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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Universal service in e-communications: report on the outcome of the public consultation
and the third periodic review of the scope in accordance with Article 15 of Directive
2002/22/EC**

(Text with EEA relevance)

{SEC(2011) 1398 final}

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1. PURPOSE OF THE COMMUNICATION

In its second periodic review of the scope of universal service in electronic communications in September 2008¹ the Commission undertook to consult interested parties on several long-term policy issues. Prior to adoption of the Telecom Package in 2009 the Commission confirmed to the European Parliament that it would carry out a wide-ranging consultation on the subject.

This document reports on the outcome of the consultation on universal service principles in e-communications, which took place between March and May 2010. It also covers the third periodic review of the scope of universal service under Article 15 of the Universal Service Directive 2002/22/EC² ('the USD'). Finally, it sets out some reflections on the measures to be taken by the Member States when implementing the USD. It is accompanied by a short Staff Working Document³ summarising the responses to the public consultation.

The EU rules on universal service in electronic communications emerged in the context of full liberalisation in the 1990s. The rationale of universal service obligation ('USO') is to act as a social safety net where market forces alone do not deliver affordable access to basic services for consumers, particularly those living in remote areas or having low incomes or disabilities. In order to achieve the three objectives of the safety-net concept, namely availability, affordability and accessibility, one or more specifically designated undertakings can be obliged to deliver such basic services.

Member States must accordingly ensure that all end-users have access at a fixed location to voice and data communications, including 'functional internet access', while minimising market distortions. The USD is neutral as to the technology by which the services can be provided.

Where the cost of USO represents an unfair burden on the designated provider(s), the latter must be compensated for the net cost incurred. Such compensation can be financed from public funds and/or from a fund to which market players in the e-communications sector

¹ COM(2008) 572.

² OJ L 108, 24.4.2002, p. 51.

³ SEC(2011)1398.

contribute. Currently, 22 Member States provide for sectoral funding only⁴, two foresee both public and sectoral funding, and three have opted for public funding only.

Several Member States have exercised their discretion not to designate any USO provider, or have relaxed obligations concerning service elements that are already catered for by the market (e.g. public payphones and directories).

While the 2002 USD limited ‘functional internet access’ to narrowband data rates⁵, the 2009 Telecom Package gave Member States the flexibility to define, where necessary, the data rates at national level, which may include broadband speeds⁶. To date, Finland, Spain and Malta have adopted legislation to include broadband in national USO.

On 5 July 2011, the European Parliament adopted a resolution⁷ underlining the importance of USO as a safety net for social inclusion.

2. RESULTS OF THE PUBLIC CONSULTATION

The aim of the consultation was to examine whether, in today’s converged and competitive e-communications environment, there is a need to revise the overall EU approach and principles for universal service. A key question was whether USO should become a pro-active tool in the context of broadband and therefore have a role in meeting the objective of ‘broadband for all’, or whether this should be left to other EU and national policy measures, while retaining USO as a safety net. Other important issues raised in the consultation were the concept of universal service, its financing, and the Member States’ flexibility in implementation.

A wide range of views were expressed in the consultation, with no consensus emerging as to the future role of USO in furthering Europe’s broadband objectives. However, many stakeholders, particularly governments and national regulatory authorities (NRAs), support the existing principles and favour maintaining the key features of the USO regime. The accompanying Staff Working Document provides a summary of the responses⁸.

3. CHALLENGES: UNIVERSAL SERVICE AND BROADBAND

The EU regulatory framework and its open access policy have fostered competitive markets, thereby increasing consumer choice and reducing prices, and placing some EU countries among the world leaders in broadband. Within the EU, the highest broadband take-up is found in Member States with infrastructure competition, combined with effective *ex ante* regulation to promote service competition where infrastructure competition is not possible.

⁴ In Latvia, the establishment of a sectoral fund has been postponed to 1 June 2013 and in the meantime the compensation is provided by public funding.

⁵ Recital 8 USD.

⁶ Recital 5 of the Citizens’ Rights Directive (CRD), OJ L 337, 18.12.2009, p. 11.

