential demand for a broadband USO	
	Comparison with other EU countries	
	Benefits of public intervention and effects on competition	
	Timeframe to make available broadband under USO	
	Social and economic disadvantages incurred by those without access to a broadband connection, including disabled end-use	
	Estimation of the costs of intervention through USO versus other approaches	

Figure 1: Question 1

2.1 Contributions Received

The majority of respondents provided both ratings and a rationale for each of the evaluation criterion that the MS with broadband USO have taken into account.

In general, the ratings provided for each criterion varied across submissions (**Errore. L'origine riferimento non è stata trovata.**). For example, diverging views were offered on the Geographic survey criteria, with Open Fiber's submission rating it as indispensable (5/5), while Fastweb, Liberty Global and PIKE ranked this criterion as not relevant at all (1/5). Such differing views in response to Question 1 was commonplace across all of the ratings offered for the evaluation criteria.

A number of respondents commented on the language used in relation to the data rate, specifically on the terms 'used' and 'enjoyed' data rates (eir, GSMA/ETNO, Liberty Global), while asking BEREC for further guidance on how to interpret the term bandwidth.

In response to Question 1, GSMA/ETNO outlined that the Communications Committee Working Document "Implementation of the revised Universal Service Directive: internet related aspects of Article 4", COCOM10-31 ("COCOM Working Document")⁶ referred to in the Report on Member States' best practices to support the defining of adequate broadband, cannot be considered when defining adequate broadband IAS, stating that it was published under Directive 2002/22/EC (as amended by Directive 2009/136/EC) (hereinafter referred to as 'the current legislative framework'), and was not intended as defining criteria and therefore it cannot be considered. GSMA/ETNO expressed that consideration of the data rate criteria (at least 50% of households and at least 80% of households with broadband) risks creating market distortion and may result in the setting of a minimum data rate that is too high.

Details on the rationale behind the rankings are provided by respondents in the submissions to the public consultation and the submissions can be accessed on the BEREC website. Figure 2 below shows the scores provided by the respondents (where applicable), the combined total scores and the average rating for each criterion.

⁶ European Commission Information Society and Media Directorate General, Communications Committee Working Document "*Implementation of the revised Universal Service Directive: internet related aspects of Article 4*," COCOM10-31 Final, Brussels, 10 January 2011.

Comparison with other EU countries	Rating 1: Not relevant at all 2: Less important 3: Important 4: High importance 5: Indispensable	Eir	Fastweb (estimated from text)	GSMA ETNO	Liberty Global	Open Fiber	PIKE	Ripe NCC	Vodafone	Total Rating	Answered by	Average Rating
Where the data rate in question is used at national level by: i) at least 50% of all households; and ii) at least 80% of all households with a broadband connection.		3	5	2	5	3	1		50% -1 80% -5	19 <i>excl. Vodafone</i>	7 out of 8	3.2
Expected availability of broadband without public intervention		4		1	1	4	1		3	14	6 out of 8	2.3
Geographic survey		2	1	2	1	5	1		3	15	7 out of 8	2.1
Market distortion		5	3	5	5	3	3		5	29	7 out of 8	4.1
Estimation of the potential demand for a broadband USO		1	3	1	1	3	1		1	11	7 out of 8	1.6
Comparison with other EU countries		3	1	2	2	3	1		2	14	7 out of 8	2.0
Benefits of public intervention and effects on competition		5	3	3	1	4	1		2	19	7 out of 8	2.7
Timeframe to make available broadband under USO		3		3	1	2	1		3	13	6 out of 8	2.2
Social and economic disadvantages incurred by those without access to a broadband connection, including disabled end-users		4		4	1	5	3		4	21	6 out of 8	3.5
Estimation of the costs of intervention through USO versus other approaches		5	3	5	1		5		5	24	6 out of 8	4.0

Figure 2: Consolidated ratings - Question 1⁷

⁷ The average rating for “data rate used” (first criterion above) is not inclusive of Vodafone’s score, as it did not conform with the rating system, therefore the average for this criterion is based on 6 out of 8 ratings provided.

