

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.9.2008
COM(2008) 572 final

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

**on the second periodic review of the scope of universal service in electronic
communications networks and services in accordance with Article 15 of Directive
2002/22/EC**

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

**on the second periodic review of the scope of universal service in electronic
communications networks and services in accordance with Article 15 of Directive
2002/22/EC**

1. PURPOSE OF THE COMMUNICATION

This Communication concerns the second periodic review of the scope of universal service as required by Article 15 of the Universal Service Directive¹ (the Directive). It also provides some broad reflections on the role of universal service in meeting wider challenges at European level — in particular ensuring access to broadband — in order to open a debate about possible future policy.

2. REVIEW OF THE SCOPE OF UNIVERSAL SERVICE

2.1. Introduction

In the EU, universal service in electronic communications (e-communications), as currently defined, means ensuring that all who so request are provided with those services essential for participation in society and already available to the great majority of citizens, either by the market or in the case of market failure by public intervention.

The Directive defines universal service as a minimum set of e-communications services available to all end-users upon reasonable request at an affordable price and specified quality, independently of geographical location within a Member State.

The Directive includes four specific elements in the scope of universal service²:

- access at a fixed location for making and receiving local, national and international telephone calls and fax communications, and data communications at data rates that are sufficient to permit functional internet access;
- availability of at least one comprehensive directory and directory enquiry service comprising all fixed and mobile subscribers who wish to be included;
- availability of public payphones; and
- specific measures ensuring access and affordability of publicly available telephone services to users with disabilities or special needs, and those on low incomes.

¹ EP and Council Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services.

² Chapter II.

The wording "access at fixed location" refers to the end-user's primary residence³ (where several members of a household can share the connection), and not to a requirement for operators to use fixed technology; i.e., there should be no constraints on the technical means - whether wired or wireless - by which the connection is provided. On the other hand, universal service does not cover personal mobility (access at any location).

The reference to data communications at data rates that are sufficient to permit functional internet access is elaborated³ as a requirement limited to a single narrowband network connection⁴, which should be capable of supporting data communications at rates⁵ sufficient for access to online services such as those provided via the public internet. This must allow satisfactory internet access, with Member States able to require the connection to be brought up to the level enjoyed by the majority of subscribers.

This flexible requirement for the functionality of internet access was in particular designed to allow the accession countries to exploit mobile/wireless technologies to deliver universal service to a higher proportion of the population³.

Member States are required to find the most efficient means of guaranteeing universal service obligations (USO), including giving all undertakings an opportunity to fulfil them. If the market fails to deliver these services obligations may be imposed on undertakings to provide them at specified conditions. So far, sixteen Member States have designated providers of universal service on the basis of the Directive, while Germany and Luxembourg have not done so, on the grounds that the universal service is already provided by the market⁶. The remaining nine countries ensure universal service on the basis of transitional arrangements.

A universal service fund may be established if the national regulatory authority concludes that a designated universal service provider is subject to an unfair burden. The related net costs can be financed either by using public funds under transparent conditions or by setting up a sector-specific fund, to which in principle all undertakings active in the market would have to contribute. At present, universal service funds have been activated in five Member States, but compensation is paid out only in France, Italy and Romania.

Member States are free to mandate additional services extending beyond the minimum set of services set by the Directive, but any further financing associated with them must be borne by them (for example through general taxation) and not by specific market players.

The Commission is required to review the scope of the universal service every three years in the light of technological, social and economic developments, taking into account in particular mobility and data rates in the light of prevailing technologies used by the majority of subscribers. The Directive⁷ establishes certain considerations to be weighed by the Commission in deciding whether a service should be included in the scope, namely:

³ Recital 8.

⁴ I.e. this does not extend to the use of ISDN technology providing two or more connections capable of being used simultaneously.

⁵ Recital 8 further explains that since the data rate also depends on the capabilities of the subscriber's terminal equipment, it is not appropriate to mandate a specific speed at Community level, notwithstanding which "an upper limit" of 56 kbits/s is mentioned.