⁷ Resolution (P7_TA(2011)0306):
<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2011-0306&language=EN>.

⁸ Contributions are published at:
http://ec.europa.eu/information_society/policy/ecomms/library/public_consult.

The Digital Agenda for Europe (DAE)⁹ sets out the socio-economic benefits of broadband, including its importance for social participation and employment. The DAE target for ‘basic broadband’ is that such networks should cover 100% of EU citizens by 2013. For ‘fast’ and ‘ultra-fast’ internet, the aim is to ensure that by 2020 there is 30 Mbps coverage for all EU citizens and that 50% or more of EU households have subscriptions above 100 Mbps. Achieving these targets requires substantial investment from private and public players alike. To facilitate this process, the Commission adopted a ‘Broadband Package’ in September 2010 comprising: i) the Broadband Communication¹⁰, laying out a framework for action and outlining proposals to Member States for achieving the targets; ii) the NGA Recommendation¹¹, setting out regulatory guidance to promote legal certainty, and hence encourage private investment; and iii) a proposal for a multiannual Radio Spectrum Policy Programme¹², to improve coordination and management of spectrum in the EU, thereby facilitating the growth of wireless broadband.

In addition, various policy tools are available to (co-)finance infrastructure development, including public funding (e.g. loans, grants to public-private partnerships). The Broadband Guidelines¹³ clarify how public funding can be granted for broadband development in line with EU State aid rules, to achieve coverage also in the areas where there is no commercial interest. The Structural Fund programmes for 2007-13 also earmark almost €2.3 billion for ICT infrastructure, mainly broadband networks. Moreover, the Commission has proposed in the Financial Perspectives 2014-2020 a Connecting Europe Facility¹⁴ with a budget of €9.2 billion to encourage pro-competitive investment, grants and credit enhancement for broadband projects and digital service infrastructures.

To foster demand, the DAE envisages a range of measures, including promotion of e-health and e-government services, facilitating licensing schemes for online rights management and the online accessibility of audiovisual content¹⁵, and initiatives to ensure digital literacy, skills and inclusion. The Commission considers that fostering demand for broadband services will in turn trigger the deployment of broadband networks, thus stimulating a virtuous cycle.

Unlike telephony in the old EU-15 more than a decade ago, the broadband market in the EU-27 is not yet a mature market but rather one characterised by innovation and dynamic evolution. Technological, competitive and regulatory developments, e.g. the decreasing costs of wireless technologies and the digital dividend, are likely to expand broadband coverage considerably.

While fixed broadband networks are, on average, available to 95.1% of the EU population, this figure is only 82.8% in rural areas across the EU and 60% or less in rural areas of Bulgaria, Slovakia, Poland, Romania and Cyprus (see section 4.1). The cost of rolling out or upgrading broadband infrastructure in underserved areas is significant. A study commissioned

⁹ COM(2010) 245.

¹⁰ COM(2010) 472.

¹¹ OJ L 251, 25.9.2010, p. 35.

¹² COM(2010) 471.

¹³ OJ C 235, 30.9.2009, p. 7. Under this instrument, almost €3.5 billion of aid has been authorized for pro-competitive broadband projects up to the end of October 2011.

¹⁴ COM(2011) 500.

¹⁵ See also the Audiovisual Green Paper: COM(2011) 427.

by the Commission¹⁶ estimates the total EU-wide net cost of ensuring the availability (coverage) and affordability (subsidised social tariffs) of a 2 Mbps broadband connection¹⁷ through USO to be approximately €13.6 bn over a five-year period.

According to the study, this total sum translates into some €2.7 bn annually, which represents approximately 0.69% of the turnover of the EU telecoms sector as a whole¹⁸. This percentage varies significantly among Member States, being higher in countries with a sparse population, difficult terrain or less developed infrastructure. The highest cost ratio would be in Romania (4.6%) and the lowest in Luxembourg (0.08%). In absolute terms, the EU average cost per household would be approximately €14.40 per year, ranging up to €30 in Romania. This compares with current annual costs per household of between €0.05 and €4.19 in the seven Member States that have established USO funds¹⁹.

