



GSMA-ETNO response to draft BEREC Report on Member States' best practices on defining adequate broadband internet access service

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The GSMA and ETNO associations, which represent the interests of telecoms operators, welcome the opportunity to comment on BEREC's draft "Report on Member States' best practices on defining adequate broadband internet access service". As established in the EECC, Member States will refer to this report when defining the adequate broadband internet access service (see EECC Art. 84 (2)).

In this document, we set out our views on the draft report. In addition to our targeted responses to the five questions posed in this consultation, we would like to share our general remarks.

General Remarks on the scope of BEREC's Draft Report

The purpose of broadband IAS for USO service obligations is to ensure social and economic participation in society and **whatever the case it should not be considered as a tool to accelerate broadband deployment** or used in ways that **cause market distortion**.

As a primary step, Member States shall **assess if there is the need for public intervention** to ensure an adequate broadband IAS for USO in their territories, establishing if the market is not able to serve the needs of consumers' full social and economic participation in society.

In case public intervention is required to ensure adequate broadband IAS for USO, 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.

The main objective of **participation in society needs to be the strict basis for defining further criteria such as speed enjoyed by the majority and the list of indispensable services**. The role of Annex V is key to avoid an inflationary rush to higher minimum bandwidth that go beyond safeguards and that would create disproportionate costs and competition distortion in the markets.

The GSMA and ETNO response to BEREC’s questions on its Draft Report

Consultation Question 1

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:

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

Evaluation criteria	Rating 1. Not relevant at all 2. Less important 3. Important 4. High importance 5. Indispensable	Rationale
<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 households; and ii) At least 80% of all households with a broadband connection. 	2	<p>It should be clarified that when assessing a sample of households to underpin USO proposal, that only primary residences should be included.</p> <p>The term “used data rate” in the present question correctly specifies the term “enjoyed” in the EECC , which neither refers to the available bandwidth (which consumes may not actually subscribe to), nor the subscribed bandwidth (that is usually bandwidth range). BEREC should not mix up the various speed categories. For the present evaluation criteria, BEREC should elaborate on how to best evaluate or assess the actually “used” bandwidth.</p> <p>The bandwidth enjoyed by the majority of consumes is just one of the criteria to be “taken into account”. EECC prescribes to balance several criteria that all contribute to achieve the objective of social inclusion.</p> <p>BEREC’s reference to the COCOM Working Document 10-31 that only refers to the previous legislation on the Universal Service Directive cannot be easily considered when defining the adequate broadband IAS:</p> <p>(1) It was drafted in the context of a different legal situation: Art. 4 USD required member states to take into account “prevailing technologies used by the majority of subscribers”. In contrary to this, the EECC</p>

