

BEREC Summary 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



7 March, 2024

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Executive Summary

The Board of Regulators adopted the [draft BEREC Report on Member States' best practices to support the defining of adequate broadband internet access service](#) (the "draft Report") for public consultation at the 56th BEREC Plenary meeting (5 October 2023).

Article 84 (3) of the EECC sets out that "*BEREC shall, in order to contribute towards a consistent application of this Article, after consulting stakeholders and in close cooperation with the Commission, taking into account available Commission (Eurostat) data, draw up a report on Member States' best practices to support the defining of adequate broadband internet access service [...].*"

In 2020, BEREC published the first report on Member States' best practices to support the defining of adequate broadband internet access service (document reference [BoR \(20\) 99](#)). Article 84(3) of the EECC states that the report shall be updated regularly to reflect technological advances and changes in consumer usage patterns.

The report is a best practices report, and it does not aim to provide formal universal service implementation guidance in respect of the EECC. According to Article 84 of the EECC, it is for the MS, taking into account the BEREC report on best practices, to define adequate broadband internet access in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within a MS territory to ensure an adequate level of social inclusion and participation in the digital economy and society in the MS territory. 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 of the EECC.

From 9 October until 10 November 2023, stakeholders were invited to comment on any of the material presented in the draft report, and to provide feedback on the following consultation questions:

1. Could you please comment on relevant experiences or criteria considered valuable to support Member States in defining the adequate broadband internet access service?
2. Could you please comment on Minimum requirements for defining the adequate broadband internet access service within the framework of the universal service provision (e.g. upload and download speed, data volume, etc.)?
3. Which end users should benefit from the universal service provision and what constitutes a reasonable request (criteria)?
4. Could you please comment on the issue of Affordability (e.g. maximum retail price, special retail prices for special user groups, etc.) and/or availability measures (e.g.



geographical criteria, distance from the existing network, connection cost, etc.) necessary to ensure access to adequate broadband internet access service?

5. Do you have any other relevant comments?

BEREC received 6 contributions (including two confidential contribution) from the following stakeholders (listed in the order in which they were received)¹:

1. Confidential contribution [Stakeholder 1]
2. Confidential contribution [Stakeholder 2]
3. Deutsche Glasfaser – telecommunication company
4. GSMA - mobile network operators association
5. EWE TEL - network operator
6. VATM – association of telecommunications and multimedia companies

This report assesses and summarises these stakeholder contributions.

Structure of this report

The following sections set out some of the high-level comments, observations and recommendations received during the public consultation:

- **Chapter 1** sets out an overview of stakeholders' comments & observations; general observations and responses to question 5 are set out in chapter 1;
- **Chapter 2** sets out stakeholders' feedback on the BEREC public consultation questions (1-4).

BEREC assessment and response is set out in each chapter accordingly.

BEREC assessment – general remarks

The purpose of public consultations is to allow BEREC to consider the views of interested parties in the context of fact finding in respect of the Report. All views were considered, and account taken of the merits of views expressed. It should, however, be noted that the process

¹ Two of the six were marked “confidential”. BEREC has requested non-confidential versions of these submissions. Two respondents declined to be named, however, they did agree that the details of their submissions could be referenced, where unattributed.



is not equivalent to a voting exercise on proposals and BEREC will exercise its judgement having considered the merits of the views expressed.

BEREC notes that this report sets out the Universal Service provisions in Member States and does not provide guidance or any analysis of the policies adopted. Each adopted policy has been analyzed in each relevant Member State according to the specific needs of the country and the relevant provisions were the subject of a public consultation prior to implementation. As outlined in the Report, different practices are followed by Member States, while some countries have decided that there is no need to implement universal service at all. The differences in practices are due to the wide range, amongst other things, of social, geographical, and economic conditions that are identified per Member State, so it would not be possible for BEREC to evaluate and to indicate, which ones would be mostly appropriate.