The 2009 Telecom Package recognises the increased diversity in the EU-27 by giving Member States the flexibility to determine the data rates for USO in the light of national conditions, and to finance the associated net costs from public funds and/or from a fund to be financed by the sector.

However, it is clear that if USO were to be extended to broadband EU-wide, the need for sectoral funding and "cross-subsidisation" between groups of consumers of a given country would increase significantly, with the burden on industry and the impact on consumer prices being greatest in Member States with currently low broadband coverage and income levels. Moreover, to prematurely mandate broadband at EU or national level risks distorting markets and holding up private investment in broadband. While telecoms companies can be expected to invest in profitable new networks, a fundamental question arises whether extensive USO, placing a heavy burden on the sector alone in the interests of social inclusion, would be appropriate and sustainable, while other private and public entities and society as a whole draw benefit from ubiquitous broadband.

4. THIRD PERIODIC REVIEW OF THE SCOPE OF UNIVERSAL SERVICE AT EU LEVEL

The USD calls on the Commission to review the scope of universal service every three years in the light of social, economic and technological developments, taking particular account of mobility and data rates. Annex V to the USD establishes certain considerations to be taken into account by the Commission in deciding whether certain services should be included in the scope, namely:

1. Are specific services available to and used by a majority of consumers and does the lack of availability or non-use by a minority of consumers result in social exclusion?

¹⁶ *Impact of EU Policy options for revision of the universal service provision*, Van Dijk Management Consultants et al., October 2010: http://ec.europa.eu/information_society/policy/ecom/library/ext_studies/index_en.htm.

¹⁷ Based on a mix of wired and wireless technologies.

¹⁸ The study estimate is based on an annual telecommunications turnover of €394 bn. In relation to actual EU-27 turnover in 2009 (€332 bn), documented in the Digital Agenda Scoreboard 2011, the annual net costs would amount to approximately 0.81% of the revenues of the telecom sector in 2009.

¹⁹ Total USO costs in these Member States range between €0.5 million and €70 million.

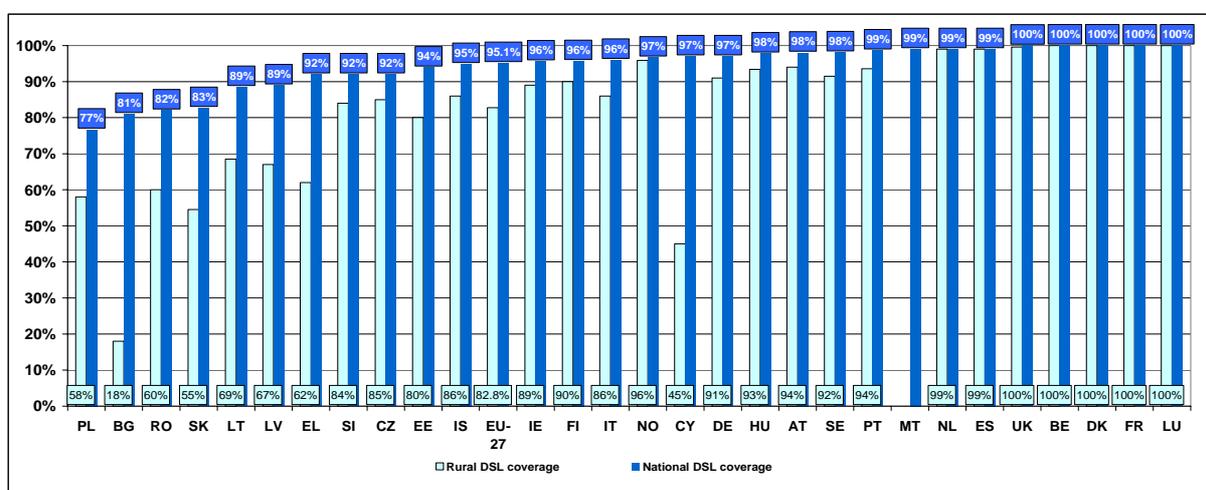
2. Does the availability and use of specific services convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public under normal commercial circumstances?