		<p>requires member states to define the adequate broadband internet access service also “in light of ... the minimum bandwidth enjoyed by the majority of consumers”. The majority use of technology plays no role in the EECC text.</p> <p>(2) The Universal Services Directive obliges member states to “take into account” this criteria, while the EECC only obliges to define “in the light of” this criteria. Thus, the EECC has downgraded the relevance of this criteria.</p> <p>(3) These criteria (i and ii) were provided in the COCOM 10-31 Working document for assessing the need of introducing in the universal service scope an availability obligation for the broadband access. The first criteria (at least 50% HH) aimed specifically at preventing “<i>a situation where broadband connections are included in universal service in Member States where broadband is only used by a low percentage of households</i>”. It was also stated that this criterion must not create undue market distortions. Accordingly, this criteria was not meant to be used for defining the quality as such, as foreseen in the EECC.</p> <p>Today the application of such criteria is likely to create a market distortion since it would create an overlap with the policy aimed at promoting the development of fast and ultrafast connectivity, which are expected to be the ones used by the majority of customers.</p> <p>The application of these criteria is likely to lead to the definition of a too high minimum data rate with the risk of being accompanied by a coverage obligation with consequent significant costs to be borne by market players. A high bandwidth is not needed to prevent social exclusion.</p> <p>Applying only the bandwidth “enjoyed” by the majority to define adequate broadband internet access is not reasonable since also the overall objective of universal service needs to be taken into account, that it is providing a safeguard for ensuring consumers’ inclusion. E.g. when in the future 80% of users have access to gigabit internet services, it would be disproportionate to automatically raise the universal service to this level that is far beyond a safeguard.</p>
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Expected availability of broadband without public intervention	1	<p>This criterion is difficult to assess since the availability of broadband without public intervention strongly depends on the prescribed speed to be delivered. Public intervention is less relevant where USO is defined as safeguard provisions, with reasonable speed obligations. Contrary to this, an obligation to deliver a speed beyond market's demand will more likely require public intervention and funding of operators.</p> <p>It is also important to take account all (future) market-driven improvements before imposing USO obligations. Likewise, improvements in availability on the basis of planned state aid measures are to be taken into account.</p>
Geographic survey	2	<p>While it is certainly important to monitor whether obligations are fulfilled, the added value through geographic surveys for the definition of the minimum bandwidth is not apparent. Geographic survey is useful to assess whether the minimum speed defined according to the other criteria is already available to 100% of households across the national territory.</p> <p>Where there is not a 100% availability, and the affordability obligation needs to be accompanied by a coverage obligation, the costs of implementing the new BB obligation should be assessed.</p> <p>Findings of the geographic survey will also need to be complemented 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.</p>
Market distortion	5	<p>This is very relevant as an inadequately high bandwidth will lead to major market distortion, which should be avoided according to the Code.</p> <p>Misusing USO to enforce high-speed internet coverage everywhere would significantly undermine those EECC's mechanisms that are supposed to provide incentives for deployment of high-speed internet.</p>
Estimation of the potential demand for broadband USO	1	<p>Rather irrelevant since the assessment of the "actually used broadband" more accurately provides information on the societal role of broadband. Indeed, there is no considerable unmet demand.</p>
Comparison with other EU countries	2	<p>The EECC foresees an assessment based on several complimentary criteria to define an</p>

		<p>adequate safeguard for national markets (indispensable service, ensuring social participation, speed enjoyed by the majority). Based on these criteria, the safeguard speed that has to be provided will differ between markets. Thus, any comparison that effectively would be a kind of benchmarking would be misleading. Having said that, essential services indispensable for inclusion are unlikely to greatly vary between member states.</p> <p>Therefore, harmonizing the list of indispensable services could be considered. When defining these services, the focus should remain on the definition of the minimum set of services that allow social inclusion.</p>
Benefits of public intervention and effects on competition	3	Carefully assessing whether competition alone leads to sufficient safeguards for all should be the precondition for justifying a public intervention. As such, the USO, which serves as a safety net so that nobody is left behind and to ensure equal opportunities, should be used as a last resort.
Timeframe to make available broadband under USO	3	<p>The timeframe should be considered and defined in a balanced way. An obligation to overly quickly provide specific speeds will inevitably result in higher costs.</p> <p>Providing an adequate timeframe will allow to properly assess, plan and execute deployment processes possibly resulting from USO.</p> <p>In any case, USO must not be misused to trying to speed up the provision of high-speed broadband (see response above). High-speed broadband roll-out can be more effectively accelerated via funding or reducing regulatory burdens.</p>
Social and economic disadvantages incurred by those without access to a broadband connection, including disabled end-use	4	<p>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.</p> <p>This is the most relevant criterion and basis for any speed obligation.</p>
Estimation of the costs of intervention through USO versus other approaches	5	<p>USO should always come in the most cost-efficient way, based on public funding.</p> <p>Where the market delivers services that safeguard social inclusion, no intervention is justified (see arguments above). Where intervention is required the variety of</p>

		measures should be assessed carefully estimating the associated costs.
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Consultation 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 adequate broadband internet action service? If yes, please describe and rate (1-5) them individually in the same manner described in Question 1.

