



Liberty Global response to BEREC's draft Report on Member States' best practices to support the defining of adequate broadband internet access service

Liberty Global welcomes the opportunity to provide input to BEREC's draft Report on Member States' best practices to support the defining of adequate broadband internet access service, required to be published under article 84 of the Electronics Communications Code (Code).¹

We support BEREC's commitment to engage with stakeholders on issues that are relevant to them. Liberty Global provided a position paper to BEREC regarding this topic in late September 2019 and we are awaiting an opportunity to discuss our position with BEREC.

General remarks

Liberty Global recognises the role of universal service obligations in supporting social inclusion and welcomes the increased focus on closing the gap between availability and take-up of broadband internet services. We consider that universal service obligations are an obsolete instrument for the objective of providing basic broadband services to remote and economically challenging areas. To the extent that there remain concerns about availability and quality, we consider that these are more adequately addressed through alternative regulatory measures. Universal service obligations should only be imposed as a tool of last resort.

Liberty Global also supports the Code's focus — under universal service obligations — on the capability of broadband services provided to deliver a basic list of online services. Whilst the Code notes that, when setting the definition, regard should be had to the minimum bandwidth enjoyed by the majority of consumers within the territory, we do not consider that this alone should be used to define minimum universal service speeds; nor should the minimum bandwidth be determined with future broadband speed goals in mind. We encourage Member States and BEREC to always keep in mind the overarching goals of the Code, and ultimate 'safety net' role of universal service obligations, when defining what constitutes an adequate broadband internet access service. Attempts by Member States to define universal service speeds as those available to the majority of consumers — without consideration of the wider market context and local conditions — bears a considerable risk that universal service obligations do not remain a safeguard provision. Moreover, the list should not be expanded to additional services that go beyond the purpose of ensuring an adequate level of social inclusion and participation by citizens in the digital economy and society in their territory, or seek to achieve Gigabit society goals. These are more appropriately achieved through promoting private investment in network infrastructure. To do otherwise would not only undermine the Code's objective of, and recently introduced measures to promote, investment in

¹ European Electronic Communications Code (EU) 2018/1972 (EECC).



high capacity networks, but it would also be counter to the principles of proportionality and appropriateness.

Now and in the future, consumers are able to obtain access to electronic communications services in the absence of universal service obligations through a range of technologies for personal and business communication. The Code recitals recognise this; noting that there should be no limitations on the technical means by which connection is provided. Accordingly, any definition should also be suitable for a mix of technologies — including fixed, mobile and satellite.

Process

In terms of process, BEREC's Work Programme 2020 foresees the final report being finalized in Q2, 2020. However, BEREC also notes in paragraph 58-59 of its draft Report that BEREC's work on net neutrality, quality of service and geographical surveys are relevant to the delivery of the report, and that there will be another iteration of the report to take into account these workstreams (though it does not state when). If possible, we would appreciate additional guidance on what is being proposed in terms of timing for finalizing this report and, if relevant, any future iterations.



Response to consultation questions

Question 1: The table below contains all the criteria that the different Member States with broadband universal service obligations 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.²

Under article 84 of the Code, Member States must ensure that all consumers in their territory have access at an affordable price, in light of specific national conditions, to an available adequate broadband internet access service. In our view, the consideration of whether a broadband internet access service is affordable, available and/or adequate are separate questions which need to be considered independently. In regards to the availability of broadband services, Liberty Global considers that *geographic surveys* under article 22 of the Code are of significant relevance.

Following a review of whether broadband services are (i) available and (ii) adequate — and in the event the answer to both questions is positive — the question then turns to whether they are affordable for consumers with a low income or special social needs. This does not have any relevance to whether a broadband access services is adequate for ensuring social and economic participation in society. Affordability is discussed further in response to Question 4 (iii) below.

If broadband services are not available or adequate, Member States must decide whether to impose appropriate universal service obligations under article 86 of the Code. In this regard, we consider that factors such as the *expected availability of broadband without public intervention*, the *benefits of public intervention and effects on competition* and the *estimation of the costs of intervention through USO versus other approaches* are instead relevant to the overall decision of whether to impose such obligations. These factors are necessary to consider when balancing the benefits of intervention against potential negative impacts. In fact, they are key factors in assessing whether intervention is necessary, appropriate and proportionate.

The above-stated process represents a key difference between the Code and the Universal Service Directive; in particular, the focus on affordability (rather than availability) of services. As part of this renewed focus, the Code envisages that it is possible to avoid digital exclusion without the designation of undertakings as universal service providers. In this context, whilst we consider it is useful for BEREC to provide guidance on best practice for Member States on how to apply such assessments, we consider it could be made clearer in the report that these criteria — on whether to impose universal service obligations — are separate considerations, and should follow the hierarchy of considerations outlined in the Code.