Furthermore, the majority of the stakeholders' comments relate to the provision of the universal service set out in the EECC, which is outside the scope of this BEREC report.



1. Overview of stakeholders comments & observations

This chapter provides a list of selected general comments and stakeholders observations.

BEREC is of the view that it is necessary to carefully distinguish the outcomes of the Report with the provisions established in the EECC and comments related to them. Accordingly, BEREC does not intend to comment on stakeholders' proposals related to provisions established in the EECC or policy developments on the issue.

BEREC thanks stakeholders for their contributions and welcomes their overall views that the draft report in the main is thorough and accurately captures the different aspects of the adequate broadband internet access service and universal service. In general, stakeholders recognize BEREC's analysis is a comprehensive view on the Member States' definitions of adequate broadband Internet access service.

Stakeholders' contributions are grouped by topics based on the relevant subject matter. BEREC has considered stakeholders' views on the impacts identified at the public consultation after each subtopic.

1.1. High divergence and low effectiveness

GSMA and **VATM** consider that the overall picture in the report illustrates the divergences in the Member States when it comes to the implementation of Universal Service in terms of the definition of adequate broadband and the type of funding of Universal Service (public vs industry-based solutions). Examples include the broadband speed required ranging from 4 Mbps downstream (Italy, ongoing consultation) and 1 Mbps upstream (Croatia) to 30 Mbps downstream and 1.5 Mbps upstream (Malta). Both stakeholders noted that there is significant divergence in the interpretation and litigation of the USO by European and national courts, which deepens the controversies of the implementation approaches across the Member States. **GSMA** and **VATM** further note that Universal Service is not an effective tool to reach its declared objective of protecting consumers with low-income and special social needs. In fact, in 2020, nearly 20 years after the concept of the Universal Service was introduced, only nine Member States started USO initiatives.

In respect of the role of the current universal service regime and its future evolution, **Stakeholder_1** is of the view that there is no need to keep the current regime in place.

BEREC response

BEREC welcomes the feedback provided by stakeholders and has carefully considered the respondent's views related to diverging approaches regarding the universal service among



the Member States. BEREC notes, that Member States define adequate broadband internet access service (at a quality specified in their territories) with a view to ensuring the bandwidth necessary for social and economic participation. Member States are also required to take into account also national conditions, the minimum bandwidth enjoyed by the majority of consumers within that Member State and the BEREC best practice report. This means, that the various aspects are taken into consideration when assessing the universal service in each country. Hence, any divergence of the approach to universal service provisions and their implementation is completely understandable.

1.2. Universal Services Obligation as “the provider of last resort”

Due to the different stages of broadband deployments, **Deutsche Glasfaser** and **VATM** consider that a one-size-fits-all approach does not work for universal service. Due to differing deployment costs, especially in rural areas, and the different social and economic conditions in individual countries, it is possible that measures appropriate for one country may not be applicable or appropriate to another country. A multi-phase analysis by the NRA is required. It should be noted if one operator wants to deploy broadband on its own (private investment). Where every network operator declines to make a broadband provision, public funding should be used. In regions, where economically efficient deployment is not possible, public funds could complement the private investments. **Deutsche Glasfaser** and **VATM** advocate treating the universal service obligation as introduced in the EECC, as the last resort i.e. only applicable where all other approaches are not able to serve a sufficient broadband connection speed.

GSMA and **VATM** listed examples in three countries (the Netherlands, Italy, and the Czech Republic) where universal service is regarded as a last resort and only after less disruptive measures, such as state aid on the supply side or vouchers on the demand side, failed to secure available and affordable broadband for everyone.

EWE TEL considers that the introductory section of the draft report correctly emphasises that universal service represents a safety net for digital inclusion (page 4). Accordingly, the goals of the gigabit society should primarily be achieved by commercially funded network roll-out and secondly, by publicly funded network rollout in accordance with the EU Broadband Guidelines. Only where households cannot be served in either of these two ways, universal service is needed to secure adequate digital participation. The subsidiarity of universal service must always be kept in mind when interpreting and applying rules pertaining to universal service. Against this background, **EWE TEL** thinks it is misguided to draw on universal service



to connect new development areas and that it is not correct, to use universal service to finance residents' connections in new development areas.