⁶ See further on implementation of the Directive the 13th Implementation Report COM(2008) 153.

⁷ Article 15 and Annex V.

- a minority of consumers would be excluded from society by the lack of availability or non-use of specific services that are both available to and used by the majority, and
- inclusion of these services within the scope would convey a general net benefit to all consumers in cases where they are not provided to the public under normal commercial circumstances.

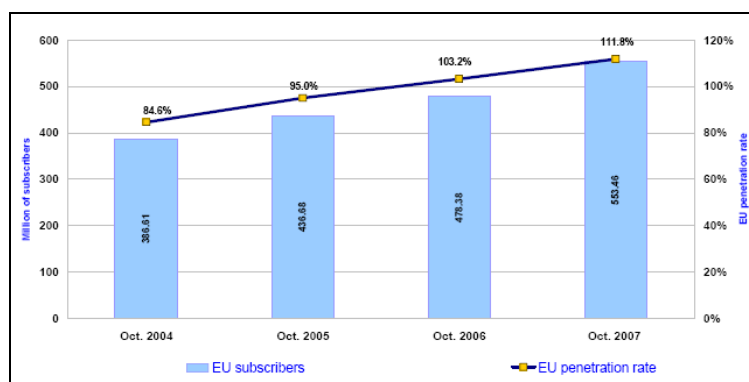
The first review of the scope of universal service in 2005-2006 concluded that there was no need to change the scope of the USO, in particular with regard to broadband and mobile services. As regards the latter, it was found that competitive and open markets had resulted in widespread affordable access for consumers. As for broadband, the overall proportion of the EU population using fixed broadband did not indicate use of the service by a majority of consumers, and broadband accordingly had not yet become necessary for normal participation in society such that lack of access implied social exclusion⁸.

2.2. Mobile communications

The first review found that, on the basis of national mobile licence conditions, (2G) mobile networks in the EU-25 covered at least 95% of the population. This also holds true for the current EU-27.

Mobile usage has been growing strongly during the last few years: while an average of 81% of the EU-25 population was using mobile services in early 2004, the penetration reached 112% of the EU-27 population in October 2007. As the chart below illustrates, over the three-year period from October 2004 to October 2007, mobile penetration per 100 inhabitants rose by over 27 percentage points.

Figure 1. Mobile subscriber penetration in the EU

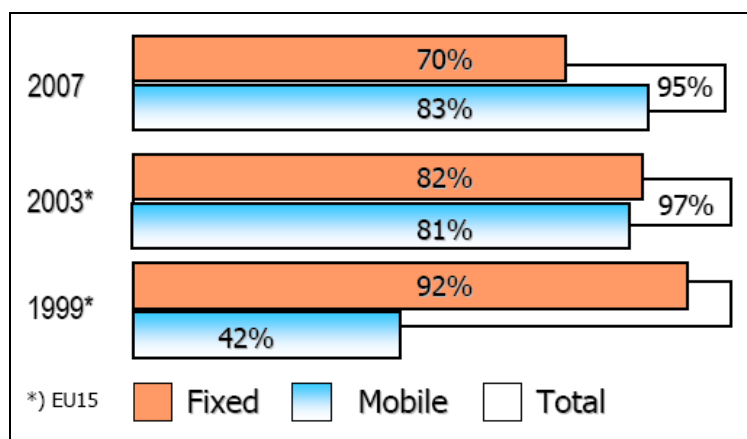


Source: Commission services

The overall mobile usage penetration level (per 100 inhabitants) translates into an average EU household penetration rate of 83% at the end of 2007, as shown in Figure 2. In the EU-15, 83% of households have a mobile phone, while the figure is 82% in the EU-10 (excluding Bulgaria and Romania) and 78% in the EU-12 (including Bulgaria and Romania).

⁸ COM(2005) 203 and COM(2006) 163.

