

## EXTRACTS FROM QUESTIONNAIRE

### FOR THE PUBLIC CONSULTATION ON THE EVALUATION OF THE REGULATORY FRAMEWORK FOR ELECTRONIC COMMUNICATIONS AND ON ITS REVIEW

## 3.2 General questions on the current regulatory framework

### 3.2.1 Evaluation of the overall functioning of the current regulatory framework

This section of the public consultation includes some general questions on the overall evaluation of the functioning of the current regulatory framework for electronic communications in relation to the key evaluation criteria established in the Commission's [Better Regulation Guidelines](#) (i.e. effectiveness, efficiency, coherence, relevance and EU added value).

**Question 8:** As regards the **relevance** of the regulatory framework, to what extent is a regulatory framework for electronic communications at EU level still necessary for EU citizens and businesses in the following areas:

a) Market analysis and access regulation

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

b) Universal service and end-users' protection

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

c) Management of scarce resources (such as numbering, spectrum access)

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

d) Authorisation

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

e) Network and service security

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

f) Other areas

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your responses.

Audiovisual media service providers are dependent on electronic communication services and networks for the delivery of their content. As explained below, the EU electronic communications framework contains *ex ante* regulatory tools that are vital to safeguard the ability of audiovisual media service providers to reach their audience and to fulfil their remits.

Public service media (PSM) have played, and continue to play, a vital role in providing pluralistic, high quality content catering to the specific needs of European viewers. In 2014, domestic and EU content made up 84.3% of EBU PSM Members' total TV programming hours, and news and current affairs represented 25.6% of their total TV programming hours (Source: EBU-MIS, based on Members' data).

Programmes provided by PSM organisations are trusted and valued by audiences. In 2014, EBU PSM Members were reaching 341 million EU viewers every week, over two-thirds of the total EU population. Importantly, PSM embrace new technologies and are a main driver of innovation. They are present on a variety of platforms, and their programmes can be accessed live and on-demand. Today, 94% of EBU Members livestream their TV channels on the Internet.

With the rise of new technologies, cumulated media time is increasing. Data shows that the growth of Internet use does not occur at the expense of television viewing. In 2014, Europeans viewed on average 3:57 hours of TV per day, representing a 20-minute increase compared to 2008 (Source: Eurodata TV Worldwide). This shows that although trends vary across European markets, the average TV viewing time is fairly stable. In fact, all platforms combined, “watching” remains the main media activity: in the UK it accounted for 39% of all time spent on different media activities in 2014 (Source: Ofcom), while in the Netherlands 35% of media time was spent watching content (Source: Media:Tijd TBO). Data also shows that when considering time spent on different devices, the TV set remains by far the most prominent for viewing activities. In 2014, UK viewers spent 4:02 hours a day in front of a TV set on average, significantly more than viewing time spent on laptops (0:37), PCs (0:50), tablets (0:26) or smartphones (0:15) (Source: Ofcom). In the UK “traditional TV” (live and recorded) accounts for 85% of the total viewing time among adults aged 16 and older. In this age group, on-demand consumption is driven by free content, with free VoD representing 64% of content watched (Source: Ofcom). Catch-up services are frequently used via smart TVs: in the UK, 73% of smart TV users watch TV on a catch-up service through an app, and 44% watch other free TV or video online (Source: Ofcom).

In the converging digital media environment, the audiovisual value chain is also changing. Powerful platform providers and new digital intermediaries are emerging. These often control other levels of the value chain (upstream as well as downstream) and are active on a global scale. Their impact on, and relevance for, European audiences seem to grow steadily. This ongoing concentration and increasing vertical integration also includes telecom markets.

Given the different commercial incentives of such platforms, it may become increasingly challenging for media service providers to reach all audiences under these conditions. This is particularly important for PSM, since to fulfil their remit they have to be easily accessible for *all* citizens (principle of universality).

In this context, the relevance of the EU telecoms regulatory framework is not diminishing, but rather the contrary. The role of the telecoms regulatory framework is to ensure that there is no distortion or restriction of competition in the electronic communications sector, including for the transmission of content, and to promote the interests of citizens regarding access to content and information, also covering consumer equipment used for digital television (Art. 8(2)(b) and (4) Framework Directive). However, for the telecoms framework to remain effective and to be future proof, the market developments mentioned above need to be taken into account in the review process.

**Question 11:** To what extent is the regulatory framework for electronic communications coherent with other EU policies, in particular:

a) Competition policy and state aid

☒ significantly   ☐ moderately   ☐ little   ☐ not at all   ☐ do not know

b) Data protection and privacy

☐ significantly   ☒ moderately   ☐ little   ☐ not at all   ☐ do not know

c) Audiovisual policy

☐ significantly   ☒ moderately   ☐ little   ☐ not at all   ☐ do not know

d) Rules applicable to online service providers under the e-Commerce Directive

☐ significantly   ☐ moderately   ☒ little   ☐ not at all   ☐ do not know

e) Other EU policies

☐ significantly   ☐ moderately   ☐ little   ☐ not at all   ☐ do not know

Please explain your responses and indicate if you have identified specific areas for improvement.

a) Competition policy and State aid: The *ex ante* regulatory regime in the telecoms package is a vital tool for national regulators to promote competition in concentrated communications markets, in particular in order to ensure the fair and non-discriminatory access to network infrastructure. It should apply in market situations where the *ex post* competition rules do not provide adequate protection for third parties, and therefore acting as a complementary regime in the effective enforcement of competition policy.

c) Audiovisual policy: There are a number of very useful provisions in the telecoms framework which recognise the links between telecom and audiovisual regulations and which have helped avoid conflicts between them, in particular Art. 1(2) and (3) Framework Directive (FD), Art. 6(4) Access Directive (AD) and Art. 31 Universal Service Directive (USD). In view of the importance of audiovisual content in delivering the digital single market, it is of great value to have consistent and complementary regulatory frameworks for the audiovisual and telecoms sectors. The above-mentioned provisions should therefore be maintained as a priority, alongside Recitals 5 and 6 FD. There is, however, room for improvement, as there are few provisions which currently create synergies and promote positive support by telecom policies to audiovisual policy objectives, and these are mostly formulated in a rather non-binding way. The ongoing parallel review of both frameworks is therefore an opportunity to further align the policies, for example as regards end-users' *access to public value content and the findability thereof* (see answers to Questions 24, 31, 39, 129, 132, and 142-143).

