EUROPEAN COMMISSION
Information Society and Media Directorate-General

Electronic Communications Policy

# QUESTIONNAIRE

## FOR THE PUBLIC CONSULTATION ON UNIVERSAL SERVICE PRINCIPLES IN E-COMMUNICATIONS

***Consultation***
Publication date: 2 March 2010
Closing Date for Responses: 7 May 2010
***Public Workshop***
30 March 2010

*This document does not represent an official position of the European Commission, but is intended to stimulate debate on the part of stakeholders and the public. It does not prejudge the form or content of any future proposal by the European Commission.*

## 1. PURPOSE OF THIS DOCUMENT

This questionnaire is intended to stimulate an open-ended and wide-ranging public debate on the principles of universal service provision in electronic communications announced by the Commission in its Communication COM(2008) 572 in September 2008[1] and in its Declaration to the European Parliament in November 2009.

The Commission invites written comments on the questions raised in this document, to be submitted **by 7 May 2010**. The Commission will issue a Communication summarising the debate, and may, if necessary, bring forward legislative proposals to update the Universal Service Directive 2002/22/EC[2].

This document will also serve to facilitate the discussion at the public workshop which the Commission will hold in Brussels on 30 March 2010. Annex 1 provides information on the workshop and how to respond to the consultation, available online.

## 2. BACKGROUND

### 2.1. Current provision of universal service

Liberalisation of the telecommunications sector in the late 1990s was accompanied by universal service provision which was meant to act as a safety net where the market alone did not deliver basic services. The aim was to prevent social exclusion by ensuring that citizens had affordable access to services, thereby allowing a minority to catch up with the great majority who already enjoy those services essential for participation in society.

The Universal Service Directive (hereinafter, the Directive) defines universal service as a "*minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition*." To this end, Member States must ensure that all citizens in their territory, independently of geographical location, are provided, upon reasonable request, with a connection at a fixed location[3] to the publicly available telephone network that allows voice and data communications. The connection must also allow basic internet services, that is, provide data rates that are "*sufficient to permit functional internet access*", limited to a single narrowband connection.

### 2.2. Recent developments

When proposing amendments to the regulatory framework for electronic communications networks and services in November 2007 ('Telecom Reform'), the Commission took the view that any adjustment to the fundamental principles in the Directive should be contemplated as part of a separate exercise. This would ensure that the wide debate that any such adjustment

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[1] Communication on the second periodic review of the scope of universal service: http://ec.europa.eu/information_society/policy/ecomm/library/communications_reports/index_en.htm

[2] EP and Council Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0022:EN:NOT

[3] The term "fixed location" refers to the end-user's primary residence.

would be bound to engender would not impede the negotiation and adoption of the rest of the regulatory package as quickly as possible.

This notwithstanding, the co-legislator deemed it necessary, in the light of developments, to address one particular aspect of regulatory flexibility by amending the current recital in the Directive dealing with functional internet access. In particular, the new recital seeks to allow Member States to define nationally the minimum data rates of the connection "*which are sufficient to permit functional internet access […] taking due account of specific circumstances in national markets, for instance the prevailing bandwidth used by the majority of subscribers in that Member State, and technological feasibility, provided that these measures seek to minimize market distortion.*"[4]

However, this amendment sets out a new principle only in a recital of the Amending Directive without corresponding changes in the body of the legislative text, which gives rise to questions of interpretation and which might affect legal certainty.

## 3. MAIN ISSUES ARISING

### 3.1. Basic concept of universal service

The current concept of universal service was designed for the conventional telecommunications environment of 'circuit-switched' voice-based single service networks, where the main infrastructure provider was also the service provider.

Today, however, new internet-based multi-service networks enable separation of service provision from network operation, so that electronic communications services (e-communications) are no longer tied to a single physical infrastructure, which potentially represents a boost to competition and consumer choice. In particular, service providers who are not at the same time operating the network facilities can also offer content, applications and services, often in competition with the facilities operators themselves. Voice has become one of many applications provided on the networks.

At the same time, competitive markets in the EU have brought significant progress in service provision in terms of availability (through increased penetration of communications services), affordability (through lower prices, in overall terms, and in particular through mobile) and accessibility (improved through voluntary as well as regulatory schemes).

