1. General context and objectives

The electronic communications sector has evolved significantly since the last revision of the Universal Service Directive in 2009. Today, the market offers competitive services that replace traditional public payphones, directories and directory enquiry services. An internet access service has become a crucial enabler for participation in the digital economy and society through different online services.

Basic broadband internet access is today almost universally available across the EU and various policy tools can be used to promote and, if necessary, fund enhanced broadband deployment. Users increasingly connect independently from a specific location or specific device and fixed and mobile networks are converging. At the same time, the concept of a safety net ensuring that all citizens are included in a fully developed digital society is gaining ever greater importance in a digital single market.

The current Universal Service Directive allows different mechanisms for financing the universal service obligations. These can be financed either through public funding, through sharing the net cost between providers of electronic communications networks and services (so called sectorial funding mechanism) or a combination of both public and sectorial funding.

The review of the universal service aims at:

- Ensuring the affordability of available basic broadband access and voice communications services;
- Removing old legacy services from the mandatory inclusion at EU level;
- Ensuring consistency with other relevant policies;
- Taking into account the needs for connectivity of end-users with low income or special social needs;
- Reviewing the funding mechanism.

2. Proposed solutions

2.1. Safety net for connectivity gap through affordability and right to contract

In order to address the cost barriers to the take-up of broadband, the new universal service provisions focus on ensuring the affordability of available basic broadband access and voice communications services.

The proposed Article 79 on affordable universal service lays down an obligation for Member States to ensure affordable access to all end-users to functional internet access and voice communications services. The internet access service should be capable of supporting the services available and used by a majority of end-users in the EU, listed in Annex V of the proposal that includes, among others, e-mail, search engines and basic training and education online tools. This minimum list of services is a dynamic list that can be amended by a delegated act (Article 108 on adaptation of annexes). Taking
this minimum list on board, Member States will define the service to reflect the services used by the majority of end-users in their respective territories.

To complete the safety net, Article 80 provides that, where Member States find a lack of affordability, they may require undertakings to provide affordable tariff options and a "right to contract" for end-users with low income or special social needs. Member States may also provide support to these end-users. In addition, Article 80 requires that these end-users be provided with an adequate period of availability of a number and be protected against unwarranted disconnection of service. Furthermore, Article 83 includes provisions for control of expenditure focused on voice communications services.

2.2. Creating a level playing field for the funding of universal service obligations

The financing regime for universal service is revised, with the compensation for net costs of the universal service which represent an unfair burden to be done from public funds (Article 85). The possibility for a separate sectorial fund with funding from telecommunications operators is removed because potential affordability obligations will be extended to all providers (not just a designated provider), which will make it very complex to establish a sectorial funding mechanism. Moreover, the beneficiaries of widespread take-up of connectivity are much wider than the telecoms sector and it is difficult to justify that only one sector would finance it. Sectorial funds are complex to set up and manage and their removal also contributes to simplification and reduction of administrative burden.

The focus on affordable access to basic broadband (rather than on availability of services) is likely to generate limited costs. Market forces are likely to be sufficient in many cases. A recent study (Review of the scope of Universal Service, 2016) provides estimations of social tariffs for broadband in different Member States. In addition, the exclusion of legacy services at the EU level is likely to reduce the financial burden.

2.3. Connectivity for disabled end-users

Building on the current provisions, measures to meet the needs of disabled end-users for connectivity are strengthened in the proposed European Electronic Communications Code. Equivalent access and choice for disabled users is included in Article 103, beyond the universal service obligations, as a general requirement for all undertakings providing publicly available electronic communications services. The proposed Article 80 allows the use of retail pricing measures and direct support for end-users with special social needs. Additional measures for disabled end-users are provided in provisions on information requirements for contracts, quality of service, the missing children hotline number and emergency communications.

The current provisions of the Universal Service Directive merely encourage the availability of terminal equipment for disabled end-users. The Code adds a new obligation (Article 80.5) on the actual affordability of terminal equipment, specific equipment and specific services, thereby enhancing equivalent access for disabled end-users.

2.4. Taking into account convergence of fixed and mobile networks, location and device independence

Article 79 requires that affordable functional internet access and voice communications services be provided at least at a fixed location. This gives Member States a new possibility to extending universal service also for mobile services, not tied to a fixed location, but limited to affordability only.
2.5. Minimising market distortions

Market distortions should be minimised while ensuring the affordability of functional broadband access and voice communications services. For achieving affordability, in cases where market forces are not sufficient Member States have clearly defined possibilities: they can require undertakings to offer special tariff options to end-user groups identified as having low incomes or special social and/or can provide direct support for such end-users (Article 80). This is done in the light of national conditions, in relation to national prices and national end-user income and on the basis of monitoring carried out by national regulatory authorities. Market distortions are also to be minimised in connection with optional availability measures (Article 81).

2.6. Consistency with other policies

The proposal aims to achieve consistency with other available policy tools (including ESIF, EFSI, CEF) that can fund broadband deployment. The proposal also takes into account that the state aid rules provide a framework for Member States to make potential additional services publicly available and repeals the current declaratory article on additional mandatory services. In order to ensure coherent policies towards disabled end-users, the proposal refers to the 2015 proposal on the approximation of the laws, regulations and administrative provisions of the Member States as regards the accessibility requirements for products and services ("European Accessibility Act"). Whilst the Code imposes obligations on the providers of publicly available electronic communications service to ensure equivalent access and choice for disabled users (Art 103) and affordability of terminal equipment, specific equipment and specific services, the proposed European Accessibility Act complements these provisions by setting out requirements for the harmonisation of a number of accessibility features.

2.7. Flexibility of Member States

The new proposed universal service regime enhances the flexibility for Member States to take account of the varying national conditions. Article 82 allows Member States to continue mandating at national level the old services that currently fall within the EU universal service obligation, such as pay phones, directories and directory inquiry services, if the need is duly demonstrated. Member States would also have flexibility in defining the functional internet access service, to adequately reflect services used by the majority of end-users in their territory.

Finally, Member States have the flexibility to impose obligations to meet reasonable requests for availability of functional internet access and voice communications services in their territories as a last resort mechanism, provided they demonstrate that other options such as private investments or other public policy tools have not delivered (Article 81).