Moreover, recital 25 USD indicates that to be included in the scope the relevant services should already be available to a substantial majority of the population. The previous reviews in 2005/06 and 2008²⁰ concluded that these criteria were not met with regard either to mobility or to broadband, and thus the scope was not changed.

4.1. Broadband

Fixed (DSL) broadband networks were, on average, available to around 95 % of the EU population at the end of 2010²¹.

Figure 1. Fixed broadband network coverage in the EU as % of the population, 2010



Source: IDATE, 2010

There were approximately 133 million fixed and 36 million mobile broadband subscriber lines in the EU at the beginning of 2011, which shows that mobile is now contributing strongly to growing broadband take-up.

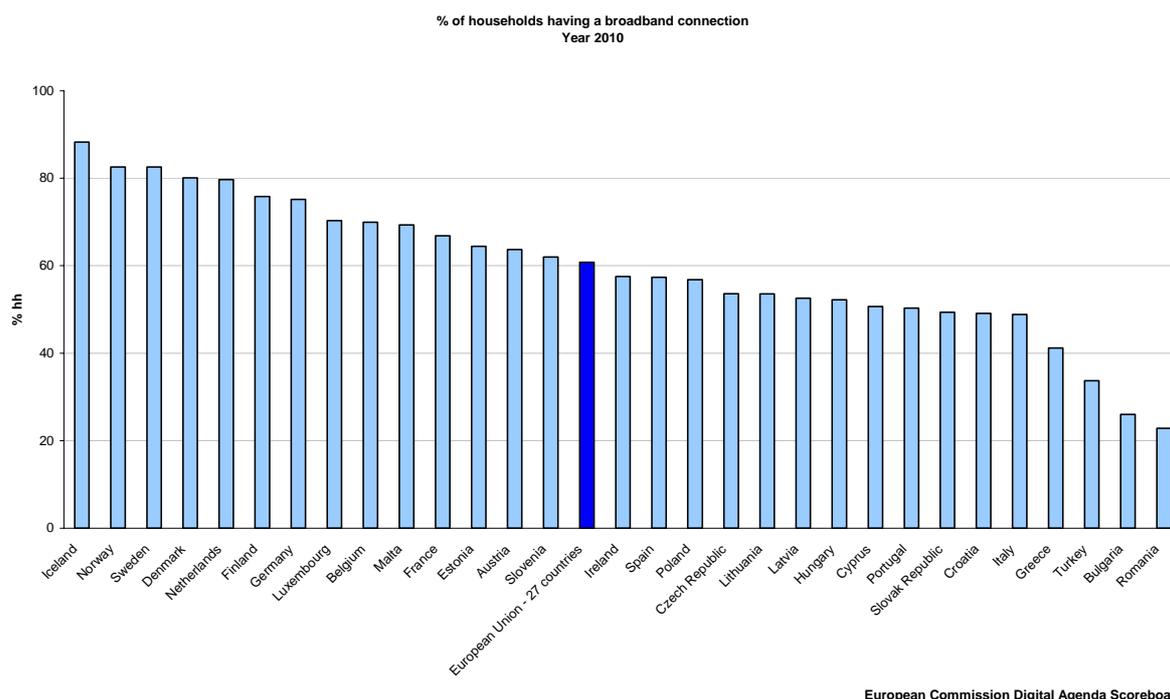
70 % of EU households now have internet access and 61 % have a wired or wireless broadband connection²². However, broadband usage rates vary considerably between Member States. Broadband take-up ranges from 23 % of households in Romania and 26 % in Bulgaria to 80 % in the Netherlands and Denmark and 83 % in Sweden.

²⁰ COM(2005) 203; COM(2006) 163; see also footnote 1.

²¹ Due to its extended reach, the footprint of DSL can be used as a reasonable proxy to monitor the availability of fixed broadband coverage. However, other fixed technologies can also provide broadband connectivity.