Below is the BEREC response in relation to some of the specific points raised in the rationale behind the ratings of the evaluation criteria.

2.2 BEREC Response

The respondents provided both ratings and a rationale for each of the evaluation criterion where the MS that defined broadband USO have taken into account under the current legislative framework.

With regard to the comments made on the terms ‘used data rate’ and ‘bandwidth enjoyed’, Article 84(3) of the EECC states that “*Each Member State shall, in light of national conditions and the minimum **bandwidth enjoyed** by the majority of consumers within the territory of that Member State, and taking into account the BEREC report on best practices, define the adequate broadband internet access service [...].*”

Prior to the introduction of the EECC, the COCOM Working Document “Implementation of the revised Universal Service Directive: internet-related aspects of Article 4” (COCOM10-31 FINAL)⁸ was published to offer MS guidance on the practical application of Article 4 of the current legislative framework and stated that “*Member States could be asked to consider including broadband connections in USO where the data rate in question is **used** at national level (i) by at least half of all households and (ii) by at least 80% of all households with a broadband connection.*”

In relation to the comments by eir, GSMA/ETNO and Liberty Global on the terms ‘used’ versus ‘enjoyed’, where the draft Report on Member States’ best practices to support the defining of adequate broadband IAS refers to “used data rate” this is reflective of the language of the COCOM Working Document, as this was available to and taken into account by those 9 MS that introduced a broadband USO under the current legislative framework. Future iterations of the Report on MS’ best practices may adopt the language of the EECC (‘enjoyed’) when examples of MS that have introduced a broadband USO under the EECC will be available to draw upon.

Lastly, it is beyond the scope of the present Report on the outcome of the public consultation and the Report on Member States’ best practices to support the defining of adequate broadband IAS to give further guidance on how to interpret the terms “used” and “enjoyed” bandwidth.⁹

3. Question 2 – additional criteria

In the consultation, BEREC presented the following table concerning Question 2:

⁸ Directive 2009/136 introduced new recitals (4 and 5) which introduced wider flexibility at national level concerning the data rates and opened the possibility for MS to include broadband speeds (applying certain criteria) under universal service. The COCOM Working Document (COCOM10-31 FINAL) aimed to facilitate the correct transposition of the updated Article 4 of Directive 2009/136 and was available to MS to take account of when implementing a broadband USO under the previous legislative framework.

⁹ On the equivalence and meaning of the terms ‘used’ and ‘enjoyed’, please also see forthcoming COCOM document “Questions and answers on the EECC”.

2	Are there any other relevant experiences and/or criteria (not mentioned in the report) that you consider useful to support Member States in defining the adequate broadband internet access service? If yes please describe and rate (1-5) them individually in the same manner described in Question 1.				
	<table border="0"> <tr> <td data-bbox="288 342 922 551" rowspan="2">Other relevant experiences and/or criteria (add rows as required)</td> <td data-bbox="922 342 1145 551"> Rating 1: Not relevant at all 2: Less important 3: Important 4: High importance 5: Indispensable. </td> <td data-bbox="1145 342 1401 551" rowspan="2">Rationale</td> </tr> <tr> <td data-bbox="922 342 1145 551"></td> </tr> </table>	Other relevant experiences and/or criteria (add rows as required)	Rating 1: Not relevant at all 2: Less important 3: Important 4: High importance 5: Indispensable.	Rationale	
Other relevant experiences and/or criteria (add rows as required)	Rating 1: Not relevant at all 2: Less important 3: Important 4: High importance 5: Indispensable.		Rationale		

Figure 3: Question 2

3.1 Contributions Received

Question 2 invited respondents to offer “*other relevant experiences and/or other criteria*” which might be useful for consideration in defining an adequate broadband IAS.