### 3.2.2 Review of the objectives of the regulatory framework

The 2002 regulatory framework laid down as objectives the promotion of competition, development of the internal market and promotion of the interests of EU citizens. The 2009 reform included the promotion of efficient investment and innovation in new and enhanced infrastructures as a regulatory principle to be applied by the National Regulatory Authorities (NRAs) while pursuing the aforementioned policy objectives.

Access by all citizens and businesses to high-quality networks is a prerequisite for them to reap the full benefits of digital society. As set out in Commission's Communication on the Digital

Single Market strategy, individuals and businesses should be able to seamlessly access and exercise online activities under conditions of fair competition. This goal cannot be achieved without ensuring access to connectivity based on ubiquitous, high-speed and high-capacity fixed and mobile broadband infrastructure. The telecoms review therefore offers an opportunity to recognize achieving access to such high-performance connectivity, on terms which would enable widespread take-up by end-users, as the main substantive policy priority sought by the Commission and as one of the main objectives of the regulatory framework.

**Question 14:** As regards the policy objectives included in Article 8 of the Framework Directive and taking into account the need to reflect adequately and completely the main European policy priorities in the electronic communications field, and more generally in the digital sector:

a) Should any policy objective be withdrawn or amended?

☐ yes ☒ no ☐ do not know

b) Should any additional policy objective be included?

☒ yes ☐ no ☐ do not know

Please explain your responses.

In view of the dependence of audiovisual media services (AVMS) on access to reliable and quality electronic communications networks and services, the coherence between the EU telecoms package and the Audiovisual Media Services Directive (AVMSD) should be improved. Therefore, we suggest to strengthen Art. 8(1) sub-para. 2 FD by making it mandatory ('shall') and/or by introducing, in Art. 8(2) FD, the *complementary* policy objective of supporting cultural diversity, media pluralism and other audiovisual media policy objectives in line with the AVMSD.

### 3.3 Network access regulation

The current framework for electronic communications has delivered more competition, better prices and choice for consumers, and spurred operators to invest. However, it is often criticised for not having sufficiently promoted the transition towards high-capacity Next Generation Access (NGA) networks fit to meet future needs, and the huge investments required, especially in rural areas. Progress towards more integrated telecoms markets is slow and the provision of connectivity to business and consumers remains highly fragmented and divergent across the Union today. It is also important not to lose the benefit of the positive pro-competitive effects of the liberalisation achieved over the past years.

The Digital Agenda for Europe targets of universal access to connectivity at 30 Mbps by 2020 indicated the ambition to ensure territorial cohesion in Europe. The penetration target of 100 Mbps (50% of subscriptions in Europe by 2020) sought to anticipate future competitiveness needs, in line with the likely global developments.

The vision of ubiquitous, high-speed, high-capacity networks as a necessary component for global competitiveness lies at the heart of the Digital Single Market strategy. While the 30 Mbps target for 2020 is likely to be largely reached on the basis of current trends, the uncertainty of adoption dynamics remains a key constraint to investment in very high-speed fixed connectivity. The EUR 90 billion investment gap identified in order to meet the 100

Mbps take-up target for 2020 will not be entirely filled from EU and national public sources, which was also never intended. Moreover, in late 2015, it is already necessary to look further than 2020, and to seek to identify and anticipate the needs of Europeans in 2025 and beyond. The incentives for investors to do more must therefore be examined afresh, along with alternative regulatory regimes which have been applied in certain areas. The review offers this possibility.

### 3.3.1 Evaluation of the current network access regulation

The first set of questions aims at providing input for the evaluation of the functioning of the current regulatory framework.

**Question 19:** To what extent has the access regulatory regime overall contributed to deliver the three objectives set in Article 8 of the Framework Directive:

a) Competition in the provision of electronic communications networks, electronic communications services and associated facilities and services?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

b) The development of the internal market?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

c) The interests of the citizens of the European Union?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

The regulatory framework has to some extent been effective in promoting competition during the liberalisation of the EU telecommunications sector. Nevertheless, in many Member States the EU DTT, cable, IP, mobile and satellite network markets remain relatively concentrated, with many operators holding monopoly or tight oligopolistic market positions at the national or regional level. In fact, in recent years there has been rather a tendency towards (re-) consolidation, particularly in the cable and mobile markets.

The audiovisual media sector relies on access to electronic communications networks in order to be able to distribute its content to the consumer. The predominant means of audiovisual media services distribution in the EU remain DTT, cable, IP and satellite (29%, 26% and 32% respectively for primary penetration according to IHS, 2014). Given in particular their different coverage (e.g. cable coverage may be limited due to its physical reach and satellite reception may be subject “blackspots” due to landscape and building restrictions on the placement of satellite dishes) and cost to consumers (e.g. consumers must purchase set-top boxes and dishes to receive the satellite signal), these networks are not considered by audiovisual media service providers to be necessarily substitutable for each other.

A dominant network provider (at a national or regional level) is therefore in a strong position to seek to extract unreasonable access terms from an audiovisual media services provider. Moreover, many of the larger networks (e.g. Liberty Global and Sky) now offer their own audiovisual media content that competes directly with the content of third parties who require access to their networks. Indeed, some network operators are now fully integrated throughout the entire audiovisual media chain, buying media rights, owning content production houses and

channels offering content direct to the consumer.