² Rating graduation: 1: Not relevant at all, 2: Less important, 3: Important, 4: High importance, 5: Indispensable



We also note that, despite being a key consideration for six out of the nine EU Member States with broadband USO requirements, BEREC has not included in its table ‘estimation of the cost of implementing a broadband USO’ as a relevant criterion.³ We have added it to the table below.

Evaluation criteria	Rating	Rational
<p>Where the data rate in question is used at national level by:</p> <ul style="list-style-type: none"> (i) at least 50% of all households; and (ii) at least 80% of all households with a broadband connection. 	5	<p>Relevant to adequacy of BIAS</p> <p>Liberty Global agrees that this is a relevant evaluation criterion when defining an adequate broadband internet access service. Article 84 of the Code states that the minimum data rate must be determined in light of national conditions and the minimum bandwidth ‘enjoyed by the majority of consumers within the territory of that Member State’. In this context, we also agree that the ‘enjoy’ equates with ‘use’, and that this requires the data rate to be used by at least 50% of all households within the territory.</p> <p>We also agree that — for the purposes of ensuring that the rates are representative of societal use of broadband connections — it is also relevant to consider the data rates used by at least 80% of all households with a broadband connection.</p> <p>We caution, however, against this criterion being used as the sole determinate when defining an adequate broadband internet access service. The Code is clearly not exhaustive in this regard; requiring Member States to consider national conditions and any other criteria identified by BEREC in its best practices report. Such an approach would be neither appropriate, nor proportionate.</p>
<p><i>{ADDED} Whether there is sufficient bandwidth to deliver access to and use of the services outlined in Annex V so as to ensure</i></p>	5	<p>Relevant to adequacy of BIAS</p> <p>Under article 84 of the Code, Member States are required to set the minimum bandwidth required by consumers in their territory to ensure social and</p>

³ We consider this a separate consideration to the comparison of the costs to other approaches.

<p><i>social and economic participation in society</i></p>		<p>economic participation in society. Recital 215 notes that this bandwidth should be sufficient to support access to, and use of, at least a minimum set of basic services that reflect the services used by the majority of end-users in that territory. This set of services is outlined in Annex V and required to be updated by the Commission as necessary.⁴</p> <p>In our view, ensuring the capability of broadband services to support the basic services outlined in Annex V will be sufficient to ensure an adequate level of social inclusion and participation by citizens in the digital economy and society in their territory. The list should not be expanded to additional services that go beyond this purpose, or seek to achieve Gigabit society goals. These are more appropriately achieved through promoting private investment in network infrastructure.</p>
<p>Comparison with other EU countries</p>	<p>2</p>	<p>Relevant to adequacy of BIAS</p> <p>With regard to the minimum bandwidth necessary to ensure social and economic participation in society, Annex V specifies a basic list of online services that is unlikely to differ between Member States. To the extent that Member States adhere to this list, we consider that comparisons with other EU countries has limited relevance. The bandwidth required to deliver access to and enable the use of such services will be the same.</p> <p>Moreover, the adequacy of broadband internet access services need to be considered in light of national conditions and based on the minimum bandwidth enjoyed by the majority of national consumers; amongst other factors that may be identified by BEREC in its final Report. Accordingly, we do not consider this to be a relevant criterion.</p>

⁴ EECC, recital 215 (i.e. Commission ‘to identify 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’).



Market distortion	5	<p>Relevant to adequacy of BIAS and decision to impose USO</p> <p>Liberty Global considers that this factor is highly relevant to defining an adequate broadband access service, and also in deciding whether to impose USO (for the latter, see <i>Benefits of public intervention and effects on competition</i>).</p> <p>As noted above, defining an artificially high ‘adequate’ broadband internet access service has the potential to distort the broadband market to the extent that it extends universal service obligations beyond what is required for a ‘tool of last resort’. One of the Code’s main objectives — and many of its recently introduced or amended measures — are aimed at promoting investment in high capacity networks. Imposition of universal service obligations is likely to undermine such objectives, by reducing incentives for private investment and competition within the market.</p>
Geographic survey	1	<p>Relevant to availability of BIAS</p> <p>Liberty Global sees little relevance of geographic surveys in defining the adequacy of a broadband internet access service. Rather, as noted above, this will be relevant to the availability (on a location basis) of broadband internet access services.</p> <p>Geographic surveys will only collect information on the theoretical capabilities of networks and not actual usage information. Given that many consumers do not make use of their current maximum speeds, this would artificially lead to a higher minimum bandwidth than is required to ensure social and economic participation in society. As noted above, attempts by Member States to define minimum universal service speeds as those theoretically available to the majority of consumers bears a considerable risk that universal service obligations do not remain a safeguard provision.</p>