²² These figures for broadband household penetration, based on the Eurostat ICT household survey, include households with at least one member aged 16-74 (http://ec.europa.eu/information_society/digital-agenda/scoreboard/library/index_en.htm).

Figure 2. Broadband penetration at home, % of EU households, 2010²³



Consequently, at household level, the threshold of broadband usage by a (simple) majority of consumers in the EU has been reached, but this is not yet a ‘substantial majority of the population’, as described in recital 25 USD. More importantly, given the significant national disparities in take-up and the fact that take-up levels in 5 Member States are below 50%, the costs of EU-wide USO for broadband would fall disproportionately on telecom providers and ultimately consumers in those Member States. Indeed, survey data²⁴, including households aged 75 and above, indicate 12 Member States below 50%. The costs of ensuring universal broadband coverage would be particularly high in countries with a sparse population, difficult terrain and/or less developed infrastructure. As indicated above, the average cost per household in Romania is likely to be more than twice the EU average. Therefore, including broadband access within the scope of universal service at EU level, at this stage, would not meet the second criterion in the USD, namely conveying a general net benefit to all European consumers.

4.2. Mobility

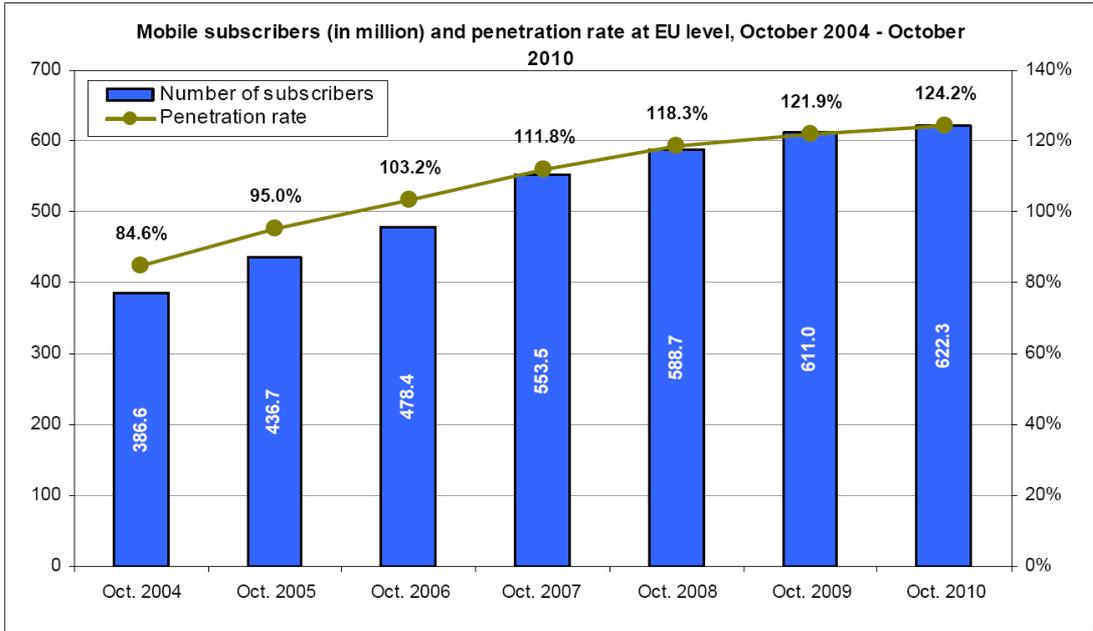
Mobile networks cover over 95% of the EU population on the basis of national mobile licences²⁵. Overall mobile subscriber penetration reached 124.2% in October 2010.

²³ 2010 data for UK not available; 2009 figure for UK was 69.5%.

²⁴ Special Eurobarometer 362: http://ec.europa.eu/information_society/digital-agenda/scoreboard/docs/pillar/studies/eb_ecomm/final_reports/reporteb751sp362infoecommunications_en_final.pdf.