In the Netherlands, for example, following the merger of Liberty Global and Ziggo, there is now a duopoly “gatekeeper” network structure of Ziggo (cable) and KPN (IPTV). Together, Ziggo and KPN hold about 85% of all TV subscriptions, giving them substantial bargaining power towards broadcasters and other online content providers. Ziggo has its own content production house (e.g., All3Media producing Dutch language content) and carries a number of its own channels directly to the Dutch consumer. Both Ziggo and KPN engage in the bundling of TV and broadband services in multiplay tiers, thereby entrenching their market power upstream and downstream. Indeed, Ziggo (the larger operator) does not offer a standalone Internet subscription to consumers.

The EBU understands that the telecommunications sector has a natural tendency towards concentration due to the high barriers to entry (e.g. very high sunk costs), economies of scale (e.g. network externalities) and fast-moving technological development (in particular, convergence). Such dynamics however make effective and proportionate *ex ante* regulation very important. Effective competition at the wholesale network infrastructure level may *indirectly* promote competition downstream. It is crucial however that the telecoms framework also maintains (and, as necessary, updates) the tools that empower NRAs to ensure the access of audiovisual media service providers to networks *directly* (i.e., the general SMP framework and Article 5 Access Directive, see Question 24). Article 31 Universal Services Directive is also vital to safeguard the access of end-users to audiovisual media content promoting general interest objectives, in particular media pluralism and diversity, see Question 143).

**Question 20:** Within the current model of access regulation, to what extent have the rules to determine whether a market should be regulated, based on the definition and analysis of relevant markets, on the three criteria test used to identify markets susceptible to ex ante regulation under the Recommendation on relevant markets, and on the identification of Significant Market Power (SMP) operators, been effective in:

a) Promoting competition?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

b) Maximising incentives for different types of operators to innovate and invest efficiently, in respect of both networks and services?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

c) Delivering the desired level of availability of electronic communications networks and services, as well as quality of connectivity, throughout the Union?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

d) Promoting to the extent possible take-up of high-quality services by end-users?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

e) Ensuring efficiency, bearing in mind in particular the impact of compliance costs on providers of electronic communications networks and services?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

Please explain your responses.

As explained in Question 19, many EU electronic communications markets continue to be relatively concentrated, with a marked tendency towards further concentration and also vertical integration. The existing framework does not appear to be preventing this development (although the position varies market to market).

While Member States are not precluded from acting to address access SMP bottlenecks in other markets, their regulatory focus tends to be largely guided by the list contained in the Commission's Recommendation on relevant markets susceptible to *ex ante* regulation (*Commission Recommendation 2014/710/EU of 9 October 2014 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services*). The EBU notes that the market for broadcasting transmission services to deliver broadcast content to end users (formerly Market 18) was dropped from the Recommendation in 2007, which may not reflect the situation in all Member States.

Given the more recent trend towards a consolidation of these markets in a number of Member States (particularly cable), the situation needs to be kept under close review. More important from the EBU's perspective, however, is to maintain and encourage the use of effective regulatory tools downstream to safeguard the audiovisual media services sector's access to key networks, including vertically integrated networks, as well as the end-users' access to public interest content. This includes the NRAs' general right to find and regulate SMP markets not included in the Recommendation, as well as the powers set out in Article 5 Access Directive and Article 31 Universal Services Directive (see Questions 24 and 143 respectively).

**Question 21:** To what extent has the definition of the type of networks and services to which SMP regulation can be applied, been effective in :

a) Promoting competition?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

b) Maximising incentives for different types of operators to innovate and invest efficiently, in respect of both networks and services?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

c) Delivering the desired level of availability of electronic communications networks and services, as well as quality of connectivity, throughout the Union?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

d) Promoting to the extent possible take-up of high-quality services by end-users?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

e) Ensuring efficiency, bearing in mind in particular the impact of compliance costs on providers of electronic communications networks and services?



☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

Please explain your responses.

The EBU notes that former Market 18 (the market for broadcasting transmission services to deliver broadcast content to end users) has been dropped from the list of relevant markets susceptible to *ex ante* regulation (Commission Recommendation 2014/710/EU of 9 October 2014), which may not reflect the situation in all Member States, see Question 20.

**Question 22:** To what extent have the provisions of Directive 2009/19/EC (Access Directive) concerning the principles that guide the imposition of remedies on SMP operators, as well as the description of the types of remedies that can be imposed, been effective in:

a) Promoting competition?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

b) Maximising incentives for different types of operators to innovate and invest efficiently, in respect of both networks and services?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

c) Delivering the desired level of availability of electronic communications networks and services, as well as quality of connectivity throughout the Union?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

d) Promoting to the extent possible take-up of high-quality services by end-users?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

e) Ensuring efficiency, bearing in mind in particular the impact of compliance costs on providers of electronic communications networks and services?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

Please explain your responses.

[See Questions 19 and 20 above.](#)

**Question 23:** To what extent is the current scope of the symmetric obligations (i.e. imposed irrespective of SMP) of co-location and sharing of network elements and associated facilities for providers of electronic communications networks as established in Article 12 of the Framework Directive effective?

☐ significantly ☒ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.



Article 12 Framework Directive (together with Art. 12(1)(f) Access Directive) is an important safeguard to ensure access for third party network service providers. Its scope may be expressly extended so that NRAs may provide for the right to place caches in electronic communications networks in order for content providers to be able to reach their audiences with sufficient quality and reliability of service, only in the event that this was no longer possible to arrange by agreement on reasonable terms. This could be particularly relevant for PSM's, which has an obligation to provide universal reach to all citizens (see Question 8).

### 3.3.2 Review of the network access regulation

#### a) Addressing bottlenecks in access networks with an appropriate regulatory regime

The telecoms review offers an opportunity to assess *ex ante* wholesale access regulation, in light of market and technological developments including in particular the transition to new and enhanced infrastructures such as NGA networks, fixed-wireless convergence and the migration to an all-IP environment. The objective would be in particular to ensure that regulation addresses the remaining "bottlenecks" or obstacles that impede effective competition and choice for consumers, lowers barriers to investment and facilitates cross-border services, while insisting on the sufficiency of *ex post* competition law in markets where competition has sufficiently developed. This includes taking stock of the level of competition, including infrastructure competition, which has developed in the market since liberalisation, and identifying any areas where enduring – often local - bottlenecks require particular attention in view of both a potentially persistent risk of abuse of dominant market positions and the European ambition to have a universally connected society. In this regard, the telecoms review offers an opportunity to consider whether access regulation is focused on the necessary inputs to allow alternative operators to deploy NGA networks in the future and compete effectively in the market, and whether they, as well as historic incumbent operators, have effective incentives to do so according to realistic timeframes.

