



**COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS
CONSEIL DES COMMUNES ET REGIONS D'EUROPE**

**CEMR reply to the public
consultation on Universal service
principles in e-communications,
submitted on 8 April 2010.**

CEMR reply to the public consultation on [Universal service principles in e-communications](#), submitted on 8 April 2010.

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?

1. This question has two dimensions: on the one hand, the question of availability of broadband infrastructure as the very pre-condition for e-communication services. On the other hand, there is the issue of access to basic e-communications services other than infrastructure.
2. To start with the basic infrastructure services: Broadband is actually provided to a rapidly rising proportion of the population through market forces. However, this concerns only areas where market forces can count on profitable return on investments.
3. CEMR shares the concern of the Commission that there are geographic areas where broadband services will not be delivered by the market¹.
4. We welcome the recognition by the Commission of the market failure of broadband delivery in many rural, remote or sparsely populated areas.² As the Commission notes³, on average 30% of the EU-population in rural areas does not have broadband access (coverage).
5. We are afraid that this gap will widen even more with new broadband technology: NGA access will be concentrated even more in areas of dense population, where telecommunication operators may expect high investment return.
6. However, for rural areas, broadband is crucial for economic prosperity, as clearly recognised by the Commission⁴
7. Therefore, the market can not to be relied on to ensure the availability of broadband throughout Europe. National governments, in close cooperation with local and regional authorities, need to establish a set of criteria to identify areas where a financial support for broadband infrastructure is needed, cf. the common categorisation into white, grey and black areas.
8. The other question of availability of basic e-communication services other than infrastructure concerns less geographical "disadvantages" but rather "social exclusion" issues. Services might in principle be available over all (i.e. in a city with overall broadband coverage), but not be available for certain groups of persons:
 - a. Services not following "design for all" principles can exclude people with special needs from using such services.
 - b. Other services again might be "exclusive" in so far as they are unaffordable for those on low income.

¹ Commission's communication on the second periodic review of the scope of universal service in electronic communications [COM\(2008\) 572 final](#), p.9

² Commission communication "Investing today for tomorrow's Europe" ([COM\(2009\) 36 final](#)), p. 5

³ In the Communication on the second periodic review of the scope of universal service in electronic communications" [COM\(2008\) 572 final](#)

⁴ In its communication "Investing today for tomorrow's Europe" ([COM\(2009\) 36 final](#))

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?

1. To allow disabled citizens the access to basic e-communication services, the principle of “design for all” should be made obligatory wherever possible.
2. Requirements of scalability and robustness concerning the infrastructure to be met by the market players must also include the needs of vulnerable persons. If this is the case, enhanced competition among service providers can lead to new and innovative solutions for this group. The role of public authorities is to act as firm and decisive procurers, taking into account user demands such as the quality of a service and ensuring that the specific needs are reflected in the service contracts.
3. Low income households should be actively supported to be able to make use of e-communication services. This can include special public support for such groups to buy computers and to rent internet services.
4. The focus must be targeted towards scalable and robust infrastructure, available everywhere. However, before this is accomplished, public access points, for example in public libraries, are still needed to make eInclusion and eParticipation a reality.
5. On geographic coverage, see next question.

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?

1. Free competition in broadband does not bring equal access to services in all regions and territories. Broadband internet should be functional, ubiquitous and affordable. In case of market failure there might be a need for public intervention. CEMR supports therefore a recast of recital 8 of the Universal service directive⁵ and the inclusion of broadband into the scope of the Universal Service Obligation.
2. The universal service concept of the EU is an appropriate tool to advance broadband access; it ensures that every resident can access basic services of electronic communication. The inclusion of broadband in the Universal Service Obligation as a legal obligation to ensure a scalable and robust broadband infrastructure overall will have a positive impact on public authorities, on residents and businesses, on social and economic inclusion, and foster innovation and economic development.
3. With the growing deployment of NGA (Next Generation Access) networks, legacy broadband network access should be included in the scope of the Universal Service Directive⁶. This would help to ensure affordable infrastructure and services as well as a fair coverage of underserved areas, which are ignored by the market players.
4. CEMR believes that the inclusion of broadband into the USO as a legal obligation to ensure a scalable and robust broadband infrastructure overall, will have a positive impact on public authorities, on residents (enhanced access), on social and economic inclusion, on competition on a level playing field for service providers and on

⁵ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). OJ L 108/51 of 24.4.2002 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0051:0077:EN:PDF>

⁶ Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive). OJ L 108/51 of 24.4.2002 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:108:0051:0077:EN:PDF>

employment. Furthermore, it will foster innovation and competitiveness of “white” and “grey” areas that are still lacking broadband coverage and turn them into “black” areas.