Figure 2. Telephone access at home, % of EU households



Source: E-communications household surveys⁹

The chart also shows that due to the less developed fixed telecom infrastructure in several new Member States, overall household telephone access¹⁰ in the EU was 95% at the end of 2007, 2 percentage points lower following enlargement in 2004. In the EU-15, overall telephone access at the end of 2007 was at 97%, while the figure was 91% in the EU-10.

Users are increasingly switching from fixed to mobile phones, with around 24% of EU-27 households only using mobile. The proportion is significantly higher in the new Member States (39%) than in the EU-15 (20%), with the exception of Finland (61%) and Portugal (48%).

As discussed in the first review Communication, the nature of mobile technology provides the possibility to add a new subscriber to the mobile network at a marginal cost. Furthermore, mobile pre-paid packages allow low income consumers a basic connection to the network at low entry prices and greater ability to control expenditure than post-paid subscriptions. On average, nearly 60% of mobile subscribers used pre-paid mobile packages in 2007, against 40% post-paid customers. Although affordability must be seen in the light of specific national conditions¹¹, it can be noted that the European consumer can now, on average, buy a low usage basket of mobile services more cheaply (€13.69 monthly) than the cost of a monthly rental of a fixed line (€14.90)¹².

Conclusion: This latest analysis reaffirms the conclusion in the first review that the competitive provision of mobile communications in the EU has resulted in consumers already having widespread affordable access to mobile communications. The considerations for including mobile communications within the scope of universal service (as set out in Annex V of the Directive) are therefore not fulfilled.

⁹ See the latest, special Eurobarometer survey 274 conducted at the end of 2007, available at: http://ec.europa.eu/information_society/policy/ecommlibrary/ext_studies/index_en.htm

¹⁰ Households having at least one telephone access, fixed or mobile or both.

¹¹ Article 3(1) of the Directive. Affordability is further discussed in the 2005/2006 Communications and the associated documents SEC(2005) 660 and SEC(2006) 445.

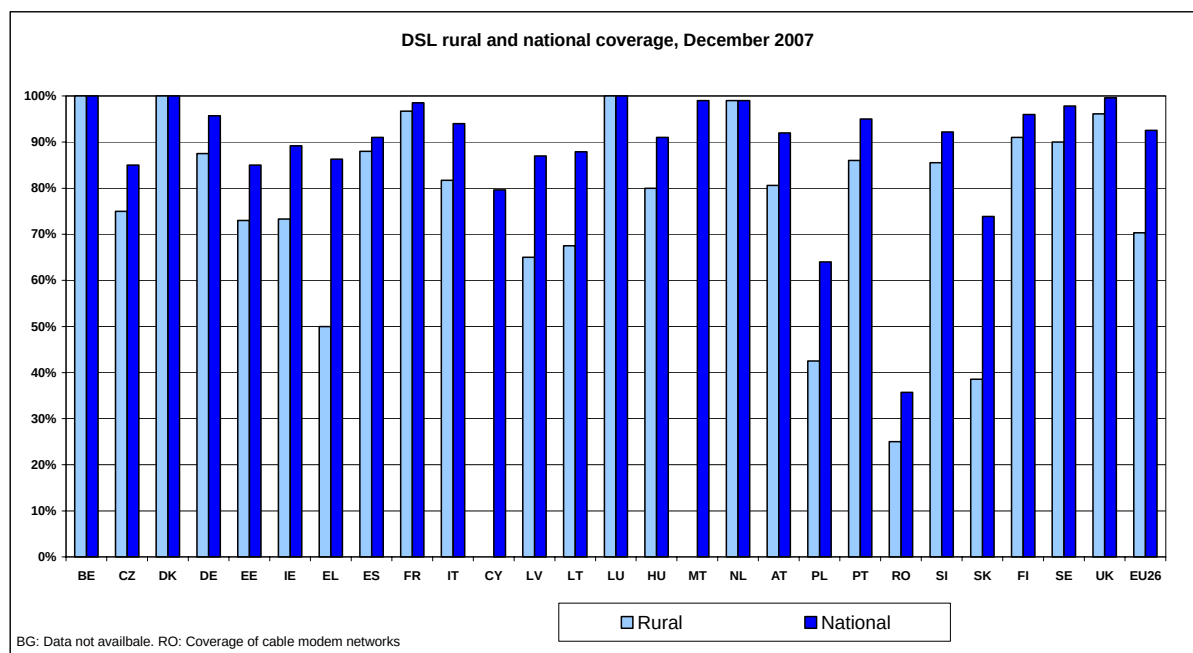
¹² The low usage basket refers to typical low usage consumption patterns of national mobile services: voice calls and SMSs. See COM(2008) 153.