<p>Social and economic disadvantages incurred by those without access to a broadband connection, including disabled end-users</p>	<p>1</p>	<p>Relevant to decision to impose USO</p> <p>This criterion is highly relevant when a Member State is deciding — under article 86 of the Code — whether to impose universal service obligations, and when undertaking the necessary balancing between the likely positive and negative effects of intervention (see <i>Estimation of the cost of implementing a broadband USO</i>).</p>
<p>{AMENDED} Expected availability of <i>adequate</i> broadband without public intervention</p>	<p>1</p>	<p>Relevant to decision to impose USO</p> <p>We consider this criterion should specify that it relates to the availability of ‘adequate’ broadband, to preserve the safety-net nature of the provisions.</p> <p>As noted above, we consider this consideration — whether, in the absence of intervention, adequate broadband would become available — is relevant to whether to impose universal service obligations on particular providers under article 86 of the Code. We do not consider it to be a relevant consideration to the adequacy of a broadband internet access service. However, it is an important consideration when assessing whether intervention is necessary — or whether the market and private investment will itself deliver the intended objectives (and with less risk of market distortion).</p> <p>It should also be noted that there is a relationship between the minimum bandwidth and the likely need for public intervention. Any universal service obligation that seeks to achieve Gigabit society goals is likely to lead to market distortion and reduce incentives to invest—thereby creating a circular need to intervene.</p>
<p><i>Estimation of the cost of implementing a broadband USO</i></p>	<p>3</p>	<p>Relevant to decision to impose USO (but dependent on definition of adequate broadband services)</p> <p>We believe this is a highly relevant decision to the imposition of universal service obligations and that this decision will require a balancing of the benefits of</p>

		<p>intervention against potential negative impacts. If the costs of implementation are very high, then this will need to be weighed against the social and economic disadvantages likely to be incurred by those without access to a broadband connection. As part of this balancing act, Member States will need to consider the cost of imposing universal service obligations as compared to alternative measures, such as State aid (see <i>Benefits of public intervention and effects on competition</i>).</p> <p>Importantly however, whether the costs of implementation are high will also partly be determined by how Member States define an adequate broadband service. If bandwidths are limited to that required to deliver the basic services under Annex V, then the costs of a universal service obligation are likely to be much less than if a Member State imposes a high bandwidth with the aim of achieving Gigabit society objectives.</p>
<p>Estimation of the potential demand for a broadband USO</p>	<p>1</p>	<p>Relevant to decision to impose USO</p> <p>Liberty Global sees little relevance of potential demand for a broadband USO with regards to defining an adequate broadband internet access service. As noted above, we believe this is a relevant decision to the imposition of universal service obligations and that this decision will require a balancing of the benefits of intervention against potential negative impacts; and that intervention is necessary and proportionate. In the event that there is little or no demand for a broadband USO, Member States should always err on the side of self-restraint to avoid – as much as possible – market distortion.</p>
<p>Estimation of the costs of intervention through USO versus other approaches</p>	<p>1</p>	<p>Relevant to decision to impose USO</p> <p>Liberty Global considers this criterion, to the extent that it is a comparison between different regulatory options, is relevant for the decision to impose universal service obligations, and not in defining an adequate broadband</p>



		<p>service. In this regard, we note that in accordance with better regulation principles that any regulatory intervention should be necessary, appropriate and proportionate. A key part of this assessment to consider whether more effective and/or less costly measures are available. Funding of the USO is discussed further below in response to Question 5.</p>
Benefits of public intervention and effects on competition	1	<p>Relevant to decision to impose USO</p> <p>The Code has introduced a range of measures aimed at encouraging investment in and deployment of electronic communications networks, particularly very high capacity networks. Liberty Global is determined to invest in networks and the capex to turnover ratio we are putting forward keeps the competitive pressure high towards incumbent and service competitors. We consider that the market will provide for the vast majority of Member States’ coverage needs, through privately financed deployment of both fixed and mobile networks.</p> <p>Regulators and governments should therefore continue to promote private investment through a mix of technologies (not only fixed), and only thereafter consider public funding to those remote and economically challenging areas where it is proven beyond any doubt that there is no prospect of commercial deployment. For this State Aid is a more targeted and calibrated instrument than universal service obligations. It is vital, however, that any use of State aid is targeted and contained to the specific area in question. Subsidising network infrastructure in areas that may be commercially viable is the quickest route to distortion of markets and the undermining of investment incentives.</p>
Timeframe to make available broadband under USO	1	<p>Relevant to decision to impose USO</p> <p>We consider this criterion is relevant to the decision to impose universal service obligations. In the event that</p>

	<p>significant investments are required to be made, and that it will take a long time to deliver, it may be prudent to consider alternative technical or regulatory options; particularly if it is likely that a separate private investment in the relevant area will occur before the service can be delivered via the designated USO provider.</p> <p>This criterion is also relevant to the mix of technologies included as part of the universal service obligation. Ensuring a mix of technologies (including satellite and mobile) will ensure the flexibility needed for operators to provide consumers with access to adequate broadband access services.</p>
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Question 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.