Multiple respondents suggested the addition of new evaluation criteria or the amendment of some of those included in the report (eir, GSMA/ETNO, Liberty Global and Vodafone), with some respondents also rating the additional criteria. These suggested additional criteria, amendments and any suggested ratings can be read in detail in the non-confidential submissions which are published on the BEREC website.

In summary, the following points were suggested as additional criteria in the public consultation:

- technology neutrality
- limitation of USO to primary residences
- mechanism of compensation to USPs (to avoid undue delays)
- funding mechanism: public funding
- separateness of affordability and availability
- estimation of the cost of implementing a broadband USO
- ensuring social and economic inclusion
- sufficient bandwidth to support the services listed in Annex V
- cost effectiveness of USO
- there should be analysis of the expected availability of adequate broadband without public intervention
- criteria listed in Question 1 should be separated out between availability, adequacy and affordability

A wide range of criteria were provided for consideration in response to Question 2, as reflected in the bullet points above. These contributions have been noted, however for the purpose of this summary report, a selection of commonly raised items will be addressed in the BEREC Response in Section 3.2. Below are some of the commonly raised points in Question 2.

In response to Question 2, a number of submissions outlined that the broadband USO should be technology neutral (eir, Fastweb, GSMA/ETNO, Liberty Global and Vodafone).

The suggestion was made in numerous submissions in response to Question 2 or elsewhere in the responses (such as in response to Question 4), that the broadband USO should be limited to primary residences (eir, GSMA/ETNO, Liberty Global and Vodafone).

GSMA/ETNO, PIKE and Vodafone recommended that there should be no delays in compensating the designated USP(s) for the provision of the USO.

GSMA/ETNO and Vodafone suggested that the USO should be publicly funded, a point that was raised by other respondents in response to other questions also (eir and Liberty Global).

A number of respondents in response to Question 2 expressed the view that the concept of affordability and availability are separate matters. eir, GSMA/ETNO and Vodafone are of the view that affordability and availability needs could be met by different USPs. Liberty Global responded to Questions 1 and 2 together and outlined that *“the consideration of whether a broadband internet access service is affordable, available and/or adequate are separate questions which need to be considered independently.”* Liberty Global suggested that the evaluation criteria were not all relevant for the determination of adequate broadband.

3.2 BEREC Response

The Report on MS Best Practices offers an overview of what has been done to date in the 9 MS which have introduced a broadband USO and the evaluation criteria used by these MS. However, the responses to Question 2 and the suggested amendments and additional criteria may be useful considerations for future reports.

Some of the points raised are outside of the scope of the best practices report to support the defining of adequate broadband IAS and therefore will not be dealt with in this report.

BEREC has considered the comments made by respondents to this question and has outlined its responses to the points below.

In relation to the comments on technology neutrality made by eir, Fastweb, GSMA/ETNO, Liberty Global and Vodafone, Article 3(4)(c) of the EECC states that MS shall *“apply Union law in a technologically neutral fashion, to the extent that this is consistent with the achievement of the objectives set out in paragraph 2.”* Additionally, Recital 230 of the EECC includes that *“There should be no constraints on the technical means by which the adequate broadband internet access and voice communications services at a fixed location are provided.”* BEREC considers technology neutrality to be clearly referenced in the EECC and therefore is not required to be outlined further in the Report on Member States’ best practices to support the defining of adequate broadband IAS by BEREC.

In relation to the point raised by a number of respondents that the broadband USO should be limited to primary residences, BEREC considers that the scope of the application of the USO will be determined by MS in accordance with the EECC. Recital 230 of the EECC states that

“Member States should be able to restrict universal service obligations to the end-user’s primary location or residence.”

BEREC considers that in relation to the points raised on the designation of USP(s) for the provision of a broadband USO, designation processes and procedures will be decided by MS in accordance with the provisions of the EECC.

In relation to the funding mechanism for the provision of an adequate broadband universal service, this will be decided by MS in accordance with the Article 90 of the EECC .