5. The second criteria for inclusion of a service into the scope of the directive, namely that this would create a net benefit to all consumers in cases where the services are not provided by the market, is obviously fulfilled: In the case of broadband not only the users in an underserved area will benefit, but also the whole region, and in a broader view, the whole EU economy.

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?

1. In CEMR’s view, the universal service concept at EU level is an appropriate form to advance broadband development as long as it is accompanied by other EU policy instruments and integrated into other areas of Community and national policies. A couple of points to be taken into account to ensure the best possible result of an inclusion of broadband into the Directive are set out in the following:
2. The integration of ICT Policy into other policy areas such as territorial cohesion, regional development, social policies, the completion of the internal market, improvement of services and the EU 2020 Strategy is very important. ICT is one of the key-drivers for innovation and economic development and can have very positive effects on the environmental.
3. The application of the European internal market rules, specially the State Aid Rules, as explained in the guidelines⁷, together with the directive will make sure that distortions of competition are avoided.
4. Future regulation in this area should – besides the overarching objective of supporting the availability of broadband across the EU - aim at stimulating innovation and modernisation, as well as counteracting monopolisation and disregard of user demands.
5. Publicly funded broadband infrastructure should always be technology neutral and available on the principle of “open infrastructure / open net” in order to enhance competition. The functional separation between infrastructure and services is important for enhanced competition on the broadband market and should not be restricted only to networks owned by the incumbents but, in terms of general interest, to all networks used for public purposes.
6. The USO should provide greater transparency in relation to the activities of the national regulators charged with implementing the provisions of universal service in each Member State. CEMR would actively encourage the Commission to pursue periodic reviews (including peer-to-peer reviews) of the effectiveness of the regulators and their actions.

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?

⁷ Community Guidelines for the application of State aid rules in relation to rapid deployment of broadband networks ([2009/C 235/04](#))

1. Basic requirements concerning obligations should be defined at EU level, which should then be adapted to the specific situation at national level, and in cooperation with local and regional authorities.
2. The USO needs to be more flexible and take into account different levels of the technical and economic development across the EU, while at the same time ensuring equal access to services. Where Member States do not have the resources required to assure this, the EU should support them, for example by means of the structural funds.
3. National governments, in close cooperation with local and regional authorities, need to establish a set of criteria to identify areas where, and determine when, public funding of broadband infrastructure will be needed. This should be done at national level to take into account the great variation of situations across the Member States.
4. CEMR is not in favour to indicate a particular speed or range of speeds in the USO, as this would soon be outdated by the technological development. Moreover, it would contradict a flexible approach, necessary to adapt to different levels of economic development across the EU. The speed level should, however, be appropriate to satisfy citizens' demands today, which will no doubt evolve in the future.
5. However the USO should set basic requirements on scalability and robustness of the electronic communication infrastructures while giving national governments the possibility to determine higher service levels if local conditions, which greatly vary across the EU, make this possible. These basic requirements have to be updated regularly.

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?

1. See answer to question 5.

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?

1. It is preferable that the financial burden of basic services, whether defined as universal service obligations or not, is born by the market players. It's not appropriate that the sector privatises the profits while socialising the costs.
2. This is one of the reasons why broadband should be included in the scope of the USO. Once included, the Directive allows national governments to establish special funds for promoting broadband in underserved areas.
3. In any case it has to be assured that the costs are not imposed on local and regional authorities.
4. The current definition of the USO is not sufficiently flexible. A USO should lead to a more transparent and competitive market and assist in identifying areas of market failure. With more than just one market player, a competitive environment will be developed and eliminate the player's dominant position. CEMR proposes that in such a situation, all market players should be jointly held responsible for the fulfilment of the obligation.

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?

1. At this moment, it seems appropriate to limit these financial arrangements to market players in the e-communications sector. This might be reconsidered in the future as new developments in information society services arise. In the meantime, private providers of information society services and digital content might be encouraged to make voluntary agreements with the e-communications sector to the mutual benefit.
2. In any event are local and regional authorities among the most important providers of eServices and are already strongly supporting the roll-out of broadband in their cities and regions.