



GSMA response to BEREC's public consultation on the draft BEREC Report on Member States' best practices to support the defining of adequate broadband internet access service (BoR (23) 178)

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About the GSMA

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Introduction

The GSMA welcomes the opportunity to comment on BEREC's report about Member States' best practices to support the defining of adequate broadband internet access service. Below we provide some general remarks to the report and further down we provide answers to the specific questions requested by BEREC.

The report is lacking facts.

BEREC aims to give an overview of methods applied regarding the Universal Service Obligation (USO) in its report on the member states' best practices to support the defining of an adequate broadband internet access service (IAS).

Generally, we think the report provides a quite comprehensive view on the state of USO implementation in the individual countries. However, we also find that the report has some gaps in adequately representing the markets.

Firstly, 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 such establishments, that are not equipped with sufficient connectivity. This is remarkable since the BEREC explicitly acknowledged the usage of social Vouchers before.¹ Member states would therefore have benefitted from insights of the implementation of Vouchers. Vouchers have, for example, been implemented in Italy.

Second, 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. For example, in Greece, the USO cost related data are available upon request but not published. The Greek NRA has been requested to make publicly available all USO cost related data, as well as the criteria and the analysis based on which the costs are considered (or not) as an unfair burden. In addition, another criticism in the Greek implementation is the lack of a public consultation which allows

¹ BEREC response to the public consultation on the draft revised European Commission Guidelines on State aid for broadband networks (10.02.2022), p. 5.

market operators that contribute to present their arguments on whether the costs are indeed an unfair burden or not.

Third, we note that the representation on the Spanish markets could add that internet access services have now been defined (now excluding provision of telephone services from the scope).

The draft confirms the industry's view on Universal Services Obligation as ultimate means.

The overall picture in the report illustrates the divergences in the member states when it comes to the implementation of the Universal Service. Examples include the broadband speed required in the state that range from 4 Mbps downstream (Italy, ongoing consultation) and 1 Mbps upstream (Croatia) to 30 Mbps downstream and 1.5 Mbps upstream (Malta). Further, the types of financing vary significantly. Whilst some member states finance the USO publicly others implemented industry-based solutions. As a result, the draft report of BEREC confirms the industry's view as commented in the EU future of connectivity this year:

Universal Service is not an effective tool to reach its declared objective of protecting consumers with low income and special social needs.

Even though the take-up rate of broadband reaches 97.9% and 99.6% in mobile EU-wide by now, this change has mainly been driven by private investments in rollout and not by USO. In fact, in 2020, nearly 20 years after the concept of the Universal Service was introduced, only nine member states started USO initiatives.

Moreover, the interpretation and litigation of the USO by European and national courts has been significantly diverging. This practice creates the risk of crowding out private investments. Hyper competition in the sector further challenges the need of the USO to ensure affordability. In those cases where intervention is still required, these should be funded publicly and designed as demand-side subsidies or social tariffs.

The recent approach taken by the Dutch government fully underlines the view of USO being the ultimate step. After investigating the extent to which universal service should be expanded to

include internet services, the Dutch Ministry of Economic Affairs concluded that imposing a universal service obligation is not reasonable at this time. The findings were as follows:

- The universal service is a safety net to ensure that a certain minimum of services and facilities are available and affordable for everyone. If this cannot be guaranteed through the normal functioning of the market, the Minister of Economic Affairs and Climate Policy can, as a last resort, impose universal service obligations on the market. Under the Telecoms Code, Member States must limit market disruptions as much as possible.
- [...] Pursuant to the Telecom Code, guaranteeing the availability of the adequate broadband internet access service must be done as much as possible through the normal functioning of the market or, where necessary, through other, less market-disruptive government interventions such as state aid.
- Imposing a universal service obligation is not reasonable at this time given the good availability of fast internet, including the wireless solutions explained in this letter, which generally provide speeds of at least 30 Mbps. but also, because the market is still investing in the rollout of high-speed internet in rural areas and this market dynamic should not be disrupted, and the fact that state aid is the first appropriate instrument.
- As most consumers start purchasing higher subscription speeds and wireless solutions may not be able to provide these speeds despite advancing technological developments, imposing universal service obligations on the market could still come into the picture in the future. However, the state aid route must first be followed and only if this does not provide any solution can a universal service obligation be imposed as an ultimate remedy. The lack of financial resources for the rollout of high-speed internet is insufficient reason to skip the step of state aid.

Another example is Italy, where public interventions aiming at financing networks have already been taken and prove far more performant (i.e., broadband deployment strategy) even in areas of market failure and both on the supply and demand side. Again, it is essential in the ongoing consultation that a duplication of interventions is avoided in order to prevent any competitive distortion.

Finally, the Czech Republic demonstrates that USO is the ultimate step. Instead of USO for internet access services, Czech Republic has implemented a “state subsidy” (CZK 200/EUR 8 per month) to people with special social needs (with disabilities and with low incomes).

Feedback to specific questions raised by BEREC.

1. Could you please comment on relevant experiences or criteria considered valuable to support Member States in defining the adequate broadband internet access service?

Considering the current high level of coverage of electronic communications networks (it is expected that in the coming years virtually the entire population will be covered) and price accessibility being guaranteed by the competitive market environment and by the commercialisation of packages, we conclude that there is not a problem of supply of internet access services, whereas there could be a possible demand problem. We therefore put forward the following views:

- (i) Do not designate the universal service for connection to the public communications network at a fixed location and access to telephone services accessible to the public through such connection.
- (ii) Monitor the market to assess the need to consider alternative solutions (e.g., the allocation of aid cheques, 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 minimise 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.

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.)?

In pursuit of the best efficiency criteria, we consider it prudent to have requirements that covers the entire national territory, although with reasonable quality and speed requirements consistent with the existence of different infrastructures (fibre, copper, mobile and satellite) deployed by different operators.

It is not 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.

We also believe 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.

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

The protection and safeguards provided by Universal Service legislation are consumer-centric and should not be extended to other for-profit legal entities that can afford larger and more far-reaching investments.

Among consumers, the focus should be on those groups who are receiving the minimum vital income or other social insertion aid that is certified by the Public Administrations. Extension to non-governmental non-profit organizations or micro-SMEs in areas with serious economic difficulties might also be considered.

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?

We believe 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 (aid cheques) issued or certified by the Public Administrations.