**Question 24:** Should access and interconnection to electronic communications networks and services continue to be regulated *ex-ante*?

☒ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

As explained above (Question 19), in many Member States the markets for the provision of electronic communications networks for audiovisual media services (DTT, cable and satellite) have a tendency towards monopoly/oligopoly (and, more recently, vertical integration). Therefore, there remains a clear need at the EU level for *ex ante* regulation to promote a competitive infrastructure/network environment, and to allow competing third party network providers to offer their services to the audiovisual media sector.

However, it is even more important for the audiovisual media sector to have *direct* regulatory safeguards to ensure fair and non-discriminatory access to networks.

*Article 5(1) AD: Access and interconnection, e.g. APIs and EPGs*

Article 5(1) Access Directive, in conjunction with Article 8(2)(b) Framework Directive, ensures that NRAs can regulate networks and associated services/facilities that do not have SMP with regard to access, interconnection and interoperability (see Case C-192/08 *Telia Sonera* [2009] ECR I-10717 par. 58). This general power is particularly important since it enables NRAs to ensure access for audiovisual media service providers with respect to key infrastructure. Article 5 Access Directive also expressly includes a number of non-exhaustive examples where NRAs might act. This includes Article 5(1)(b) Access Directive, which mentions the power of NRAs to provide access to application programme interfaces (API) and electronic programme guides (EPG) (Annex I Part II). This remains an important safeguard (and the services included in Annex I Part II must be updated as necessary to ensure all relevant user interface services are covered for the digital media environment).

#### ***Article 6 AD: CAS services and EPG organisation***

Article 6 Access Directive is also important for audiovisual media service providers to be able to obtain fair and non-discriminatory wholesale access to conditional access systems. Further, Article 6(4) expressly refers to Member States' general power to regulate the organisation of electronic programme guides and similar listing navigation facilities (e.g., to ensure the findability of public value content).

#### ***Article 5(4) AD: Dispute resolution powers to ensure access of AVMS providers***

Further, Article 5(4) AD also concerns access and interconnection. NRAs may intervene at their own initiative in order to secure the objectives of Art. 8 FD, including the objective in Art. 8(2)(b) FD, i.e. to ensure "*there is no distortion of competition in the electronic communications sector, including the transmission of content.*" NRAs may therefore exercise their dispute resolution powers deriving from Art. 20 FD in order to resolve access disputes between AVMS providers and network operators (in *BT v. O2* [2014] UKSC 42 par. 12 on mobile call termination rates, the Supreme Court recognised that the NRA may intervene in the case of a provider without SMP where interconnection terms are negotiated or operated in a way that is inconsistent with end-to-end connectivity or the Framework Directive's Article 8 objectives, including regarding pricing. The reference to EPG and API in Article 5 is not exhaustive).

#### ***Article 31 USD: Must-carry rules***

The must-carry rules set out in the Universal Services Directive (Article 31) provide protection for end-users in accordance with general interest objectives - in particular the promotion of media pluralism and diversity. The imposition and implementation of a must-carry rule is at the discretion of the Member State. Member States have variously applied it to cable, satellite, IPTV and/or DTT. Given this variance in application, it should be clarified at the EU level that "must carry" is capable of application to all distribution networks and the related interfaces on a technology neutral basis. In addition the current drafting of Article 31 does not refer to all types of audiovisual services of particular value for society that audiences expect today (e.g. non-linear on-demand and interactive services), and therefore needs to be modernised. It would then be up to the regulator to assess which services should have must carry status according to the tests set out in the legislation. The EBU makes proposals for the revision of the must-carry rules in line with the digital media age at Question 143.

For the avoidance of doubt, *ex post* general competition law (e.g. Articles 101 and 102 TFEU) alone is not sufficient to ensure effective and timely access to networks. As explained above, access problems may arise even in the absence of a dominant network position. More

fundamentally, *ex post* remedies can only be imposed in individual cases and only following a lengthy and costly procedure after the exclusionary conduct has occurred (with interim measures being hard to obtain). If content providers lose visibility, they can quickly lose their relevance in the market place.

**Question 25:** Will the current access regime model, including the analysis of relevant markets and the identification of Significant Market Power (SMP) operators as well as the three criteria test used to identify markets susceptible for *ex ante* regulation, continue to be the appropriate operational tool in determining the threshold for *ex ante* regulatory intervention beyond 2020, in all types of geographic areas and economic conditions?

☒ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

The electronic communications markets are developing at an extremely fast pace, and it is difficult to predict what regulatory tools will be required to ensure competitive networks in the future. However, given the dynamic towards increased concentration in the network markets, effective regulatory tools will become even more important, particularly downstream to ensure fair and non-discriminatory access for audiovisual media service providers (in particular where the networks are vertically integrated).

The current tools for identifying markets susceptible for *ex ante* regulation on the basis of SMP will continue to be relevant and appropriate. As noted above (Question 20), although Member States have the general discretion to apply SMP regulation whenever appropriate, it is important for the European Commission to continue to keep its Recommendation on relevant product and service markets within the electronic communications sector that are susceptible to *ex ante* regulation (2014) under close review. It may be necessary to consider the inclusion of other relevant markets in the future to address SMP bottlenecks at the retail level, for example the access of the audiovisual media services sector to concentrated (SMP) networks.

**Question 26:** Do you consider that the current *ex ante* regulatory approach gives regulatory authorities adequate tools to map and reflect in their analysis the local variations in infrastructure availability, investment and competition within many Member States?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☒ do not know

Please explain your response.