The BEREC response to the point raised on the separateness of affordability and availability is outlined in Section 5.2 BEREC Response of this report.

4. Question 3 – bandwidth

In the consultation, BEREC presented the following table concerning Question 3:

	Rationale
3	<p>What are your views on the minimum bandwidth requirements (e.g. upload and download speed amongst other things) of a connection at a fixed location to ensure that consumers have sufficient bandwidth to guarantee social and economic participation in society and to support the minimum set of services established in Annex V of Directive (EU) 2018/1972? Please provide reasons for your views.</p> <p>Annex V</p> <ol style="list-style-type: none"> 1) E-mail 2) search engines enabling search and finding of all types of information 3) basic training and education online tools 4) online newspapers or news 5) buying or ordering goods or services online 6) job searching and job searching tools 7) professional networking 8) internet banking 9) eGovernment service use 10) social media and instant messaging 11) calls and video calls (standard quality)

Figure 4: Question 3

4.1 Contributions Received

In response to Question 3, a number of respondents suggested possible bandwidths that might provide for adequate broadband, these are listed below:

- The minimum bandwidth could be 10-20 Mbps in download and 1-2 Mbps in upload (Open Fiber)
- A minimum bandwidth is likely to be in the range of 5-10 Mbps (eir)

eir outlined that “the only requirement that should be considered in this context is that the minimum bandwidth identified supports the minimum set of services identified in Annex V. Any

additional criteria would likely be arbitrary and create potential for the USO to be used in order to meet other policy objectives rather than simply being used as a safeguard.”

eir and GSMA/ETNO outlined that the minimum bandwidth should be limited to the services listed in Annex V. Vodafone stated that *“the list in Annex V should be strictly limited to the services needed for social and economic inclusion”* and the social media service should not extend to video usage.

Open Fiber stated that the minimum bandwidth set should not be fixed for the period but should be changed in accordance with the development of connectivity in each MS.

Liberty Global stated that the minimum bandwidth is unlikely to vary materially across MS and suggested that the determination of bandwidth should be undertaken in a coordinated or harmonised manner across the EU. Liberty Global suggested that BEREC organise a consultation of stakeholders or a working group to determine the minimum bandwidth.

Similarly, GSMA/ETNO expressed that defining the speeds for the *“indispensable services”* could be done in centralised way at EU level.

In contrast to this, eir expressed that determination of bandwidth will require careful analysis and stakeholder input at MS level.

GSMA/ETNO stated that they do not consider there to be a need *“to define respective speeds related to each service as they are subject to change over time.”*

4.2 BEREC Response

With regard to the determination of bandwidth, BEREC considers that in accordance with Article 84(3) of the EECC, each MS will define the adequate broadband IAS which shall be capable of delivering the bandwidth necessary for ensuring social and economic participation in society, in light of national conditions and the minimum bandwidth enjoyed by the majority. The adequate broadband IAS shall be capable of delivering the bandwidth necessary for supporting at least the minimum set of services set out in Annex V of the EECC.

Article 84(3) of the EECC states that

*“Each Member State shall, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within the territory of that Member State, and taking into account the BEREC report on best practices, define the adequate broadband internet access service for the purposes of paragraph 1 with a view to ensuring the bandwidth necessary for social and economic participation in society. The adequate broadband internet access service shall be capable of delivering the bandwidth necessary for supporting **at least** the minimum set of services set out in Annex V.”*

Annex V of the EECC provides MS with a minimum set of services which the adequate broadband IAS must be capable of supporting in accordance with Article 84(3). Annex V includes social media and standard quality video calls, amongst other services. With regard to these services, MS will define at a national level, in accordance with Article 84(3), the bandwidth necessary to support at least the services contained in Annex V of the EECC. The

bandwidth defined in the MS on basis of Article 84(3) may be sufficient to support also video in social media.