2.3 Broadband

The first review found that in mid-2004, fixed broadband access networks covered around 85% of the EU-15 population, while the lower penetration of fixed lines in the new Member States indicated that broadband was available to a considerably smaller proportion of their population. In October 2005, broadband take-up was 11.5% of the EU population.

In late 2007, fixed DSL broadband networks were, on average, available to 93% of the EU-26 population, with a few countries lagging behind (Figure 3).

Figure 3. Fixed broadband network coverage in the EU as % of the population



Source: IDATE, December 2007

A major driver for broadband development is competition between parallel infrastructures (telecom and cable networks) combined with effective *ex ante* access regulation. This is reflected in the figures for broadband penetration, which show average fixed broadband usage penetration per 100 inhabitants in the EU of 20% in January 2008, while the rate varies significantly across Member States, from 7.6% in Bulgaria to 35.6% in Denmark.

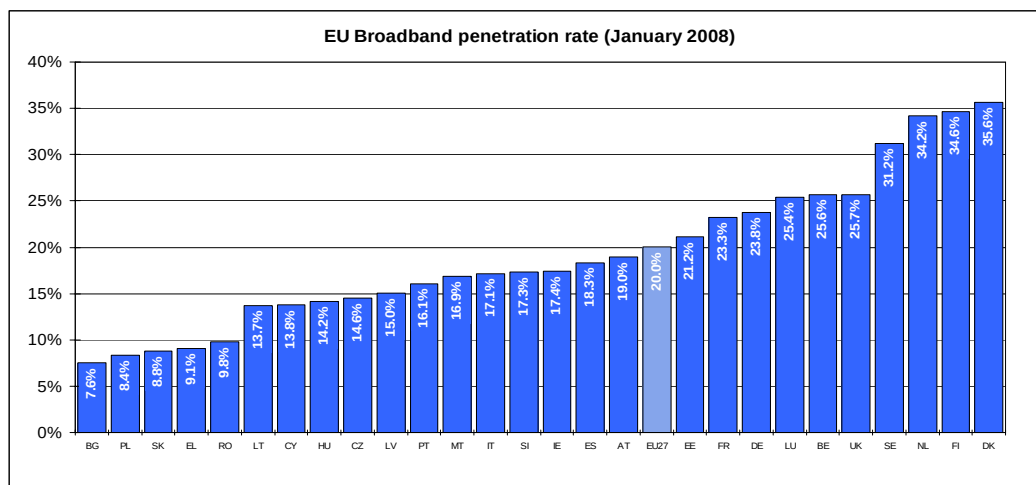
Other factors such as access to PCs and cultural and linguistic features also clearly play a considerable role in take-up of these services. As for personal computers, which are the most common user terminal for access to internet and broadband services, only 57% of EU-27 households have a PC (the figure was 53% in 2003 and 33% in 1999).

Mobile broadband may contribute positively to increasing broadband penetration figures, as it has developed significantly in a number of Member States and as wireless LAN technologies start to play a significant part in internet access¹³. The significant decline in access prices as regards both mobile and nomadic wireless technologies and rising performance and

¹³ Overall mobile broadband retail lines are at 15.5% in Slovakia, 15% in Ireland, 8.4% in Lithuania.

transmission speeds indicate that broadband usage will be rising faster than the figures for fixed broadband access indicate.