The review will have to consider whether the parts of the networks that are regulated under the current rules are the appropriate and sufficient point of intervention to address the market failures that limit the growth of the Digital Single Market, or whether - in certain cases - it would (also) be necessary or more proportionate to address retail market failures at the level of services and/or content, which are increasingly important to consumer choice and to the

competitive dynamics at the retail level, and are in many circumstances controlled by undertakings that are not network owners.

**Question 27:** Should the regulatory framework indicate more clearly that the absence of effective retail competition is the justification for regulatory intervention?

☐ strongly agree      ☒ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response. In case of a positive reply, please indicate what should be the mechanism for determining such intervention.

As noted above, many European network markets show a marked tendency towards oligopoly, and the risks that such conditions pose for the retail markets are exacerbated by the vertical integration of network operators, which are increasingly active throughout the entire broadcasting value chain, from the buying of broadcasting rights to the delivery of retail audiovisual media services to the consumer.

The application of the existing telecoms framework by NRAs currently focuses on ensuring network competition at the wholesale level, i.e. the provision of network services. This does not guarantee that markets will be competitive downstream for a number of reasons. In particular, the market for the provision of network services involves very high barriers to entry (incorporating substantial sunk costs and network externalities), and in many markets those barriers are simply too high to attract new entrants.

For these reasons, the existing power of NRAs to intervene downstream at the retail level is very important in some markets.

Article 5 Access Directive, in conjunction with Article 8(2)(b) Framework Directive, provides NRAs with a power to intervene to ensure access to key networks and associated services/facilities (irrespective of SMP).

In addition, the (non-exhaustive) list set out in the Recommendation on relevant product and service markets within the electronic communications sector that are susceptible to *ex ante* regulation (2014) should be kept under constant review (see Questions 20 and 25).

Moreover, electronic communications networks are currently undergoing significant technological changes due to the transition to new and enhanced infrastructures such as NGA networks, fixed/mobile convergence, and future developments such as network virtualisation and the shift to an all-IP environment. These trends need to be taken into account in the effort to make access regulation simpler. It is opportune to verify whether the number of wholesale access products to SMP networks should be reduced, in order to reduce administrative burden while addressing the most important types of demand expressed by access seekers, and adapting to technological change.

**Question 31:** Should NRAs have the powers to address access bottlenecks in relation to other inputs, whether or not these relate to electronic communications services and networks, if such inputs are considered to be decisive for the development of the retail market (i.e. such as for example access to content)?

☐ strongly agree      ☒ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response.

While citizens can now access content in a multitude of new and convenient ways (including on-demand and portable modes), creating a huge potential for an ever more diverse and pluralistic offer, large (multinational) economic players controlling major networks will become gatekeepers between content providers and the public. Given that many such gatekeepers are also vertically integrated, there is considerable risk that they will try in the future to restrict or distort access to media content. Sustaining wide, easy and non-discriminatory access for citizens to a plurality of media, not least PSM, should be a major concern driving any future EU policy responding to the challenges of convergence. PSM content drives take-up of broadband to deliver the Digital Single Market goals.

Inputs that may be relevant for audiovisual media services (aside from traditional technical networks) may include elements of software (e.g. applications, APIs) hardware (e.g. connected TV sets and other connected devices) and navigation systems (e.g. EPGs). The risks to fair retail competition are particularly acute where the gatekeeper input offers competing retail services.

The existing telecoms framework should expressly apply to all inputs that are considered to be decisive for the development of the audiovisual media services retail market. Rather than amending the definition of “electronic communications services” to cover such entities (which could blur the scope of the telecoms framework), the specific provisions (SMP framework, Article 5(1) Access Directive and Article 31 Universal Services Directive) should be extended to cover services which are a functional substitute without (directly) involving the conveyance of signals (see Question 109).

Finally, to the extent that there are perceived to be any distortions of competition in the market with respect to third parties’ access to audiovisual content, PSM is already under the obligation to provide universal access to its service to consumers. While this speaks for the general availability of PSM content, the EBU would have strong reservations about any general “must offer” obligation for content given that PSM content might then be used in contexts or ways that are in conflict with the public service role (e.g. political propaganda, advertising overlays etc.), irrespective of any contractual and copyright concerns.

PSM themselves must retain control over the terms on which their content is offered by the relevant distributor, according to the criteria adopted by the Member State at its discretion (technical, economic, commercial, respect for fundamental rights etc.). PSM may also refuse the use of their content in the event of a failure to comply with any criteria to which the offer of content is made subject.

**Question 39:** Should in your view the NRAs be empowered to impose obligations set out in Articles 9 to 13 of the Access Directive on operators irrespective of whether they hold SMP, in circumstances other than those listed in Article 5 of the Access Directive?

☐ strongly agree    ☒ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response. If your answer is yes, please specify these circumstances.

As explained (Question 24), Article 5(1) Access Directive remains an important safeguard provision for the audiovisual media services sector. It already empowers NRAs to encourage and ensure “adequate access and interconnection, and the interoperability of services”. The

EBU considers that these criteria are sufficiently broad to cover all relevant circumstances.

Another specific area of concern for audiovisual media service providers, in the face of the increasing vertical integration of user interface operators, is to ensure the findability of their content on the EPG and equivalent user interfaces (see Questions 142 and 143). Media freedom and pluralism are European values that are too important for democracy to be left entirely to the market. Member States' discretion at the national level to impose effective obligations in this respect is expressly referred to in Article 6(4) Access Directive, which must be retained and turned into a general principle applying across the scope of the telecoms directives.