²⁵ COM(2005) 203.

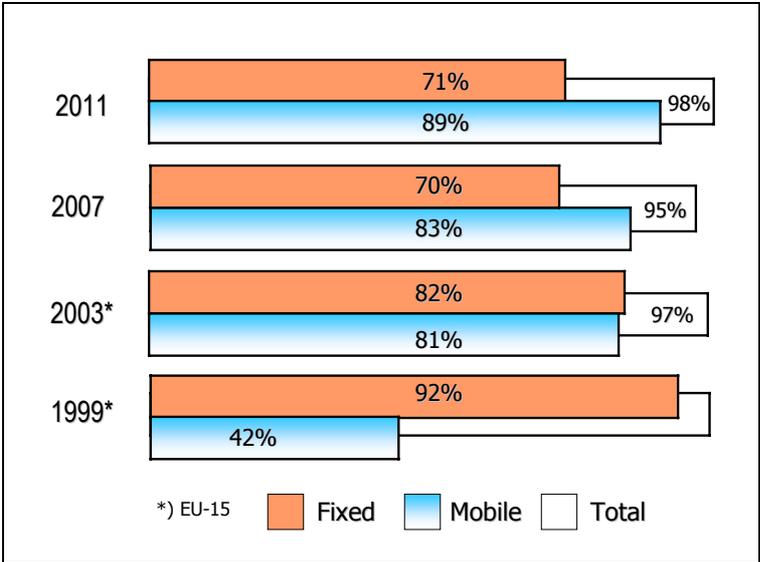
Figure 3. Mobile subscribers and penetration rate at EU level, 2004- 2010



Source: Digital Agenda Scoreboard 2011 — electronic communications market indicators

89% of EU households have mobile and 71% fixed telephone subscriptions, so that 98% of all EU households now have telephone access.

Figure 4. Telephone access at home, % of EU households, 1999-2011



Source: E-communications household surveys, July 2011

As to affordability, the average monthly price of a low usage basket of (pre and post-paid) mobile services in the EU amounted to €9.07 in 2010, down approximately 30% from 2006²⁶.

²⁶ Report on Telecoms Price Developments from 1998 to 2010, Teligen, Strategy Analytics Ltd, December 2010.

Since the last review, growing take-up and declining prices of mobile services can be observed. This confirms the analysis in earlier reviews that the competitive provision of mobile communications has resulted in consumers having widespread affordable access to these services so that there is no risk of social exclusion. The criteria for including mobility within the scope of universal service at EU level are therefore not met. This does not exclude wireless technology being used to provide connection at a fixed location under USO.

The Commission will continue to monitor the special needs of persons with disabilities, including in particular issues related to mobile telephone services²⁷, and report its findings in the next review.

5. WAY FORWARD

Given the large sums needed to ensure broadband coverage through USO and the potential impact on industry and consumers, Member States need to carefully analyse whether national conditions warrant the extension of USO to broadband, taking into account the risk of social exclusion as well as possible distortion of competition and undue burden on the sector.

In view of the risk of divergent approaches to implementing the USD and the potential financial implications for industry, the Commission considers that further guidance is needed to ensure that implementation is in accordance with consistently applied principles while taking into account the different stages of development of the markets in the Member States. Such guidance will help to tackle the risk of social exclusion while at the same time avoiding a disproportionate burden on the sector.

This responds to the requests for clarification from stakeholders in the consultation and the call from the European Parliament for the Commission to *‘provide guidelines on how best to implement and enforce the revised USD, avoiding market distortions and, at the same time, allowing Member States to adopt the provisions that best suit their national circumstances’*²⁸.

The Commission is of the view that consistent implementation of USO calls for a coherent approach to the criteria for defining ‘functional internet access’ at broadband speeds, designation mechanisms, financing, and measures for end-users with disabilities. The Commission intends to engage in further discussions with Member States, European Parliament and other stakeholders on these matters.

- *Scope of USO relating to ‘functional internet access’ at broadband speeds*²⁹.