**Question 1**: In today's competitive environment, can the market be relied on to meet demand for basic e-communications services from all sections of society, thereby ensuring social inclusiveness?

**Question 2:** If not, what is the best policy to allow disabled consumers, those on low incomes and those living in geographically remote or isolated areas to access and use basic e-communications services?

[4] See Annex 2 for the complete text of Recital 5 of the Amending Directive regarding the Universal Service Directive. Note that there is also a number of other changes concerning the universal service provision brought about by the Telecom Reform, e.g. strengthening disabled users' rights. See further at: http://ec.europa.eu/information_society/policy/ecomm/tomorrow/reform/index_en.htm

### 3.2. Broadband

Broadband internet access has become an important medium for using a wide variety of applications and online services such as communicating, work and study, banking and purchasing, civic activities and leisure. It is therefore increasingly seen as an important component of consumer welfare and digital inclusion.

The EU's open access policies and regulatory framework have placed it amongst the world leaders in broadband development[5] and provided wide choice and lower prices to consumers.

Nevertheless, two major policy challenges arise. The first relates to the *coverage* of broadband networks: the new networks are deployed largely on a commercial basis, which generally follows the geographic and income-related distribution of computers in households and businesses. The cost per customer of supplying fixed broadband networks in rural and remote areas is therefore significantly higher than in more urbanised areas.

While fixed broadband networks covered on average almost 93% of Europeans at the end of 2008, this figure was close to 98% in urban areas but only 77% in rural areas. The gap between coverage in urban and rural areas is particularly significant in Cyprus, Bulgaria, Romania and Slovakia[6].

The second challenge concerns *connection speeds*: many online applications and services, such as e-business, e-health and e-learning, require certain minimum broadband speeds. However, while the vast majority of European broadband subscribers (over 80%) now have at least a 2 Mbp/s connection and can therefore benefit from the most common online services, there are again big differences between Member States as well as between urban and rural areas.

The Commission has called on Member States to draw up national broadband strategies and set national targets for broadband usage[7]. In the Competitiveness Council of March 2009, the Member States agreed to "*a common indicative goal being 100% coverage of broadband between 2010 and 2013*".

Several policy tools are available for this purpose, including action at EU, national, regional and local level - including public-private partnerships - and involve policy areas such as regulation, regional and rural development, State aids[8] and an intelligent use of the digital dividend. An overview is given in Annex 3.

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5 See for example *Next Generation Connectivity: A review of broadband Internet transitions and policy from around the world*, The Berkman Centre for Internet and Society at Harvard University, Draft October 2009: http://www.fcc.gov/stage/pdf/Berkman_Center_Broadband_Study_13Oct09.pdf

6 See *Broadband Coverage in Europe*, Final report, 2009 Survey, IDATE: http://ec.europa.eu/information_society/eeurope/i2010/docs/benchmarking/broadband_coverage_in_europe.pdf

7 See COM(2007) 807, available at: http://ec.europa.eu/growthandjobs/pdf/european-dimension-200712-annual-progress-report/200712-annual-report_en.pdf

8 While this consultation addresses only basic services that should be considered as part of the universal service provision in e-communications, it should be noted that the Commission in its State aid decision 331/2008 (*Réseau à très haut débit en Hauts-de-Seine*) has indicated that in certain circumstances broadband services can be regarded as services of general economic interest (SGEI), provided that certain conditions are met. See Annex 3 and footnote 11 for further information on State aid measures.

Moreover, technological advances provide new and cheaper means of reaching users in remote and less populated areas. In particular, compared to conventional fixed networks, wireless technologies allow more flexible and effective delivery of broadband in such areas, with new subscribers being connected to wireless networks at very low marginal cost.

The release of spectrum resulting from the switch-off of analogue TV services (the digital dividend) opens the significant prospect of widespread roll-out of mobile and other wireless broadband services, which can in particular benefit remote or inaccessible areas of the Union not covered by legacy copper networks, as well as some of the newer Member States where fixed penetration has been historically low[9]. In this context, coverage requirements in licences can constitute an instrument for ensuring geographical inclusion.

Although wireless technology still typically provides connection at lower speeds than wired broadband solutions (for example, 1.5 Mbp/s and upwards in the case of 3.5 generation mobile), fourth generation (4G) mobile networks to be deployed in the coming years will enable significantly higher data rates.