## **b) The impact of network technologies developments: facing new challenges**

Appropriate interoperability of electronic communications services throughout the EU is critical to ensure freedom of choice for end users and achieve the Digital Single Market. Standardisation is likely to become a prominent issue in the move towards software defined networks (SDN) and network functionality virtualisation (NFV), whose implementation relies on the definition of open network interfaces. In ultra-high definition television (UHDTV) interoperability issues may emerge if industry agreement is not reached on standards across the whole value chain, from film production to the end user's screen. Account needs to be taken of the trend over the last 15 years towards the multiplication of global industry-led fora and consortia involved in the development of common technical specifications for ICT and their implementation, e.g. through certification schemes. This has resulted in a situation which, if not addressed, could lead to an increased fragmentation of Europe, as one can observe at the moment in the area of wholesale access products. The Commission has encouraged the use of a standard for mobile TV from 2008 and (from 2006), for access to unbundled local loops, interconnection, caller location, quality of service for voice telephony and for digital radio. The Commission competence to make the implementation of certain standards and/or specifications mandatory has not been used so far, but the existence of such a competence could in principle help to foster voluntary industry consensus on the use of standards.

**Question 52:** Will the current voluntary and market-driven approach in standardisation remain valid and efficient enough to cope with the future needs of stakeholders in 2020 and beyond, while taking into account the community interest, including of EU citizens?

☐ strongly agree      ☒ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

Voluntary and market driven standardisation process has enabled significant economies of scale in particular in the domain of broadcast, media, and consumer equipment. It is also the cornerstone of the migration from analogue to digital television and radio services. Experience has shown that the commercial success of open voluntary standards is due to an inclusive standardisation process involving all members of the value chain, with appropriate incentives.

However, there are examples of vendor-specific solutions becoming popular in some markets at the expense of interoperability, e.g. SmartTV where operators are unable to target all TV sets in a market due to having to author applications for multiple platforms.

This inefficiency could be greatly reduced by appropriately addressing the interoperability issues.



Implementation of common broadcast standards across the EU is essential for achieving the objectives of the Digital Single Market. Mandating certain standards may help to avoid fragmentation in cases where the market alone was unable to solve the interoperability issues.

There is a specific need for fostering the digitalisation of radio by promoting standard-based solutions. Regulation is needed, whereby all consumer equipment in the EU intended for the reception of radio signals and placed on the market as of a certain date should be capable of receiving T-DAB+ in addition to FM services.

It is important to ensure equitable access to platforms for content providers, and the active promotion of open standards, is, we feel, the best approach to safeguard this going forward.

This is particularly relevant for the ongoing developments of 5G which should provide new opportunities for public service media to reach their audiences.

**Question 53:** Will regulatory safeguards as provided under the regulatory framework for electronic communications (in particular the competences to encourage and ultimately to mandate the use of standards) still be needed in the future to preserve service interoperability across the EU and improve the freedom of choice of end users in addition to the general purpose EU legislative mechanisms on ICT standardisation in place?

☒ X strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

The “strongly agree” in the answer relates to the aspiration, rather than the current regulatory safeguards. The broadcast community has strongly supported the development and deployment of open and interoperable standards as a way of bringing new services and technologies to the consumer. The media consumption picture is changing however, with a growing tendency towards single vendor, walled-garden solutions, as is the case with SmartTV and with some tablet/smartphone vendors.

HbbTV is a good example of a European standardisation effort in the area of SmartTV. This must be offset against vendor-specific solutions entering the market place from organisations such as Google, Apple and Amazon that promote an App-based SmartTV consumer experience. These developments risk undermining the success of open standards. Further, the sometimes restrictive terms and conditions for providing applications to App Stores suggest that their operators could exploit their gatekeeper role to the detriment of other actors in the market place. For example, these conditions sometimes restrict economic activities inside the Apps without a sizeable proportion of revenues being paid to the said gatekeepers.

Achieving better end-to-end quality of service would allow for more innovation on the application layer (e.g. more widespread use of cloud computing, eHealth, telepresence etc.), with potentially very significant economic and social benefits. Greater consistency in the design of access and interconnection products may facilitate this process. Furthermore, the issue of service interoperability with assured quality level between different networks will also have to be considered if pan-European services with specific quality requirements are to be provided on Europe's still fragmented networks, in particular services with real-time needs.



**Question 54:** Is there a need for common access and interconnection products that can operate across the EU with a view to foster the emergence of high-quality connectivity services, including at pan-European level?

☒ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

With a global market for end-consumer devices, such common access and interconnection products have become essential. In addition, there is a high demand for new services like HDTV and even UHD TV requiring ever greater reliable capacity in interconnections.

**Question 55:** How can service interoperability with end-to-end assured quality level between networks be best guaranteed for the development of services with specific needs in the Digital Single Market? Please explain.

Interoperability across networks is seen as an essential element to ensure appropriate levels of quality as large amounts of data are delivered across networks as part of the provision of a service. Adhering to international commonly-agreed open standards and a high degree of transparency is a pre-requisite for improving the quality of the service delivered across those networks.

### 3.4 Spectrum management and wireless connectivity

While technical harmonisation of the use of radio spectrum for EU-wide allocations has progressed significantly based on the 2002 Radio Spectrum Decision (RSD), the designation of (additional) spectrum to a (new) application or technology in the EU still requires several steps (first in the European Conference of Postal and Telecommunications Administrations (CEPT), then in the Radio Spectrum Committee) before the Commission can ensure legal certainty in the EU. This iterative process may be particularly burdensome, in terms of costs and delays in "time to market", for innovative new uses, but can also weigh on the ability of existing spectrum users such as wireless broadband providers to expand capacity to meet burgeoning market demand. See also section 3.7.3 below.

In addition, even where globally standardised technologies with universally accepted benefits for users and business (e.g. LTE) do have access to harmonised spectrum, the terms under which the individual authorisations to use spectrum are granted remain widely fragmented, in particular in terms of timing, licence durations and assignment conditions. This may be due not only to objective differences in national circumstances but also to diverging objectives or approaches.

This situation may impede investment, innovation and rapid availability of spectrum for network deployment, broadband capacity needs or new and innovative uses, and prevent the establishment of economically advantageous wireless connectivity at EU scale for new digital services and applications - such as the Internet of Things, connected vehicles or other connectivity-enabled products. Moreover, in particular the exponential demand for spectrum

for wireless broadband may require the facilitation of a rapid deployment of denser networks and a more flexible and efficient access and use of spectrum.