When Member States consider whether to define the network connection permitting ‘functional internet access’ at broadband speeds at national level, a set of coherent criteria, reflecting the criteria for changing the scope of universal service at EU level³⁰, could help to ensure consistency and minimise market distortion, while meeting the objective of preventing social exclusion.

²⁷ www.eaccessibility-monitoring.eu; ongoing EC pilot project Reach112 on accessible alternatives to traditional voice telephony (www.reach112.eu).

²⁸ See footnote 7.

²⁹ See the interpretative document (COCOM10-31) presented by Commission services to the Communications Committee.

³⁰ Article 15, Annex V and recital 25 USD.

For instance, Member States could be called on to make a prior assessment of the impact of such a decision, which could include assessing overall national broadband take-up in terms of the percentage of national households with broadband and the percentage of households with a broadband speed equal to or above the minimum speed envisaged.

Reflecting the notion in recital 25 USD that the services covered should be available to a 'substantial majority of the population', certain thresholds could be applied to determine whether the required critical mass of broadband take-up is achieved. The Commission believes that, at this stage, Member States could be asked to consider including broadband connections in USO where the data rate in question is used at national level (i) by at least half of all households and (ii) by at least 80 % of all households with a broadband connection³¹.

Member States could also be advised, when making their decision, to identify their specific social and economic objectives and desired outcomes. This could include an assessment of:

- the expected market availability of broadband without public intervention;
- the social and economic disadvantages incurred by those without access to a broadband connection, including disabled end-users;
- the cost of public intervention via USO and comparison of this cost against the use of other approaches;
- the benefits of public intervention and its effects on competition, market distortions and broader policy objectives.

Thus, intervention would only occur where overall benefits outweigh overall costs.

- *Common approaches to designation*

Finding the most appropriate mechanism for designating universal service providers can help minimise market distortions and enhance efficiency. Territorial coverage requirements set at the outset of a designation process can unduly restrict the number of eligible undertakings. Likewise, a designation mechanism that allows Member States to consider all technical options for the provision of universal service is likely to produce the most cost-effective outcome.

An unduly long or indefinite designation period may also *a priori* exclude other operators from being designated³². For instance, transparency and non-discrimination can be promoted through limited time periods for USO designations (as e.g. in Greece and Poland). A thorough evaluation of potential options (including all available technologies) and their impacts will help identify the most efficient means of providing universal service, which may lead to more frequent designation of alternative operators (as e.g. in Estonia), or the designation of more than one undertaking (as e.g. in the Czech Republic and France). To avoid discrimination, a designation could be designed in such a way that it does not last longer than is necessary to recover the relevant investment costs and does not exceed a maximum duration (for example 10 years).

³¹ According to the study (footnote 16), on average more than 80% of EU fixed broadband subscribers have broadband speeds above 2 Mbps today.

³² C-154/09 *Commission v Portugal*.

- *Consistent approaches to calculating the net cost of universal service provision*

In order to ensure cost efficiency and a level playing field for operators across the EU, the approach followed by national authorities to calculate the net costs of universal service provision is of key importance. Efficiency could be enhanced by setting out the methodological approach for calculating the net cost of USO in advance of any designation process, and by consulting publicly on it. Carrying out a specific net cost calculation for each designated undertaking would also ensure transparency and accuracy. The Court of Justice has identified specific elements that should be taken into account when evaluating the intangible benefits arising from USO. They should be established in line with calculations used for business valuations, and include e.g.: ubiquity, life cycle effect, marketing/sales/advertising benefits, brand image, loyalty and recognition/corporate reputation, benefits from provision of other services on a commercial basis, access to subscriber data, and information and technical and commercial benefits arising from the increased extent of the network. It is also important to clarify the principles to be applied by national authorities when assessing whether USO constitute an unfair burden³³ on the provider. In this regard, NRAs should examine all relevant characteristics particular to each designated undertaking, such as technical and economic characteristics of the equipment it uses for the provision of universal service, its economic and financial situation, and its market share³⁴.