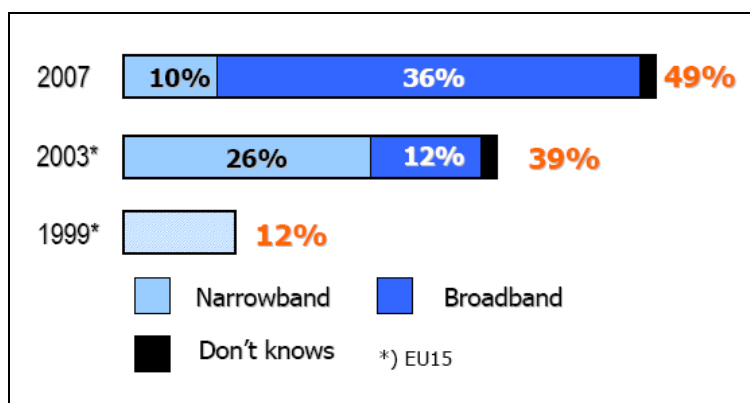
Figure 4. Broadband usage penetration per 100 inhabitants in the EU



Source: 13th Implementation report

In the period 2003 to 2007, broadband take-up by EU households tripled. According to the latest e-communications household survey, an average of 36% of EU households now have fixed broadband access¹⁴, while a total of 49% of households use the internet, either at narrowband or broadband speeds, as shown in the chart below. This indicates that although broadband adoption has not yet reached levels of coverage and take-up that would qualify it for consideration under the universal service framework, it is approaching these thresholds rather quickly, whilst the number of narrowband connections is progressively decreasing

Figure 5. Internet and broadband penetration at home, % of EU households



Source: E-communications household surveys

¹⁴ See footnote 9. Note that according to the Eurostat data, 42% of EU households now have broadband (see <http://epp.eurostat.ec.europa.eu>). The reason for the difference between the findings of the Eurostat and the e-communications household survey is that the former does not measure the use of the internet among the population over 75 years old, which corresponds to 12% of the total population.

Conclusion: Coverage of broadband networks is now very high in most Member States, being available, on average, to 90% of the EU population. Use of the internet is now approaching the level of a service used by the majority, with 49% of EU households using the internet, 36% of which are on broadband. Although broadband is not yet used by the majority of consumers (the first of two considerations identified in Annex V of the Directive¹⁵) and is therefore not encompassed by the USO as laid down and described by the present wording, take-up is approaching the threshold of use by a majority of consumers. Furthermore, it is reasonable to anticipate that, in a relatively short horizon of time, narrowband will no longer answer the requirement of being "sufficient to permit functional internet access" (as laid down in Article 4(2) of the Directive). Thus the situation does need to be kept under review.

3. UNIVERSAL SERVICE IN A CHANGING ENVIRONMENT

While, on the existing interpretation of the Directive, neither mobile nor broadband fall within its scope, it seems clear that the substitution of mobile for fixed voice telephony as well as the increased levels of take-up and importance of broadband in daily life raise questions about the universality of access to e-communications services for the future. It is therefore an appropriate time to begin a reflection on the concept of the universal service obligation as part of an overall approach to high-speed internet for all, which could also include Community, national and regional/municipal support, public-private partnerships and other mechanisms.

3.1. Concept and role of universal service in e-communications

Prior to liberalisation of the telecom sector, provision of service was State-led, with cross-subsidisation by monopoly undertakings ensuring the availability of basic services, in particular connection to the fixed network and local calls. Fixed telephony penetration was virtually universal, fulfilling a role in providing social cohesion comparable to that played by local post offices and public libraries.

In the wake of liberalisation, universal service regulation was introduced to safeguard the concept of reasonable access at an affordable price — in the light of national conditions — irrespective of income levels and geographic location.