BEREC response

BEREC appreciates stakeholders comments regarding the universal service as the ultimate provider of last resort.

BEREC agrees with the stakeholders' opinion that no 'one-size-fits-all' approach can be identified from the fact-finding in the Report.

BEREC notes that these comments are general observations related to regulation of universal service in the EECC and not directly related to the Report content. BEREC notes that where Member States have defined adequate broadband the relevant NRA or competent authority has engaged in the relevant consultation and decision-making processes set out within each Member State. Accordingly, BEREC has now added an appendix to the final report setting out links to the relevant non-confidential documents related, which were provided by the relevant Member States. These documents set out in detail the rationale for the relevant Members States' decisions. Accordingly, BEREC refers readers to these documents.

BEREC acknowledges that EECC legislation of universal service requires Member States to designate undertakings at the time of imposing the obligation and it cannot be (i) *ex lege* and (ii) the default obligation forever, but may apply as long as those conditions remain valid. Member States are required to ensure availability and affordability of universal service and in this context to decide whether designating one or more universal service providers is necessary in order to ensure the abovementioned obligations.

1.3. Universal service to be financed solely from public funds and to be available to users with particular social needs, with low incomes and with disabilities

Under the current market conditions, **Stakeholder_1** considers that the universal service regime should be limited to finance the access for users with particular social needs, with low incomes and with disabilities. Furthermore, the funding should come solely from public funds instead of the industry contribution mechanism chosen so far by several Member States.

Stakeholder_1 highlights that there should be targets that have a greater scope than that of social inclusion with respect to closing the digital divide, their financing should be addressed on the basis of the State Aid measures that have proven their validity and effectiveness in time.



GSMA is of the view that, in cases where intervention is still required, it should be provided from public funds and designed as demand-side subsidies or social tariffs.

BEREC response

In accordance with the financing of universal service obligations set out in Article 90(1) of the EECC where the NRA find that a provider is subject to an unfair burden, Member States shall decide to do one or both of the following: (i) “share the determined net cost of universal service obligations between providers of electronic communications networks and services” and/or (ii) compensate that provider from public funds in either case the principle of transparency applies. The Report provides information on Member States and the relevant approaches adopted in line with the EECC.

Accordingly, BEREC does not offer an opinion in respect of the financing of universal service obligation options funding established in the EECC.

1.4. Draft report – General comments and suggestions for improvements of the report

GSMA is of the view that the report provides a quite comprehensive view on the status of USO implementations in the individual countries. However, **GSMA** also finds that the report has some gaps in adequately representing the markets. Firstly, **GSMA** notices the use of vouchers has not been addressed in the BEREC report, even though the implementation of vouchers can be an effective tool to address the inclusion of low-income households and those households that do not have access to adequate broadband. Second, **GSMA** considers that the draft report does not touch upon the criteria that the USO implementation should ensure sufficient transparency for the market players regarding all aspects of the process and especially during the calculation of the costs of the universal service obligations.

Stakeholder_1 considers that the Draft Report does not provide recommendations or policy proposals regarding the described practices by NRAs and other competent authorities. This stakeholder believes that tangible guidance from BEREC, if provided in the final version, would constitute a crucial added value for stakeholders, operators and other competent authorities.

Stakeholder_2 believes it is essential that the contributions provided by operators in response to the May 2023 Call for inputs on “BEREC Report on Member States' best practices to support the definition of adequate broadband internet access service (IAS) within the framework of the universal service” to be kept in the maximum account.