- *Financing*

Any sectoral financing mechanism for universal service must be transparent, objective, proportionate and non-discriminatory, and seek to minimise distortion to competition and user demand.³⁵

Using general taxation to finance USO can be seen as less distortive than sectoral funding, since it reflects more accurately the general nature of the ensuing social and economic benefits and the ability of consumers to pay. Finland, Sweden and the Czech Republic provide for these costs to be covered from public funding alone, while Malta and Portugal allow for a mix of public and sectoral financing.

Given the potentially higher costs of USO extended to broadband connections, Member States may consider, as is currently the case in certain countries, an appropriate mix of public and sector-specific funding to finance the provision of universal service.³⁶

They could also set limits on contributions from telecom operators to a sectoral compensation fund.

Such limits may take two forms. First, as stated by Article 13(3) USD, Member States may choose not to require contributions from undertakings whose national turnover is less than a set limit (*de minimis* threshold). A number of Member States make use of this provision. A common *de minimis* threshold could be applied by reference to the revenues of the operators concerned. This could be set as a fixed monetary amount (e.g. € million) or a percentage of the national turnover of the sector as a whole.

³³ In accordance with Article 12 USD.

³⁴ C-222/08 *Commission v Belgium*, C-389/08 *Base NV and others v Ministerraad*.

³⁵ See Article 13(3) USD and Article 6 (1) of Directive 2002/77/EC.

³⁶ In any event, funding of USO shall be in line with the rules governing State aid.

Secondly, in order to respect the principle of proportionality explicitly referred to in Article 13(3) USD and Article 6 (1) of Directive 2002/77/EC, a number of Member States have considered it appropriate to set a ceiling on the individual contributions of operators. A maximum common limit may be set on operators' individual contributions, with the balance of the net cost financed from public funds. This limit may be expressed as a percentage of the operators' national annual turnover from the provision of electronic communication networks and services. The percentage could be within a range (e.g. from 0.40 to 0.65% of annual turnover) to reflect the anticipated costs of USO provision, including broadband, by an efficient operator, but cannot exceed the actual net costs of USO provision in a given country. A number of Member States already provide in their national legislation for a maximum ceiling on individual contributions, set by reference to either gross or net revenues.

- Measures for end-users with disabilities

In view of the strengthened provisions in the revised USD relating to disabled end-users, Member States could also be encouraged to take due account of the needs of such users in designing their national USO, in accordance with the principle of ensuring equivalence of access.

6. CONCLUSIONS

The Commission currently does not see a need to change the basic concept and principles of universal service as an instrument for preventing social exclusion. At this stage, it would not be appropriate to include mobility or mandate broadband at a specific data rate at EU level.

The 2009 Telecom Package gives Member States the flexibility, in line with the principle of subsidiarity, to define the appropriate data rate for network connections delivering 'functional internet access' in the light of national conditions. Basic broadband access can therefore be part of USO at national level in justified cases, particularly where market forces and other policy tools and financing instruments have not led to universal broadband coverage. To minimise market distortions, Member States should take full account of public intervention tools other than USO to ensure broadband availability. Member States thus have the possibility, but no obligation, to include access to broadband connections within the scope of national USO.

However, there is a risk that divergent national approaches to implementation in the broadband environment could distort markets and put an unreasonable burden on the sector.

The Commission considers that it would be advisable to follow a common approach in applying the relevant provisions of the USD in the broadband context. This will make USO arrangements more efficient and boost regulatory predictability for the sector, so that investment and competition in the Digital Single Market will work to the benefit of innovation, consumer choice and affordability. The Commission will engage in discussions with the Member States, European Parliament and other stakeholders in the light of this Communication.

The Commission will also, based on a review of the various options, make proposals in the first quarter of 2012 to ensure that public sector websites and websites providing basic services to citizens are fully accessible for disabled users by 2015.

The importance of broadband access for European citizens is expected to continue to grow. While its inclusion now within USO at EU level would be premature, the Commission will continue to monitor broadband market developments, including in their social context. It will take these developments into account when it next reviews the scope of universal service.