A further issue is that the regulatory environment in the EU has become more complex with enlargement in 2004 and 2007. The differences between 27 Member States regarding market developments, affordability and the digital divide are now much wider than in the 'EU15', for which the current universal service rules where designed. This is in particular true for fixed broadband penetration rates, which vary from around 12% in Bulgaria and Romania to over 37% in the Netherlands and Denmark, while the EU average is around 24%[10].

**Question 3**: Broadband for all is a widely-stated policy objective at national and European level. What role if any should universal service play in meeting this objective?

**Question 4**: What impacts could an extension of the role of universal service to advance broadband development have in relation to other EU and national policies and measures to achieve full broadband coverage in the EU? What other impacts would be likely to arise regarding competition, the single market, competitiveness, investment, innovation, employment and the environment?

**Question 5:** If universal service obligations should prove necessary to achieve the policy objective of broadband for all, at what level (EU or national) should such obligations be defined, taking into account the different levels of market development across the current Union of 27 Member States?

**Question 6:** If a common harmonised universal service needs to be defined at EU level, should a mechanism be put in place to balance the need for national flexibility and a coherent and coordinated approach in the EU?

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[9] The recent EU measures to free-up the 900 MHz spectrum band previously used for second generation mobile services will further increase the scope for the provision of broadband mobile services, see: http://ec.europa.eu/information_society/policy/ecomm/radio_spectrum/index_en.htm

[10] Broadband penetration per 100 population as of July 2009, see COCOM09-29 Final, available at: http://circa.europa.eu/Public/irc/infso/cocom1/library?l=/public_documents_2009/cocom09-29_july09pdf/_EN_1.0_&a=d

### 3.3. Financing of universal service

The Directive provides that, where the obligation to fulfil universal service obligations results in the imposition of an unfair burden on the undertaking concerned, Member States may resort to general taxation to make up the resulting shortfall, or put in place a mechanism ('universal service fund') under which contributions by market players in the e-communications sector must be made.

Universal service has not been considered so far as a mechanism whereby the roll-out of 'new' technologies and services is financed by increasing the costs for all existing users. Indeed, the current rules permit Member States to require additional services within the definition of universal service, provided their provision is not financed by the sector through a funding mechanism. Although only a small number of Member States have so far provided for universal service funding from the sector, it is clear that large sums would be necessary to ensure widespread affordable broadband rollout as part of the universal service.

As noted above, broadband internet enables consumers to access a wide range of services that extends beyond the telecom sector to various digital services, applications and content that are produced and provided both by public authorities and private businesses. It is necessary to examine whether the current financing model of universal service remains sustainable and equitable in the new convergent digital environment.

**Question 7:** Irrespective of the scope of universal service, are mechanisms whereby funding is provided by the sector appropriate in the context of a regulatory environment that seeks to eliminate distortions of competition and promote market entry?

**Question 8:** In the context of the roll-out of broadband in Europe, is it still appropriate to limit the financial arrangements of universal service to market players in the e-communications sector, while this provision would have wide-ranging benefits outside the sector, for instance, the delivery of information society services and digital content? Are other means of financing more appropriate?

### 3.4. Any other issues

Respondents are invited to raise any other issues they might want to address in this consultation.

**ANNEX 1**

**Public Workshop**

To facilitate an exchange of views, the Commission will also organise a public workshop on the subject of future universal service on 30 March 2010 in Brussels.

This workshop is especially directed towards stakeholders in the field of e-communications (policy-makers, regulators, market players and non-governmental organisations representing user and consumer interests etc.) but is open to anyone who may have an interest. Attendance is free of charge but registration is required. Further information on the workshop and registration can be found on the following web site:
http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/index_en.htm

**Responding to the consultation**

The Commission invites written views and comments on the issues raised in this document, to be submitted **by 7 May 2010**.