VATM considers that the report provides a comprehensive view on the state of USO implementation in the individual countries based on the provisions set by Art. 84 and Annex V of the European Electronic Communications Code (EECC). However, the report has some gaps in adequately representing the markets as it compiles a set of observations without analyzing them. In addition, the report does not provide guidance or recommendations for the way forward.

VATM calls out on BEREC for leaving the different voucher schemes aside implying that they are not part of USO. This is remarkable since the BEREC explicitly acknowledged the usage of social vouchers before (BEREC response to the public consultation on the draft revised European Commission Guidelines on State aid for broadband networks, 10.02.2022, p. 5). **VATM** is of the view that the implementation of vouchers can be an effective tool to address the inclusion of low-income households that are not equipped with sufficient connectivity. Member States would therefore benefit from insight into the implementation of vouchers.

VATM requests BEREC to:

- issue guidance for the NRAs to consider all kinds of technologies for providing the minimal determined bandwidth for universal service. Satellite-based internet, which would be a feasible solution in many cases, currently seems not to be taken into consideration [at least in Germany] because of high monthly fees. Here, state-funded vouchers for the respective households could be a pragmatic solution;
- analyse and prepare a set of criteria for defining the relevant measures that set the direction and relate to choosing a certain policy (see VATM's comments about the multi-phase analyses in the "US obligation as ultimate means" part of this report). In **VATM's** view, implementing USO is directly related to determining whether there is a market failure in a certain area or not.

Stakeholder_1 notes that the draft BEREC Report, in Section 4.3 regarding obligations, states: "According to the NRAs responses, only 9 countries (Croatia, Cyprus, Greece, Finland, Hungary, Iceland, Lithuania, Slovenia, and Spain) have placed obligations on service providers to ensure universal service, including adequate broadband IAS, at a local or national level. The majority of the countries have not imposed obligations or do not intend to consider imposing obligations". The specific explanation is provided for Malta, Portugal and Sweden. This stakeholder, therefore, kindly requests that the final text of the BEREC Report specifies the Member States that have not defined such obligations yet and the Member States that deliberately decided to not place obligations by specifying the motivations.

Stakeholder_1 suggests that the final text of the BEREC Report:



- Explains the motivation underlying the Member States' decision and provides the detail referring to the specific national conditions that brought the authorities to reach a decision in that specific case.
- Identifies the best practices among those described for the Member States and provides policy recommendations by taking into account, inter alia, the core principles of the EECC which require that the measures undertaken should be reasonable, effectively needed and proportioned to the nature of the identified problem.
- for each Member State's decision, details of the underlying cost-benefit analysis performed by the Member State in order to shed light to the mechanism that induced the competent authorities to take that specific decision and to show the details of such analysis for the specific conditions of the Member State.
- for each Member State's decision described, an analysis of whether the following criteria have been used or not: i) whether the NRA or competent authority has estimated or not the cost of implementing a broadband USO which consists in ensuring a BB internet access service that should meet certain characteristics, ii) whether the NRA or competent authority has estimated or not the potential demand for a broadband USO, iii) the time period needed to make available a BB internet access service that should meet certain characteristics under universal service obligation and iv) whether the NRA or competent authority has estimated or not the cost of intervention via universal service obligation versus other approaches (e.g., voucher schemes, State Aid).

Stakeholder_1 underlines that for future revisions of the Report, and in general for all reviews of BEREC documents, it would be worthwhile for BEREC to provide a draft with indication in mark-up of the proposed modifications.

EWE TEL is of the view that in future reports, BEREC should include an overview of which criteria Member States use to define affordability, which would be helpful to gain an insight into potentially diverging approaches between Member States.

BEREC response

BEREC appreciates the support of its outcomes provided in the Report.