Recital 215 of the EECC refers to the Commission for monitoring and updating the list of online services used by the majority of end-users across the Union which are necessary for social and economic participation in society; *“the Commission will monitor the development in the use of the internet to identify those online services used by a majority of end-users across the Union and necessary for social and economic participation in society and update the list accordingly.”* With regards to the services listed in Annex V of the EECC, Article 116 of the EECC states that *“The Commission is empowered to adopt delegated acts in accordance with Article 117 amending Annexes V, VI, IX, X and XI in order to take account of technological and social developments or changes in market demand.”* Further clarification on Annex V can be found in the COCOM Document *“Questions and answers on the EECC”* under the Article 84 section.¹⁰

5. Question 4 – eligibility, quality of service & affordability

In the consultation, BEREC presented the following table concerning Question 4:

4	Do you have any specific observations on: (i) eligibility criteria; and/or (ii) quality of service (QoS); and/or (iii) affordability measures that might support the definition of the adequate broadband internet access service in your MS?
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Figure 5: Question 4

5.1 Contributions Received

Question 4 asked for specific comments on three criteria (eligibility, quality of service and affordability), which are reflected in the presentation of the responses received below.

(i) Eligibility criteria

In response to this question, a number of respondents outlined that the USO should be limited to primary residences (eir, GSMA/ETNO, Liberty Global and Vodafone).

Liberty Global outlined that pricing should not be considered an eligibility criterion for seeking access to broadband under USO.

GSMA/ETNO and Liberty Global outlined that the cost of provision should not exceed a certain threshold.

eir outlined that *“the cost of provision should not exceed the amount that the USP would recover over this period and past this cost threshold the end-user would be required to cover the excess.”*

eir outlined that end-users that will be covered by public or private investment rollout plans in the medium term should not be eligible for USO.

¹⁰COCOM document “Questions and answers on the EECC”
<https://circabc.europa.eu/ui/group/7da1d333-3dda-4a40-9d7c-0013e0c51c98/library/a4e082a7-46df-4504-bb9f-5b066e089ffe/details>

(ii) Quality of service

A number of respondents outlined that the quality of service (QoS) for the broadband USO should respect the principle of technology neutrality (eir, GSMA/ETNO, Liberty Global and Vodafone).

Liberty Global expressed that the QoS for the broadband USO should not exceed the quality offered by operators in their most basic service.

GSMA/ETNO outlined that certain technologies have stronger fluctuation and therefore no minimum QoS can be ensured all the time and therefore information requirements of Article 4 TSM¹¹ defined for fixed lines IAS would not be reasonably possible to apply.

Ripe NCC, in response to Question 4(ii) expressed the view that the concept of QoS should extend beyond simple metrics such as packet loss rates and should instead encompass a more holistic understanding of the end user's experience. Ripe NCC also expressed that the concept of QoS can be extended to encompass the question of acceptable downtime.

(iii) Affordability measures

Multiple respondents outlined that affordability does not have to be linked to the provision of a broadband connection under USO and that affordability and provision/access should be treated separately (eir, GSMA/ETNO, Liberty Global and Vodafone). GSMA/ETNO expressed that they consider affordability to be outside of the scope of the BEREC mandate.

It was expressed that affordability measures should take the form of social welfare payments or vouchers, rather than commercially provided lower prices (eir, GSMA/ETNO and Liberty Global). PIKE outlined that social packages should be restricted to those people who are in hardship.

GSMA/ETNO outlined that affordability measures should be limited to the primary residences of end-users.

Liberty Global outlined that they do not support the imposition of a price threshold which would apply to all consumers.

Additional

Ripe NCC considered that the use of IPv4 addresses through NAT place constraints on connections, therefore imposing technological restraints on how connections can be used.

Ripe NCC expressed the view that there is a need for the widespread IPv6 adoption in order to support future growth of internet.

¹¹ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.
<http://data.europa.eu/eli/reg/2015/2120/oj2015/2120>

5.2 BEREC Response

(i) Eligibility criteria

The scope of the application of the broadband USO, and the residence types or end-user types it will include, will be determined by each MS, following the provisions of the EECC.