The Commission has a strong preference for receiving responses using the online form and questionnaire. See details, including the specific privacy statement, at:
http://ec.europa.eu/information_society/policy/ecomm/library/public_consult/index_en.htm

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**ANNEX 2**

**Telecom Reform 2009: New recital of the Universal Service Directive**

In the context of the review of the EU regulatory framework for e-communications, a recital was introduced in the Citizens' Rights Directive (Recital 5), which complements the current Recital 8 of the Universal Service Directive concerning the universal service requirement for a offering functional internet access that is "*limited to single narrowband connection*", as well as the reference to "*currently available voice band modems [that] typically offer 56 kbit/s*". The new recital reads as follows:

> "*Data connections to the public communications network at a fixed location should be capable of supporting data communications at rates sufficient for access to online services such as those provided via the public internet. The speed of internet access experienced by a given user may depend on a number of factors including the provider(s) of internet connectivity as well as the given application for which a connection is being used. The data rate that can be supported by a connection to the public communications network depends on the capabilities of the subscriber's terminal equipment as well as the connection. For this reason it is not appropriate to mandate a specific data or bit rate at Community level. Flexibility is required to allow Member States to take measures where necessary to ensure that a data connection is capable of supporting satisfactory data rates, which are sufficient to permit functional internet access, as defined by the Member States, taking due account of specific circumstances in national markets, for instance the prevailing bandwidth used by the majority of subscribers in that Member State, and technological feasibility, provided that these measures seek to minimize market distortion. Where such measures result in an unfair burden on designated undertaking, taking due account of the costs and revenues as well as the intangible benefits resulting from the provision of the services concerned, this may be included in any net cost calculation of universal obligations. Alternative funding of underlying network infrastructure, involving Community funding or national measure in accordance with Community law, may also be implemented."*

## ANNEX 3

### Summary of main EU policy tools to advance broadband coverage

In the EU, Member States may use public funding - such as loans, grants to public-private partnerships, fiscal incentives to subscribers - to support broadband in under-served areas.

In particular, the EU structural and rural development funds are available to bring broadband to sparsely-populated rural and remote areas, where the market is failing to invest in adequate infrastructure, as long as the schemes are well-justified and proportionate to remedy a well-defined market failure, as well as to meet cohesion objectives, and are in compliance with requirements for open access and technological neutrality and with competition, including State aid, rules. The current structural funds programmes of 2007-2013 are to invest almost € 2.3 billion in communications infrastructures, mainly broadband networks, as well as to provide support for demand side actions.

The Commission views favourably the use of public funds for broadband deployment in these circumstances, having already approved almost 60 broadband projects for compliance with State aid rules.[11] In order to help Member States to accelerate and extend broadband deployment, the Commission adopted the State Aid Guidelines in 2009, by outlining its policy and past practice on individual cases of public support for "traditional broadband" as well as addressing public financing of very high speed, next generation access networks.[12]

In the *State aid Action Plan — Less and better targeted State aid: a roadmap for State aid reform 2005-2009*[13], the Commission already noted that State aid measures can, under certain conditions, be effective tools for achieving objectives of common interest. State aid can correct market failures, thereby improving the efficient functioning of markets and enhancing competitiveness. Further, where markets provide efficient outcomes but these are deemed unsatisfactory from a cohesion policy point of view, State aid may be used to obtain a more desirable, equitable market outcome. In particular, a well targeted State intervention in the broadband field can contribute to reducing the 'digital divide' that sets apart areas or regions within a country where affordable and competitive broadband services are on offer and areas where such services are not.

The European Economic Recovery Plan (EERP) channelled an additional €1.02 billion to new challenges of the rural development policy as identified under the 'Health Check' of the Common Agriculture Policy (CAP) and to broadband in rural areas, the latter measures of which can vary from investment to increase network coverage, upgrading existing infrastructure, or at investing in passive infrastructure. A total of around €360 million of this funding was programmed for broadband-related projects[14].

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11 Situation as of 12.02.2010, see: http://ec.europa.eu/competition/sectors/telecommunications/broadband_decisions.pdf

12 See *Community Guidelines of 17 September 2009 for the application of State aid rules in relation to rapid deployment of broadband networks*, O.J. 30.09.2009 C235/7: http://ec.europa.eu/competition/state_aid/legislation/specific_rules.html

13 COM(2005) 107 final.

14 For further information, see e.g. *Survey : European Economic Recovery Plan in Regions & Cities : One year on*, January 2010, Final report: http://portal.cor.europa.eu/lisbon/news/Pages/EERPSurvey.aspx