

## **Vodafone: consultation response on the BEREC report on Member States' best practices to support the defining of adequate broadband internet access service**

### **Introduction**

We welcome the consultation on the BEREC report on Member States' best practices to support the defining of adequate broadband internet access service.

Vodafone is one of very few pan-European technology communications champions. We are proud of our European heritage, having been part of Europe's mobile revolution for the last 35 years and now driving the shift towards an inclusive and environmentally sustainable European digital society. Across the 13 European markets where we operate, our services today reach 99.8% of citizens and 4m European businesses, most of which are SMEs.

Vodafone is the EU's largest Next Generation broadband network owner, passing 52 million homes with gigabit capable connections, and we offer NGN services to a further 40 million homes through partnerships with other network owners. We have 24 million broadband customers, 22 million pay TV customers and 96 million mobile subscribers in the EU – more than any other operator.

### **General position**

The purpose of a potential Universal Service Obligation (USO) for broadband is to ensure social and economic participation in society. This needs to be the strict basis for defining further criteria. As a general point, USO is not suitable to ensure a speedy and efficient broadband rollout and care must be taken to avoid any distortion of competition.

Before imposing any requirements, Member States must assess if there is the need for public intervention to ensure an adequate broadband internet access service (IAS) in their territories. If a need is established, any requirements should be publicly funded. It should clearly be a 'last resort' instrument, and broadband funding (state aid) should be at the focus of state intervention (if necessary at all).

In the event public intervention is required in the form of a USO to ensure adequate broadband IAS, such services must remain to be defined in a technology-neutral way and delivered at fixed locations for residential consumers and limited to the primary residential premises.

In terms of affordability measures: these are not necessarily linked to the provision of the USO connection. One operator can provide the connection in the USO areas, for example, and another operator(s) can provide the service as part of an affordability measure not linked to the USO in any area to customers with special affordability needs.

While Article 84 stipulates that BEREC's report on best practices should be taken into account, member states should not go beyond what is prescribed by the Code. For some of the criteria subject of the consultation questions there seems to be little or no basis in the Code, such as average data speeds.

## Specific responses to the consultation questions

When rating below, we have used the following assessment as per the BEREC report:

- 1: Not relevant at all
- 2: Less important
- 3: Important
- 4: High importance
- 5: Indispensable.

Criterion	Rating	Rationale
Data rate used by 50%/80% of households with BB connection	50%: 1 80%: 5	Even though Article 84 provides for “the minimum bandwidth enjoyed by the majority of consumers within the territory of that Member State” to be taken into account, the risk of using this criterion is that it will create market distortions and/or significant implementation costs. An 80% threshold, therefore, is more appropriate to avoid such effects.
Expected availability without public intervention	3	It is important to take into account all current and future market-driven improvements before imposing USO obligations and whether the imposition of obligations is necessary with respect to the competitive evolution of the market absent intervention in term of services availability without USO. Likewise, improvements in availability on the basis of current and planned state aid measures are to be taken into account. The approach should be technologically neutral, i.e. not only take into consideration fixed BB.
Geographic survey	3	There should be a solid (data) basis for deciding on USO. Findings of the geographic survey will need to be reinforced by further analysis to make sure that absolutely all other means (technologies, rollout plans, planned state aid measures, etc.) are taken into account before imposing a USO.
Market distortion	5	The Code expressly requires market distortion to be taken into account. This is essential as a USO bears the risk of distortive effects (in particular to the benefit of incumbents).
Estimation of potential demand for a broadband USO	1	This requirement is not a relevant consideration when considering an obligation, which is intended to address a lack of availability (and/or affordability).

Comparison with other EU countries	2	Given that costs and social needs will vary hugely across Member States, comparison across Member States is not appropriate and this should be left to Member States to establish. Otherwise, it is necessary to take into account differences between Member States (e.g. in term of availability of substitute services, geographical differences, population distribution, market structure, etc.).
Benefits of public intervention and effects on competition	2	A USO is not a suitable instrument to address competition issues. The scope of any USO should be limited to what is necessary to ensure the availability of the defined services, avoiding the risk of creating market distortion caused by providing benefits which go beyond the aims of the USO obligation.
Timeframe to make available broadband under USO	3	In general, broadband rollout on the basis of a USO cannot be expected to take place faster than the one based on private investment or state aid measures. Therefore, the timeframe should be considered (and this consideration should regularly lead to the conclusion that other instruments are more suitable/efficient). Member States have to check whether the imposition of obligations is potentially only temporarily necessary with respect to the natural competitive evolution of the market and coverage
Social and economic disadvantages	4	EECC clearly states that member states shall define the adequate broadband IAS with a view to ensuring the bandwidth necessary for social and economic participation in society, including end-users with disabilities. As this is the essential underlying consideration of the EECC's provisions on USO (and for any speed obligation), there appears to be no room to apply it as a separate criterion because the purpose of the USO regime already is to avoid those disadvantages.
Estimation of the costs of intervention through USO versus other approaches	5	USO should always come in the most cost-efficient way, based on public funding. Where the market delivers speed that safeguard social inclusion, no intervention is justified (see arguments above). Where intervention is required the variety of measures should be assessed carefully estimating the associated costs.

**Consultation question 2: Are there any other relevant experiences and/or criteria (not mentioned in the report) which you consider useful to support Member States in defining the adequate broadband internet access service.**

Public funding	5	<p>In case of public funding, the data rate should be established according to the administration decision without distorting competition.</p> <p>Operators providing publicly funded Universal Services do not always receive compensation in reasonable timeframe, as delays can reach up to three years.</p> <p>This problem might be avoided by introducing a public tender mechanism.</p>
Premises type - only primary residential premises	5	<p>Limit the provision of USO to the primary residence only.</p>

**Question 3: 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>Annex V</p> <ol style="list-style-type: none"> <li>1) E-mail</li> <li>2) search engines enabling search and finding of all types of information</li> <li>3) basic training and education online tools</li> <li>4) online newspapers or news</li> <li>5) buying or ordering goods or services online</li> <li>6) job searching and job searching tools</li> <li>7) professional networking</li> <li>8) internet banking</li> <li>9) eGovernment service use</li> <li>10) social media and instant messaging</li> <li>11) calls and video calls (standard quality)</li> </ol>	<p>The list in Annex V should be strictly limited to the services needed for social and economic inclusion. In relation to social media, this requirement should be restricted to communication and should not extend to video usage.</p>
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**Consultation question 4 – Specific observations on the eligibility criteria and/or the quality of service and/or the affordability criteria that might support the definition of adequate broadband internet access service.**

- (i) **Eligibility and QoS criteria:** these must be reasonable, technology-neutral and proportionate and should be restricted to the primary residential premises.
- (ii) **Affordability measures:** these do not have to be linked to the provision of the USO connection.
- (iii) **A key criteria should be to avoid market distortion.** USO only becomes relevant where no broadband service (in a technology-neutral way) can be made available at a reasonable price.

## **Consultation question 5 – other comments**

### **Country specific answers**

#### **Spain:**

- Page 14 and 22. The USO designation period was extended for 3 years, until 31st December 2022, by Ministerial Order ECE/1280/2019 approved last 26<sup>th</sup> December. Telefónica was designated after an unsuccessful public tender.
- Page 20. Concerning eligibility, connection requests have to be considered as “reasonable” according to certain conditions (urban land or residential and primary building (REAL DECRETO 424/2005, art 29)
- Page 72. The last Resolution on cost distribution was issued in November 2019 for fiscal year 2016.