In addition, the growing spectrum needs for wireless connectivity are constrained by lack of vacant spectrum and by the high price associated with re-allocating spectrum to new uses, in terms of cost, delays and the occasional need to switch off incumbent users. To satisfy growing demand, greater efficiency and innovation in spectrum use are crucial. Mechanisms such as sharing, trading or leasing therefore deserves more attention, including understanding why they have been used only to a limited extent so far and how to enable an increasing number of users to share simultaneous rights of access to a specific frequency band in a pro-competitive manner (for more details, see [COM\(2012\)478final](#) on promoting the shared use of radio spectrum resources in the internal market).

### 3.4.1. Evaluation of the current rules on spectrum management

The first set of questions aim at providing input for the evaluation of the functioning of the current regulatory framework.

**Question 64:** The regulatory principles and policy objectives applicable to spectrum allocation, assignment and use in the EU are based on the regulatory framework for electronic communications (ECRF), the Radio Spectrum Decision 676/2002/EC (RSD) and the 2012 Radio Spectrum Policy Programme (RSPP). To what extent has the fact that electronic communications and other spectrum users are addressed in different legislative instruments (ECRF, RSPP) impeded their effective interpretation and/or implementation?

☐ significantly ☐ moderately ☐ little ☒ not at all ☐ do not know

Please explain your response.

The EBU believes that the current legislative instruments in the area of EU spectrum policy have proven their value and as such have not impeded the implementation of EU spectrum policy actions (such as the 2012 RSPP). The different ways in which, and speed with which, actions are implemented are due to the specificities and particular dynamics of the various markets in the EU (see role/weight of different spectrum uses in different markets).

In 2012 the EU adopted its first Radio Spectrum Policy Programme (RSPP) aiming at developing a strategic planning and harmonisation of the use of spectrum to ensure the functioning of the internal market in the EU in all policy areas involving the use of spectrum, also beyond electronic communications. See [Commission's report](#) of 22 April 2014 with regard to its application for more details.

**Question 65:** Do you see the need for better coordination of EU spectrum policies beyond ECS to maximise the benefits of spectrum use throughout the economy?

☐ strongly agree ☐ agree ☒ disagree ☐ strongly disagree ☐ do not know

Please explain your response.

Any action for better coordination at the EU level must safeguard Member States' competence and leeway to link the granting of individual rights of spectrum use with commitments to the provision of particular content services. This is an essential tool for Member States in pursuing their cultural and media objectives. Any EU radio spectrum policy activities in the EU should thus be without prejudice to measures taken at the EU or national level in pursuit of general interest objectives (such as freedom of expression, media pluralism, cultural and linguistic diversity and social inclusion), and in particular with regard to content regulation and audiovisual and media policies (as already recognised in Recital 25 of Directive 2009/140/EC).

With regard to the particular discussion on whether or not to designate additional UHF spectrum for mobile use, it is clear that the economic benefits for the EU are maximised if the 470–694 MHz band (bands below 700 MHz) continues to be used for DTT for at least the next 15 years – there is clearly no economic case for switching-off existing DTT networks across Europe on the grounds of spectral efficiency. A recent international study conducted by Aetha Consulting concludes that, even in the most aggressive mobile traffic forecast, the costs of clearing DTT from the spectrum (EUR 38.5bn) significantly outweigh the potential value of using the spectrum for mobile (EUR 10.3bn) by a factor of almost four. When a less aggressive traffic forecast is used, the costs of clearing DTT are unchanged but the value of using the spectrum for mobile would be close to zero. The recent decision at WRC-15 that UHF spectrum below 700 MHz will remain exclusively allocated to terrestrial TV services in ITU "Region 1" supports this case and will provide regulatory certainty, and act as an incentive for further investment in DTT.

Any coordinated approach of EU spectrum policies also needs to provide the regulatory certainty and stability that are required for industries to invest. This is particularly important for the broadcasting industry which invests in maintaining a thriving DTT platform while at the same time facing important costs for facilitating the release of the 800 MHz band and the future release of the 700 MHz band for wireless broadband services.

**Question 66:** Which of the following policy areas require a more active common approach to EU spectrum policy to benefit from economies of scale?

- |                             |   |                                |  |  |
|-----------------------------|---|--------------------------------|--|--|
| a) Transport                | <input type="checkbox"/> strongly agree | <input type="checkbox"/> agree | <input type="checkbox"/> disagree            | <input type="checkbox"/> strongly disagree |
| b) Audiovisual              | <input type="checkbox"/> strongly agree | <input type="checkbox"/> agree | <input checked="" type="checkbox"/> disagree | <input type="checkbox"/> strongly disagree |
| c) Energy                   | <input type="checkbox"/> strongly agree | <input type="checkbox"/> agree | <input type="checkbox"/> disagree            | <input type="checkbox"/> strongly disagree |
| d) R&D                      | <input type="checkbox"/> strongly agree | <input type="checkbox"/> agree | <input type="checkbox"/> disagree            | <input type="checkbox"/> strongly disagree |
| e) Satellite                | <input type="checkbox"/> strongly agree | <input type="checkbox"/> agree | <input type="checkbox"/> disagree            | <input type="checkbox"/> strongly disagree |
| f) Internet of Things / M2M | <input type="checkbox"/> strongly agree | <input type="checkbox"/> agree | <input type="checkbox"/> disagree            | <input type="checkbox"/> strongly disagree |
| g) Other (specify)          | <input type="checkbox"/> strongly agree | <input type="checkbox"/> agree | <input type="checkbox"/> disagree            | <input type="checkbox"/> strongly disagree |

Please explain your responses.