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
Ensuring social and economic inclusion	4	For MS defining USO quality, the primary reference is the EECC, which aims at ensuring the bandwidth necessary for social and economic participation in society. The EECC obliges to specify on how to achieve this target through 2 criteria: (1) speed enjoyed by a majority and (2) the list of indispensable services.
Enable services listed in Annex V	5	MS should enable the usability of the services listed in Annex V. This is the primary criterion to be applied by Member states. This list of services appears as better instrument to truly identify the quality indispensable for participation in society compared to assessing speed enjoyed by a majority (further comments see response to Q3). The Code does not prescribe certain bandwidths and national legislation should also not prescribe bandwidths which are not future proof. The appropriate data rate can then be set by the provider of USO.
Avoid long periods in order to get back compensation for the provision of Universal Services.	4	Operators providing Universal Services do not always receive compensation in reasonable timeframe, as delays can reach up to several years. The definition of too high minimum bandwidth could to an increase in USO cost and of the compensation period, which instead should be minimized. In any case, a public funding mechanism would better ensure a

		proper compensation while avoiding undue delays.
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Consultation Question 3

	Rationale
<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) 	<ul style="list-style-type: none"> • The minimum bandwidth should be strictly limited to the services list in Annex V needed for social and economic inclusion. • The adequate broadband IAS should enable usage of the mentioned services most of the time, based on the performance criteria as prescribed for IAS in the TSM Art. 4. • Since indispensable services are unlikely to vary greatly across Member States, defining these services could be done in a centralized way at EU level based on objective considerations. • There is no need to define respective speeds related to each service as they are subject to change over time.

Consultation Question 4

<p>Do you have any specific observations on;</p> <ol style="list-style-type: none"> (i) eligibility criteria; and/or (ii) quality of service (QoS); and/or (iii) affordability measures <p>that might support the definition of the adequate broadband internet action service in your MS?</p>
<p>Eligibility: should be limited to primary residences, not secondary residences. In addition, provision costs should not exceed a certain threshold.</p> <p>Quality of service: should be designed technologically neutral to enable usage of mobile and satellite technology. These mentioned technologies technical differ from fixed line technology since they are a shared medium and have a stronger fluctuation. Consequently, no minimum quality can be ensured all the time. If universal services at a fixed location is based on these technologies, it would not be reasonably possible to apply all the contractual information requirements of Art. 4 TSM defined for fixed line IAS. Particularly the indication of minim speed would be highly problematic.</p> <p>Affordability: BEREC should adhere to its mandate, which does not cover the specification of what is “affordable” but is limited to the definition of the quality of universal service. In line with the availability of universal service, also affordability needs to be limited to the primary residences of consumers. Besides this, affordability should not necessarily entail a reduced price lower than what is commercially offered. The EECC clearly says that Member States are not supposed to interfere in the market as long as market prices are affordable (Rec. 219). If markets do not ensure affordability, the EECC simply required MS to ensure that low-income people and people with special needs can afford universal broadband access, leaving considerable flexibility to Member States on how to define best solutions (compare Rec. 219). Possible measures include e.g. subsidies to respective consumers or support</p>

through social welfare. In addition, these do not have to be linked to the provision of the USO connection. One operator can provide the connection in the USO areas, and other operator can provide the service in any area to customers with special needs.

Consultation Question 5

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

The report contains no details on how the fulfillment of the USO is monitored in detail and what consequences a lower performance has. BEREC should clarify that NRAs have a strong competency to enforce the provisioning of USO, including adequate quality parameters. Further burdens for operators that provide this safeguard for consumers – which does not happen under normal commercial conditions – can and should be avoided. It would be inappropriate to impose additional consumer rights for universal service broadband such as on redress. Besides this, Member States should not go beyond consumer protection requirements set out in the Communications Code but instead strive for a high degree of maximum harmonization.

The definition of speed as universal service obligation must not be confused with the quality parameter to be provided in the contract according to Art. 4 TSM Regulation such as the “minimum speed”. The USO speed is better reflected in the actual used speed, while the minimum speed may be lower.

It is of the utmost importance that proportionality is kept through the analysis process, avoiding additional burdens for operators and taking into account national circumstances.