Since liberalisation and the introduction of competition, as shown convincingly in a series of Communications¹⁶ on the implementation of the regulatory framework for e-communications, consumers have benefited from lower prices and a wider choice of services, while there has been relatively little overall recourse to universal service funding. The role of universal service has been to act as a final safety-net so as to enable a minority of consumers to catch up with the majority who were already enjoying basic services.

Competition has also promoted increasingly affordable access to all sorts of innovative services such as mobile and broadband. For example, the fixed broadband market is

¹⁵ The second consideration set out in Annex V refers to the general conditions of market failure which would justify public intervention i.e. where *"the availability and use of specific services conveying a general net benefit to all consumers such that public intervention is warranted where the specific services are not provided to the public under normal commercial circumstances"*.

¹⁶ See the latest, 13th Implementation Report, COM(2008) 153.

characterised by intensifying competition and continued investment leading to fast take-up (an average of 52 000 new lines per day in 2007, equivalent to a 20% growth rate, to achieve nearly 100 million fixed broadband access lines in the EU on 1 January 2008).

However, even with such high growth rates, it has to be recognised that there will be geographic areas where it is unlikely that the market will provide the service on a reasonable timescale. As the take-up of broadband internet access spreads and as more and more social and economic transactions shift to on-line delivery, there will come a time when “info-exclusion” becomes a significant issue.

It is in recognition of this problem that bridging the digital divide has been embedded as a policy priority in the i2010 initiative¹⁷. Access to broadband communications is not just needed for competitiveness and economic growth but is becoming a prime objective of consumer welfare and digital inclusion.

Furthermore, the Commission’s 2006 Communication “*Bridging the Broadband Gap*”¹⁸ gave a strong impulse to achieving broadband by mobilising both EU-level policies such as spectrum policy, cohesion funding and State aid rules as well as regional and local initiatives based on public-private partnerships.

In the context of reporting on the Renewed Lisbon Strategy, the Commission called on Member States to draw up national broadband strategies and set national targets for high-speed internet usage¹⁹. These national broadband strategies and the i2010 initiative have, so far, provided an overall framework to widen Member State action in bringing the Information Society to the widest possible range of citizens. As broadband becomes an essential tool of everyday life, we are confronted with the question of how to implement a true “broadband for all” policy and what the role of universal service policies might be in meeting this challenge.

3.2. Reflections for the future

The widening debate concerning the basic services that, over time, should be available to enable citizens to participate in society increasingly encompasses the question of whether and how universal service could play a role in meeting these objectives within the general framework of promoting open and competitive e-communications markets.

Contributions to the consultations for the general telecoms regulatory review²⁰ have raised a number of questions concerning the appropriate place of the universal service mechanism, as part of a systematic and realisable “broadband for all” policy.

Broadband enhances active participation in society: e-health, e-learning, e-government and e-business services are increasingly being used by citizens. This has resulted in more active economic and social participation in society, providing better possibilities to find employment, do business and study, irrespective of location.

¹⁷ COM(2005) 229.

¹⁸ COM(2006) 129.

¹⁹ See COM(2007) 803.

²⁰ The contributions to the public consultation on Communication COM(2005) 203 and those received in the context of the reform of the EU regulatory framework in 2006/07 acknowledged the need for a more fundamental reflection on universal service.

The main question is therefore whether universal service at EU level is an appropriate tool to advance broadband development and, if so, when and how it should be invoked, or whether other EU policy instruments - and, in such case, which ones - would be more efficient. This question goes beyond the issue of the scope of the universal service.