The funding mechanism and any costing criteria will be determined at MS level, following the provisions of the EECC.

(ii) Quality of service

In relation to technology neutrality, as previously outlined in Section 3.2, BEREC notes that this principle is included in Article 3(4)(c) of the EECC which states that MS shall “*apply Union law in a technologically neutral fashion, to the extent that this is consistent with the achievement of the objectives set out in paragraph 2.*” Recital 230 of the ECC states that “*There should be no constraints on the technical means by which the adequate broadband internet access and voice communications services at a fixed location are provided [...].*” BEREC therefore considers that technology neutrality does not need to be outlined further in the Report on Member States’ best practices to support the defining of adequate broadband IAS by BEREC.

(iii) Affordability measures

Upon the transposition of Article 84 (“*Affordable universal service*”) of the EECC, MS shall, in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within the territory of that MS, and taking into account the BEREC report on best practices, define the adequate broadband IAS for their territories with a view to ensuring the bandwidth necessary for social and economic participation in society. The adequate broadband IAS shall be capable of delivering the bandwidth necessary for supporting at least the minimum set of services set out in Annex V of the EECC. It should be noted also that Article 86 on the availability of universal service refers to the adequate broadband IAS, as defined in accordance with Article 84(3) of the EECC.

A number of respondents made comments on the separateness of affordability and availability, and more specifically on the appropriate stages of analysis for the adequate broadband USO. With regard to this, at MS level, the adequate broadband IAS will be defined in the first instance [Article 84(3)], taking into account the criteria listed in Article 84 and delivering the bandwidth necessary for supporting at least the minimum set of services set out in Annex V of the EECC. It should be noted that Article 86 of the EECC (“*Availability of universal service*”) refers to the adequate broadband IAS, as defined in accordance with Article 84(3), therefore consideration of availability under Article 86 takes into account the determined adequate broadband of Article 84 of the EECC. Similarly, Article 85 of the EECC on the “*Provision of affordable universal service*” refers to “*services referred to in Article 84(1),*” which means the adequate broadband IAS (and voice communications).

The design of affordability measures and eligibility criteria for the broadband USO will be determined at a MS level in accordance with the provisions of the EECC in light of national conditions.

Additional

BEREC observes that any considerations regarding the deployment of different internet protocols, and more specifically the use of IPv4 rather than the adoption of IPv6, are outside

of the scope of the Report on MS best practices to support the defining of adequate broadband IAS. The BEREC Work Programme 2020¹² includes an internal workshop on IPv6 deployment across Europe, scheduled for Q4 2020.

6. Question 5 – general observations

In the consultation, BEREC presented the following table concerning Question 5:

5	Do you have any other general observations on this draft report?
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Figure 6: Question 5

6.1 Contributions Received

PIKE outlined that they view the experience of USPs seeking to recover costs for the provision of USO as being very difficult and they recommend that NRAs should not have an industry fund and designate multiple USPs. They recommend either one USP and an industry/public fund or multiple USPs and a public fund.

Fastweb recommended that the designation of more than one USP would benefit consumers and the market.

Liberty Global expressed the view that the designation of USP(s) should be an open process through tenders or expressions of interest.

In relation to funding, Liberty Global outlined that the USO should be publicly funded, however if decided that it is to be in part or otherwise industry funded, this should include all providers of online content, apps and services. Liberty Global also recommended a cap on the cost of the provision of USO in order to keep costs down.

GSMA/ETNO in response to Question 5 highlighted that the draft Report on Member States' best practice to support the defining of adequate broadband does not include details on how the USO will be monitored or what consequences a lower performance has, and GSMA/ETNO asked that BEREC clarify that NRAs have a strong competency to enforce the provisioning of USO, including adequate quality parameters.

GSMA/ETNO expressed that additional consumer rights should not be imposed for broadband USO and that MS should not go beyond consumer protection requirements set out in the EEC but should strive for a high degree of harmonisation.