As regards the comments on different practices related to affordability measures among countries, BEREC notes that in Article 85(2), the EECC sets out that Member States may ensure that support is provided to consumers with a low income or special social needs for communication purposes or require providers of such services to offer to those consumers tariff options or packages different from those provided under normal commercial conditions,



or both. For that purpose, Member States may require such providers to apply common tariffs, including geographic averaging, throughout the territory. Furthermore, in exceptional circumstances, in particular, where the imposition of obligations on all providers would result in a demonstrated excessive administrative or financial burden for providers or the Member State, a Member State may, on an exceptional basis, decide to impose the obligation to offer those specific tariff options or packages only on designated undertakings. Accordingly, any of these measures may be implemented by a Member State at the discretion of the relevant NRA or competent authority.

BEREC acknowledges stakeholders' comments in respect of vouchers, and this is addressed in the final Report.

BEREC appreciates stakeholders' comments requesting guidance or criteria to be set so as to ensure the consistency of universal service implementation among countries. However, BEREC's role is to provide a "state of the nations" report which sets out the approaches used by NRAs in defining adequate broadband and to identify the common elements to assist in the consistent application of Article 84 with the EECC. Accordingly, as set out in the Report (p.3), this report is a best practices report, and it does not aim to provide formal universal service implementation guidance in respect of the EECC. According to Article 84 of the EECC, it is for the MS, taking into account this BEREC report on best practices, to define adequate broadband internet access in light of national conditions and the minimum bandwidth enjoyed by the majority of consumers within an MS territory to ensure an adequate level of social inclusion and participation in the digital economy and society in the MS territory.

BEREC notes that the fact-finding with respect to the implementation of universal services is based on the questionnaire which was circulated to NRAs in May 2023. The data on stakeholders' newly proposed criteria cannot be modified according to limited data but improvements of aspects to detail can be considered in the future reports. [Stakeholders comments may be considered in the context of how further reports may evolve].

BEREC has added an appendix to the final report setting out links to the relevant non confidential consultation and decision documents, where provided by the relevant Member States to address the request to elaborate the details of the assessment of the universal service obligations. These documents set out in detail the rationale for the relevant Members States' decisions.



1.5. Other comments

A few stakeholders contributing to the public consultation pointed out a few national cases to be addressed. These are out of the scope of the Report and are not considered in the summary.

Deutsche Glasfaser is requesting that BEREC force NRAs to consider all the various kinds of technologies that may be used to deliver adequate broadband. It postulates that (i) adequate broadband should only be defined where the commercial market cannot deliver broadband services; and that (ii) adequate broadband should only apply to consumers and not business customers.

GSMA is broadly in agreement with the draft BEREC Best Practices Report, however, it identifies the following gaps: (i) use of vouchers has not been addressed in the BEREC report; and (ii) that it does not address the criteria that the USO implementation should ensure sufficient transparency for the market players regarding all aspects of the process and especially during the calculation of the costs of the universal service obligations.

EWE notes that it may be beneficial to include the criteria used by Member States to define affordability in future reports and to provide insights into any potentially diverging approaches between Member States.

BEREC response

BEREC notes that Article 3(4)(c) of the EEC 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.*” and, Recital 230 of the EEC 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.”

Accordingly, BEREC considers technological neutrality is clearly referenced in the EEC and this approach is referenced in the Report.

What concerns the comments related to the criteria used by MSs to define affordability, the Report provides the information received from NRAs regarding affordability measures in the countries (Part 4.3 of the Report); detailed information on USO can be also found in Annex 3 which was newly included with the links provided by NRAs related to national regulatory documents for the universal service.



2. BEREC public consultation questionnaire – Stakeholders' feedback

2.1. Q1 - Comments on relevant experiences or criteria considered valuable to support Member States in defining the adequate broadband internet access service.

GSMA considers that there is no problem of supply of internet access services, whereas there could be a possible demand problem. **GSMA** therefore put forward the following views: (i) not to designate a universal service provider for connection to the public communications network at a fixed location and access to publicly available telephone services at a fixed location, and (ii) Monitor the market to assess the need to consider alternative solutions (e.g., the allocation of vouchers), if the conditions provided by the market are insufficient. If it is deemed necessary to designate operators to provide universal service, the conditions under which universal broadband internet service is provided shall seek to minimize market distortions, where the provision of services is conducted at prices or under conditions that diverge from normal commercial practices, while safeguarding the public interest.