See above.

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.

As the minimum bandwidth needed to access and use the basic services listed in Annex V will not vary materially between Member States, the determination of the bandwidth necessary for supporting this minimum set of services should be undertaken in a coordinated/harmonised manner across the EU. In this regard, consultation of a broad spectrum of industry stakeholders, including the European Standards Development Organizations, is key. As technological developments in network design — as well as in product and service developments — move at a high pace, it is critical to ensure that those involved at setting that pace (including operators) are involved in the determination of these bandwidth requirements. For this, we would encourage BEREC to organise a separate consultation or working group for all relevant parties, to ensure it is an open and transparent process.



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

(i) Eligibility

We agree that there should be eligibility criteria for those wishing to make use of universal service obligations. In particular, we consider that universal service obligations should only apply to primary residences to ensure that the obligation is only used as a safeguard. In our view, if the individual already has access at their primary residence to adequate broadband services, it would be unnecessary (for the goal of avoiding digital exclusion) and disproportionate to impose costly universal service obligations. Additionally, we consider that there should be caps on the cost of providing universal service obligations and that there should be an assessment of whether adequate broadband is expected to become available to the relevant individual/area in the near future.

We do not consider that pricing should be considered an eligibility criteria for seeking access to broadband services under any universal service obligations imposed under article 86 of the Code. As discussed above, the new Code provisions envisage that where adequate broadband access services are available, there may be no need to impose universal service obligations and that affordability concerns as regard to low income or special social need consumers can be addressed through ensuring support for such consumers or requiring providers to offer such consumers different tariff options or packages than those available under normal commercial conditions. We have addressed the question of affordability in response to Question 4(iii) below.

(ii) Quality of service

Any quality of service obligations should respect the principle of technological neutrality. Also, such quality of service obligations shall not exceed the quality of service that operators apply to their basic service.

(iii) Affordability

Under article 85 of the Code, adequate broadband access services are considered to be unaffordable when consumers with a low income or special social needs (e.g. elderly, disabled) are prevented from accessing them. In this regard, we consider that the Code requires Member States to ensure that there is support for consumers that may have reduced ability to pay market rates for broadband services.

We urge BEREC and national policy-makers to ensure access to electronic communications through direct financial support for low-income or special social needs consumers, rather than imposing



obligations on service providers to offer services on conditions that do not represent normal commercial conditions. Such demand-side measures could include direct subsidies for costs of the service, as well as installation costs and/or in-premise equipment. Similarly, we do not support the imposition of a price threshold which would apply to all consumers — and amount to quasi-retail price regulation — for the affordability of broadband access services.

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

Funding

Liberty Global considers that the least distortive model of universal service financing is through public funding and/or government subsidies. In particular, the situation should be avoided whereby a universal service beneficiary is reliant upon contributions from other market players to finance basic network coverage, as otherwise the universal service results in distortion of competition. If it is deemed necessary and proportionate that universal service be part-financed by service providers, it is essential that this should include all providers of online content, applications and services — in addition to providers of electronic communications services — in order to ensure a level playing field. A cap on the cost of providing universal service obligations would assist with ensuring that costs are kept within reasonable limits, and do not place undue burden on industry.

Designation

Liberty Global supports an open process, such as through tenders or expressions of interest, for designating USO providers.



About Liberty Global

Liberty Global is one of the world's leading converged video, broadband and communications companies, with operations in six European countries under the consumer brands Virgin Media, Telenet and UPC. We invest in the infrastructure and digital platforms that empower our customers to make the most of the digital revolution.

Our substantial scale and commitment to innovation enable us to develop market-leading products delivered through next generation networks that connect 11 million customers subscribing to 25 million TV, broadband internet and telephony services. We also serve 6 million mobile subscribers and offer WiFi service through millions of access points across our footprint.

In addition, Liberty Global owns 50% of VodafoneZiggo, a joint venture in the Netherlands with 4 million customers subscribing to 10 million fixed-line and 5 million mobile services, as well as significant investments in ITV, All3Media, ITI Neovision, LionsGate, the Formula E racing series and several regional sports networks.