GSMA/ETNO stated that the definition of speed for USO should not be confused with the quality parameter to be provided in the contract according to Article 4 of the European Union Regulation 2015/2120¹³, and that the USO speed is better reflected in the actual used speed, while the minimum speed may be lower.

¹² BEREC Work Programme 2020

https://berec.europa.eu/eng/document_register/subject_matter/berec/annual_work_programmes/8918-berec-2020-work-programme

¹³ Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union.

<http://data.europa.eu/eli/reg/2015/2120/oj>

Liberty Global requested that BEREC provide information on the proposed timeline for the finalisation of the Report and any future iterations.

Vodafone offered some observations specific to the case of Spain which can be read in full in the consolidated report on submissions.

6.2 BEREC Response

BEREC considers that in relation to the points raised on the designation of USP(s) for the provision of a broadband USO, designation processes and procedures will be assessed and determined at MS level, following the provisions of the EECC.

Similarly, funding mechanisms for universal service will be determined at national MS level in line with the provisions of the EECC. BEREC does not consider the funding mechanism to be directly relevant to the defining of adequate broadband.

Monitoring of the USO and related QoS parameters will be determined at MS level in light of national conditions.

In response to the degree of harmonisation as raised by GSMA/ETNO, the provisions of Article 101 of the EECC outlines the levels of harmonisation with regard to end-user protection. BEREC considers the level of harmonisation of consumer protection to be outside the scope of the Report on MS best practices to support the defining of adequate broadband IAS.

In relation to the definition of speed under a USO as compared to the speed according to Article 4 of (EU) 2015/ 2120 as raised by GSMA/ETNO, BEREC cannot anticipate the definition of the adequate broadband internet access service to be defined by the MS.

In relation to the proposed timeline for future iterations of the Report, BEREC has included further information on this in the final Report on Member States' best practices to support the defining of adequate broadband IAS at the suggestion of Liberty Global.

In response to the points raised on Spain by Vodafone, BEREC appreciates Vodafone's remarks on the latest developments of the Universal Service in Spain. Indeed, since the time the draft BEREC Report on Member States' best practices to support the defining of adequate broadband IAS was submitted from the End Users Expert Working Group to BEREC's Board, and until the end of the public consultation period, two relevant legal acts were adopted by the Ministry of Economy and Enterprise and by CNMC, respectively:

- On November 22, 2019, the Order of the Ministry of Economy and Enterprise made public the call for tenders for the designation of the obliged operator tasked with the provision of the elements of the Universal Service concerning the provision of access to the public network of electronic communications and the provision of the public available telephony service.
- Ministerial Order ECE/1251/2019 declared vacant the aforementioned call for tenders. By means of Ministerial Order ECE/1280/2019 Telefónica was designated Universal Service Provider for the provision of access to the public network of electronic communications and the provision of the public available telephony service until 00:00 AM of January 1, 2023.

- CNMC's resolution of November 21, 2019 concerning the determination of the service providers obliged to contribute to the Universal Service National Fund.

BEREC has therefore incorporated such normative and regulatory developments within the concerned sections of the BEREC Report on Member States' best practices to support the defining of adequate broadband IAS on page 18, (Designation – Procedures and scope), pages 56, 59 (Spain's section in Annex 3) and pages 68, 69 (Spain's section in Annex 4).

Vodafone is correct in its observation concerning the need for requests to make use of the Universal Service to be reasonable. However, as Article 29.2 of Royal Decree 424/2005 states that requests for connection to the network in the frame of the Universal Service are always to be considered reasonable if the connection is made for premises located on urban land and for premises that, despite not being located on urban land, are used as the primary residence by the requester. This provision does not preclude requests for other premises being deemed reasonable.

BEREC has added additional wording in paragraph 39 of the Best Practices report and a corresponding footnote (25) to capture Vodafone's comments. Further remarks have also been included within Spain's section in Annex 3.