BEREC response to comments on question 1

BEREC notes that problems with the supply of internet services have been identified in remote areas of some Member States after thorough analysis.

The EECC legislation of universal service requires Member States to ensure availability and affordability of universal service and in this context to decide whether designating one or more universal service providers is necessary in order to ensure the abovementioned obligations. Based on the given principles, the universal service obligations were imposed in several Member States. Moreover, the Report envisages that the Member States imposing obligations, after careful assessment decided to impose obligations only in part of their territory, which suggests the proper implementation of universal service as the provider of last resort.

Regarding the allocation of vouchers, as mentioned above, BEREC acknowledges stakeholders' comments in respect of vouchers, and this is addressed in the Report.



2.2. Q2 - Comments on Minimum requirements for defining the adequate broadband internet access service within the framework of the universal service provision (e.g. upload and download speed, data volume, etc.).

In pursuit of the best efficiency criteria, **GSMA** considers it prudent to have requirements that cover the entire national territory, accompanied with reasonable quality and speed requirements which should be consistent with the existence of different infrastructures (fibre, copper, mobile and satellite) deployed by different operators. It is possible to set data speed and volume requirements that can be easily met with fibre but are more difficult or impossible to meet with other technologies such as copper, radio, or satellite. **GSMA** also believes that a designation period of several years is needed to enable the designated operator/s to design, plan and implement all the activities necessary to be able to fulfil the obligations of the various elements of the Universal Service, as well as to avoid having to make investments and expenditures without any possibility of return.

Deutsche Glasfaser highlights that all technologies should be considered for the provision of broadband internet access service. It is not acceptable that a couple of technologies are excluded from the evaluation. NRAs should find an economically efficient solution for broadband connection, e.g., the already existing satellite internet. Such a solution could be provided much faster compared to a completely new fibre connection deployment (and is much cheaper). Mobile radio and satellite internet are also broadband technologies, which can provide minimal requirements in terms of download and upload speed and even more. The NRA should communicate clearly enough to the end users that different technologies could provide sufficient broadband provision.

EWE TEL considers that Figure 4 on page 19 of the draft report points out that most Member States have currently set minimum speeds at 10 Mbit/s (download) and 1-2 Mbit/s (upload) and according to **EWE TEL** this appears sufficient. **EWE TEL** suggests that when setting minimum requirements to be met by universal service, it should be taken into consideration that any tightening of these requirements beyond what is necessary can lead to significantly higher costs, which ultimately will have to be borne by end users (at least in their capacity as taxpayers). Particularly high minimum requirements for universal service may benefit a few individual end users. They are not, however, in the interest of end users in their entirety. A good balance is therefore needed. **EWE TEL** also considers that Member States should consider a volume cap for universal service. Such a volume cap could amount to 6 GB per month, as has been ascertained by the World Bank (page 14 of the draft report). Such a volume cap is particularly relevant for shared media such as mobile and satellite



communications, but for reasons of technological neutrality, the same cap should apply to all types of network connections.

EWE TEL further notes that universal service must be understood in a technologically neutral fashion, i.e. it must be open to mobile or satellite communications solutions, to the extent such technologies meet the minimum requirements for universal service at the location in question.

VATM underlines that one of the leading principles of EECC is technological neutrality. **VATM** would like to emphasize that mobile and satellite-based internet solutions are also broadband technologies, which could provide the minimal requirements of 10 Mbit/s in downstream, 1,7 Mbit/s in upstream and even more. **VATM**, therefore, urges a stepwise evaluation of the USO appropriate cases taking into account all available technological solutions and then determining the appropriate measures. It is not acceptable that technologies that are technically capable of covering the USO criteria are preliminarily excluded from the evaluation.