The Commission considers it of the greatest importance that, within the EU, key services such as e-communications are widely available to citizens and businesses, independently of their geographical location, and at an affordable price and specified quality. The Commission would therefore like to launch a broad public debate around the following questions:

1. To what extent can today's competitive e-communications markets be considered sufficient to provide universal access, taking into account:
 - that the trend towards a substitution of fixed telephony by mobile voice communications, which have very wide coverage and high affordability, could indicate that a USO limited to access at a fixed location is becoming less relevant; and
 - that broadband is being delivered to a rapidly rising proportion of the population through market forces, indicating that broadband, including mobile broadband, might well follow the same track as mobile telephony in becoming near-universal through market forces over the medium term?
2. Current trends suggest that satisfactory access to the internet is seen progressively as meaning, for increasing numbers of subscribers, access beyond a narrowband connection. Under these circumstances, the question arises as to whether the interpretation of the existing USO (in particular, Recital 8 in conjunction with Article 4(2) of the Directive) needs to be reconsidered, in particular, concerning the meaning given to data communications at data rates sufficient to permit functional internet access? It would also need to be considered whether a more dynamic and technologically neutral interpretation of this wording should require an amendment to the existing legislation.
3. If broadband is seen increasingly as a universal service, would it be more appropriate to formally amend the scope of the USO to include a reference to broadband as such? Is the concept of functional internet access still a valid one?
4. Is the current definition of the USO sufficiently flexible or, conversely, too prescriptive, taking into account different levels of market development across the EU-27?

These questions need to be seen against the background of the following more detailed questions, including about the role and implementation of the USO in an overall “broadband for all” policy.

- (a) How might an extended USO fit into an overall policy to ensure that “broadband for all” becomes a reality, including a regulatory framework stimulating the competitive provision of widely available services, the application of structural funds, regional open access fibre network schemes and demand stimulation measures such as subsidies for purchase of subscriber equipment, training or awareness raising? What are the advantages and disadvantages of using the universal service mechanism as

opposed to other policy instruments for implementing a “broadband for all” policy? What would be the likely impact on stakeholders, social and territorial inclusion, employment, competition, investment, innovation and competitiveness?

- (b) How would the possible extension of the scope of the USO to broadband, a more dynamic interpretation of functional internet access or a move to a less uniform concept of USO be accommodated alongside the need to ensure a coherent approach within the internal market, avoiding distortions of competition?
- (c) Is it appropriate to indicate a particular speed or range of speeds that would be taken to represent “broadband” or an updated notion of functional internet access? To ensure quality of service and for today’s active participation in society, should such a speed be set at between 1 and 2 Mb/s?
- (d) Common European criteria and implementing arrangements to minimise distortions of competition, such as:
 - What level of “majority” take-up would be needed before a USO can be invoked?
 - What should be the mechanism for defining, in appropriate circumstances, which groups of consumers or geographic zones would be considered for coverage by a USO?
 - What would be the appropriate approach to ensure access to and usability of e-communications for vulnerable persons (such as disabled and older users) that would be comparable to the levels enjoyed by the majority of users?
 - Is there still a need to keep the provisions of directories and public pay telephones within the USO? As for the latter, is there a need to extend USO to "other e-communications access points" (for example WiFi hotspots)?
 - How should undertakings that are subject to universal service obligations be selected and what should be the scope of obligations?
 - What should be the institutional structure for implementing universal service actions, including the role of regulators?
 - What would be the likely costs of universal service obligations and who should pay for them? What should be the size and limits of funding and compensation schemes, the relationship between funding sources such as general taxation and universal service funds, and how would the consistency with State aid rules be ensured?

3.3. Conclusions

This Communication sets out some reflections for the future role of universal service in the provision of e-communications services. It raises the question whether the concept and scope of universal service at EU level should be changed and if so, whether universal service is an appropriate tool to advance broadband development, or whether this should be left to other EU policy instruments or to national measures. It provides the basis for a discussion on the range of relevant issues in order to open a substantial European debate that would allow all stakeholders to express their views and discuss alternative approaches, in the course of 2009.

On the basis of this debate, the Commission will issue a Communication in the second half of 2009, summarising the debate. It could follow this up in 2010 with concrete proposals if they are needed to update the Universal Service Directive.

The Commission invites the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions to use this Communication as a basis for further discussion.