

BEREC views on the Universal Service regime, as in the Commission's proposals and IMCO Opinion

Commission's proposals and current framework

The objective of the universal service (hereinafter "US") rules is to provide a minimum set of electronic communications services at a specified quality to all users in the territory of a Member State, in light of national conditions, at an affordable price, while minimising competition distortions.

The Commission proposals¹ aim at evolving the US concept in order to reflect technology and market developments, as well as changes in user demand. Against this background, the Commission is seeking to streamline and update the current US rules in view of their effectiveness and of the decreasing relevance of some of its elements.

In line with this approach, the policy measures proposed by the Commission include the **removal of the mandatory inclusion of the legacy services** (public payphones, comprehensive directories and directory enquiry services) from the scope of US obligations. Furthermore, the Commission proposes that the concept of US should **focus on the affordability of available voice communications and basic broadband services, provided at least at a fixed location**. For the purposes of the latter, the Commission proposes that broadband services be defined by reference to a functional internet access connection, supporting a minimum list of online services² which Member States may further specify at national level. US obligations in relation to access to voice communications and functional internet access services may only be imposed if a relevant need is duly demonstrated via the geographic survey as established in Article 22(1) of the Code, given that the Commission considers that the availability of these services should primarily be promoted by other policy tools.

US should provide a safety net to ensure that all citizens are included in a fully developed digital society. Similar to the current framework, **the minimum set of services should be available to all end-users at an affordable price**, bearing in mind that social or economic exclusion can arise from those services not being available at an affordable price or from the lack of access to these services. Whereas participation in a digital society should be

¹ Proposal for a Directive establishing the European Electronic Communications Code 14 September 2016

² As set out in Annex V of the Directive, functional internet access service shall be capable of supporting the following services, in accordance with Article 79 (2):(1) E-mail; (2) search engines enabling search and finding of all type of information; (3) basic training and education online tools; (4) online newspapers/news; (5) buying/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; and (11) calls and video calls (standard quality).

safeguarded for all citizens, Member States should also be allowed to include affordability measures for vulnerable end-users.

Consequently, Member States can require undertakings to have special tariff options for end-users identified as having low incomes or special social needs and/or to provide those end-users direct support and establish a right to contract for consumers benefiting from special universal tariffs. The Commission also proposes that the affordability of those services should be ensured **at least at a fixed location** and Member States should have the flexibility to extend these affordability measures to mobile services for the most vulnerable users.

Finally, the Commission is proposing that US should be **financed only through the general budget**, thus ending the possibility of the sectoral funding mechanism.

IMCO Opinion

In its Opinion adopted on 8th September 2017 (which was incorporated within ITRE's report, adopted last 2nd October), IMCO suggests reintroducing some flexibility on the matter of US funding for Member States, by allowing them, by way of exception, to adopt or maintain a sectoral funding mechanism to share the net cost of US obligations³.

Regarding **the scope of US**, IMCO proposes to allow Member States to extend the relevant provisions to micro and small enterprises and not-for-profit organisations as end-users, and not to limit them to consumers only, as in previous elaborations of its Opinion.

Furthermore, the IMCO Opinion foresees that **national regulatory authorities should – in accordance with BEREC guidelines – be able to define the minimum functionality of the internet access service**. BEREC would set out guidelines on how to translate Annex V into practical quality of service requirements – including minimum bandwidth – in order to secure a consistent EU-wide approach. In IMCO's Opinion there is also a requirement to ensure those guidelines are updated every two years to reflect technological advances and changes in consumer usage patterns. With a view to assessing US availability, IMCO's Opinion also extends the Commission's proposal concerning the use of the geographical survey conducted in accordance with article 22(1), insofar as this should be used "where available", but appropriate US obligations can be imposed also where the national regulatory authority is satisfied with alternative evidence".

BEREC analysis

The European Electronic Communication Code focuses on promoting the relevant regulatory tools and public policies to foster network deployment for all end-users. BEREC agrees that US provision remains an important policy goal to avoid any digital divide and social and economic exclusion and will remain relevant in the future. BEREC welcomes the Commission

³ According to the Council text proposal adopted by COREPER on 11th October 2017 to grant the Estonian Council Presidency the mandate to begin negotiations with the European Parliament, the financing of universal services would not be limited to public funds as proposed by the Commission but Member States would maintain their existing flexibility to choose between public funds and/or sectoral funding mechanism.

proposal to clarify that US obligations to ensure the availability of universal services can only be imposed where such availability cannot be ensured under normal commercial circumstances or through other potential public policy tools. Furthermore, BEREC agrees that the concept of US should evolve in order to reflect advances in technology, market developments and changes in user demand. Therefore, BEREC welcomes the proposal to “update” the current US scope, while retaining sufficient flexibility for Member States, as the scope of USO can evolve differently depending on market developments in each country. Such flexibility has to be preserved also as concerns the scope and timing of phasing out processes for legacy services, in order to take into account national specific consumers’ needs. Moreover, BEREC welcomes the focus of the proposed new regulatory framework to include basic broadband at an affordable price in the US scope.

Furthermore, BEREC welcomes the above-described IMCO’s take regarding the US beneficiaries, since restricting the US scope to consumers only would have led to unequal treatment, especially of SME and non-profit organizations – although BEREC would prefer to go back to the initial wording referring to “end-users”. The current framework, applicable since 2002, has worked well in ensuring that a basic supply of universal services throughout the Member States is available for every end-user. In BEREC’s view, restricting the US scope does not reflect the general nature of US as a regulatory instrument and would lead to unequal treatment.

In addition, BEREC underlines the need to maintain the flexibility for each **Member State to define functional internet access according to the specificities of their national markets** and that the functional internet access should be defined at national level.

With respect to the basis which a national regulatory authority has to use in order to establish that availability cannot be ensured and thus US obligations are to be imposed, BEREC welcomes IMCO’s Opinion insofar as it broadens this basis and allows for other evidence to be considered, apart from the geographic survey.

Finally, regarding **affordability measures**, the Commission’s proposal is unclear about whether some providers may be required to supply these offers while others are not. In BEREC’s view, requiring a very small size provider or a provider who has recently entered the market to make offers available under conditions other than the normal market conditions may be disproportionate, even if the cost associated with such services could be reimbursed. Regarding the Commission’s proposal that Member States may ensure affordability of functional internet access and voice communications services “at least at a fixed location”, it could be useful to clarify that “fixed location” can cover services provided both through wired or wireless technologies. Besides, BEREC suggests to replace "the connection at a fixed location" by "the functional internet access and voice communications services at a fixed location" in the respective recital.