Stakeholder_1 believes that the download speed defined by the majority of those Member States that set a speed (i.e. 10 Mbps) is much higher than the download speed that would be effectively needed to support the services listed in Annex V of the EECC. **Stakeholder_1** believes that the objective of the universal service is social inclusion and therefore the download speed should not be set at a value above the strict minimum required.

BEREC response to comments on question 2

BEREC notes that USO is technologically neutral in accordance with the EECC provisions. National decisions on the implementation of USO were published after public consultation processes. As mentioned previously this report sets out the objectively diverse practices of universal services provisions in the Member States.

BEREC notes that Member States take into consideration various aspects and unique national circumstances, and methods to achieve social and economic inclusion. Accordingly, national views may result in the diverse relevant practices and definitions of adequate broadband.

2.3. Q3 - Which end users should benefit from the universal service provision and what constitutes a reasonable request (criteria)?

GSMA considers that the protection and safeguards provided by Universal Service legislation are consumer-centric and should not be extended to other for-profit legal entities. Among consumers, the focus should be on those with low income or special social needs, which the public administration recognizes as such. Extension to non-governmental non-profit



organizations or micro-SMEs in areas with serious economic difficulties might also be considered.

Similarly to GSMA, **Deutsche Glasfaser** also considers that any requirements regarding adequate broadband service target only the provision of consumers and cannot be used for the provision of business customers.

EWE TEL notes that according to Art. 84 of EECC, universal service is primarily geared towards consumers. Any ideas to broaden the universal service concept to include very small enterprises as well as small and medium enterprises and non-profit entities should be met with utmost reluctance. On one hand, with regard to the social policy considerations underlying art. 85 EECC, the interests of enterprises carry a lesser weight than those of consumers. On the other hand, art. 85 (5) EECC calls for market distortions to be minimized. Interventions into business communications markets are always at particular risk of causing market distortions, which then lead to macro economically inefficient resource allocation.

In **VATM's** view, USO is a measure which especially addresses consumers with low income and special social needs. Therefore, first and foremost individuals with social or physical vulnerabilities or households with established social and financial constraints must be entitled to benefit from it. Member States may introduce exceptions in limited cases for small enterprises only with a solid justification. Therefore, **VATM** would like to underline that it would be more appropriate to structure Art. 86 EECC in the same manner as Art. 84 and Art. 85 in the sense that it is generally applicable only to consumers while an exception for certain enterprises can be made with a reasonable justification.

In this context, **VATM** also urge BEREC to clarify, that the specific technical USO criteria are valid for each household as a unit. Regulators are currently evaluating whether the USO should relate to every single person in one household or to the household as a whole. Art. 84 EECC clearly does not refer to each person in one household, so that the technical criteria need to be fulfilled per household, not per person. Any other interpretation of the law would be out of scope.

BEREC response to comments on question 3

BEREC notes that EECC provisions of universal service include the availability and affordability for all consumers. Accordingly, every consumer has the right to have access to adequate broadband internet access service and to voice communications services under the same conditions as other consumers, even if he/she is located in areas where there is no service available. The EECC allows that this right may be extended to end-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations. Special tariffs apply only to consumers with low income or special social needs and not to all



consumers or other end users as mentioned previously. End-users that are microenterprises and small and medium-sized enterprises and not-for-profit organisations may also be considered in this case. According to Article 85(2) of the EECC, Member States in this case designate undertakings only in exceptional circumstances, which have to be proven at the time when imposing the obligation and cannot be *ex lege* as the default obligation forever, but only as long as those exceptional circumstances remain valid.

Comments received on the above issue, are on the provisions of the EECC and not in the scope of the BEREC report.

Regarding the beneficiaries of the US (households or individuals), BEREC appreciates the views shared.

2.4. Q4 - Comments on the issue of Affordability and/or availability measures necessary to ensure access to adequate broadband internet access service

GSMA believes that the starting point should be the commercial prices offered by the market. Based on the prices of these products and services, discounts can be made according to the economic needs of the users. Ideally, these discounts could be made through vouchers issued by public authorities.

GSMA considers that it is unlawful to make a finding of insufficient supply, which may then trigger obligations to build out a network, when in fact a sufficient supply of telecommunications services is available via mobile and/or satellite communications and the alleged undersupply consists only in that the respective providers' tariff options are more expensive or offer a higher quality than consumers may be willing to pay for. Where commercial offers for mobile and/or satellite communications exceed the limit of affordability, the correct reaction can only be to require the respective providers to offer additional tariff options or service bundles that meet the conditions for universal service under Art. 85 Abs. 2 EECC.

EWE TEL considers that: (1) there is an insufficient supply of broadband services when existing services at the respective site do not meet the minimum requirements, and (2) a finding that broadband services at a given location are unaffordable must never lead to obligations to build out networks but may only justify measures under Article 85 (2) of the EECC. Following Article 85 of the EECC, the criteria for affordability should be the average market prices and consumer income. In that respect, **EWE TEL** requests the following consideration to be taken into account:



- To the extent affordability is defined by reference to average market prices, it is not correct to exclusively look at tariff bundles which most closely reflect the scope of universal service. Instead, it is necessary to calculate a weighted average of all tariffs currently offered on the market. Otherwise, it is not possible to gauge consumers' average willingness and ability to pay for telecommunications services;
- To the extent there is demand for mobile and satellite communications at a fixed location, the respective tariffs should also be included in the determination of average prices. Any other approach would run counter to the principle of technological neutrality;
- care has to be taken not to equate affordability with the average prices found as described above. If that were the case, the upper (price-weighted) half of all tariffs on offer would automatically be deemed unaffordable;
- Finally, it is necessary under Article 85 of the EEC to also assess consumers' income level. However, taking consumers' income level into account is necessary as a matter of market surveillance, because higher levels of consumer income may result in higher prices for telecommunications services becoming affordable. Furthermore, when considering specific market interventions, it is necessary to look at the income level of the households specifically targeted with the planned measures. This is because under art Art. 85 (2) EEC, reduced tariffs are intended to benefit consumers with low incomes or special social needs. Therefore, care has to be taken to make sure that tariffs subsidized by the universal service mechanisms are not offered to consumers who are not in need, because reduced tariffs must ultimately be refinanced by all other consumers, at least in their capacity as taxpayers.

According to **VATM**, there is a general trend across Europe towards demand for higher broadband, more data, and even more expensive subscriptions meeting the higher demands of consumers. Provided by this market development there are more and more offers directed to all possible consumer profiles, which indicates the high competitiveness of the telecommunications sector. Therefore, this creates the question of whether there is a need for the USO to ensure affordability. **VATM's** position is that in these cases where interventions are still required, these should be funded publicly and designed as demand-side subsidies or social tariffs targeting above all vulnerable consumers.

Deutsche Glasfaser and VATM ask for careful consideration which reflects the evolving market conditions when NRA determines the affordable price. The affordable price should not evolve from a consideration of old already depreciated copper infrastructure. If the NRA wants to force the deployment of gigabit connections (also in case of a universal service obligation),



the average prices should be orientated on the base of newly deployed infrastructure. Tariffs and access to the old infrastructure should be excluded from the consideration. **Deutsche Glasfaser** further underlines that satellite technologies should not be excluded because the tariff of this service is higher than the affordable price. **Deutsche Glasfaser and VATM** highlight that no operator should be excluded because of these reasons (affordable price) and the most efficient operator is chosen for universal service.

BEREC response to comments on question 4

BEREC notes that the methodology to define affordability is a national matter and relevant public consultations have been conducted nationally. This report provides information on the relevant practices.

BEREC, nevertheless, is grateful for the views shared by stakeholders which Member States can evaluate when making their decisions in the future.