A more active coordinated approach at the EU level in the audiovisual area is not needed to benefit from economies of scale. However, within the framework of an EU initiative on the designation of the 700 MHz band (currently used for broadcasting purposes) for mobile use, an EU common approach should facilitate the transition in such a way that the disruption of

digital terrestrial television services and impact on the public is minimised. In this respect, the EBU refers to the findings of the Lamy report: *"Noting the recent assignments in the 800 MHz band, the 700 MHz band is not immediately needed for mobile services. This is an opportunity for a planned transition path (detailed in annex 2 [of the report]) that would benefit from a coordinated approach at European level..."* The EBU calls for the development and the inclusion of a comprehensive and robust transition path (as detailed and agreed by the Lamy High Level group) alongside guarantees and legal certainty for access to UHF spectrum below the 700 MHz band for broadcasting purposes for the foreseeable future (i.e. at least for the coming 15 years) as part of any EU proposed policy action to designate the 700 MHz band for mobile use. This would be consistent with the recent decision at WRC-15 that UHF spectrum below 700 MHz will remain exclusively allocated to terrestrial TV services in ITU "Region 1".

It is also important to note that spectrum allocated to broadcasting has been harmonised worldwide which allows digital radio and television standards to be implemented in different countries around the world. This has resulted in important economies of scale for the broadcast industry which directly benefit Europe's creative and cultural sector. Such harmonisation must be preserved by providing legal certainty at the EU level as to the continued availability of UHF spectrum below 700 MHz band for terrestrial broadcasting (as mentioned above). For Programme Making and Special Events (PMSE) equipment (e.g. wireless microphones, wireless cameras) it is also essential to have harmonised tuning ranges and long term certainty of access to spectrum.

**Question 67:** Do you consider that the currently applicable regime for coordinating spectrum policy approaches in the EU has contributed to ensuring harmonised conditions with regard to the availability and efficient use of spectrum necessary for the establishment and functioning of the internal market in electronic communications?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 68:** Do you consider that the currently applicable regime for granting spectrum usage rights based on general or individual authorisations and setting out spectrum assignment conditions has been effective in:

a) Providing market operators with sufficient transparency and regulatory predictability?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

b) Ensuring an appropriate balance in terms of administrative burden?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

c) Promoting competition in the provision of electronic communications networks and services?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

d) Contributing to the development of the internal market?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

e) Promoting the interests of the citizens of the EU?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

f) Ensuring an effective and efficient use of spectrum?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your responses.

**Question 69:** To what extent have selection processes for limiting the number of rights of use been coherently applied by authorities in charge in the Member States and only where strictly needed?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 70:** What type of spectrum assignment process has proven most effective for assigning spectrum for wireless broadband, having regard to the objectives listed in question 68?

☒ Licence exemption/general authorisation ('Wi-Fi bands') ☐ Comparative administrative licensing ('beauty contests') ☐ Auctions ☐ Hybrid models ☐ Other

Please explain your response.

The growing demand for wireless broadband data is increasingly met through offloading methods such as Wi-Fi. According to the Commission Study on *"Impact of traffic offloading and related technological trends on the demand for wireless broadband spectrum"* (SMART 2012/0015, p. 2-3) the volume of traffic that is already being offloaded, mainly to Wi-Fi in the home, already exceeds that of the mobile network, and can be expected to grow even faster. 71% of all wireless data traffic delivered in 2012 to smartphones and tablets in the EU was delivered using Wi-Fi, and could possibly reach 78% by 2016.

It is reasonable to assume that Wi-Fi will remain consumers' technology of choice for wireless broadband services wherever possible, especially as it is substantially less expensive than mobile broadband provided over cellular networks.

**Question 71:** To what extent does the lack of coordination across Member States regarding the current methods to select spectrum right holders create obstacles to or difficulties for the development of electronic communications?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 72:** To what extent does the lack of coordination across Member States regarding the current system for setting out spectrum assignment conditions create obstacles or difficulties for the development of electronic communications?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

### 3.4.2. Review of spectrum management rules

The Commission seeks the views of all stakeholders as to the need for greater predictability and consistency in the way radio spectrum use is governed in Europe and whether this could require a revision of the regulatory framework for electronic communications, in particular the Framework and Authorisation Directives, which set fundamental principles and certain operational requirements for spectrum allocation and assignment, as well as the current institutional arrangements for spectrum strategy in the Digital Single Market.

Taking into account the identification of remaining or new obstacles to the efficient use of spectrum, the further development of electronic communications, investments and the development of wireless innovation, it is appropriate to consider whether more coordination or additional measures are needed at EU level, to ensure a future-proof framework which maximises the economic benefits of spectrum use, by providing investment predictability, facilitating business decision-making, driving competition and meeting the future connectivity needs in Europe.

#### a) Principles and objectives of radio spectrum management in the Digital Single Market

**Question 73:** Would more consistency in spectrum management across Europe increase legal certainty and the overall value of spectrum in the Digital Single Market?

☐ strongly agree ☐ agree ☒ disagree ☐ strongly disagree ☐ do not know

Please explain your response and provide examples.

[See responses to questions 64-66.](#)

**Question 74:** Is it necessary to remove barriers to access to harmonised spectrum across the EU in order to foster economies of scale for wireless innovations and to promote competition and investment?

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

Please explain your response and provide examples.

**Question 75:** Do you see benefits in integrating the objectives and principles relating to spectrum management for both electronic communications services (ECS) and other spectrum users in a single legislative instrument (see question 62 above)?

☐ strongly agree    ☐ agree    ☒ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

See response to question 64.

The EBU would also like to emphasise that the full benefits of spectrum usage are not always realised by the licensee. That is to say, broadcasting use of spectrum produces wider economic and social value in ways that do not translate into an ability to compete with network operators in spectrum licence auctions. Any integrated objectives and principles would need to take into account both kinds of value – and enable national regulators to find a balance between uses. This would need to take into account a range of consumer and citizen benefit as well as incremental value delivered through wider benefits generated.

**b) Granting individual spectrum usage rights for wireless electronic communications (ECS spectrum)**

Provided that it fulfils the very general rules and criteria set by the EU regulatory framework, the process of granting spectrum usage rights – or assignment - is managed today at national level and in various ways across Member States, as the national authorities in charge may be ministries, national regulatory or other authorities or a combination of these, and subject mainly to national considerations. Under the Authorisation Directive, where it is necessary to grant individual rights of use, such rights should be granted upon request; a selection process is only allowed where a Member State considers that the number of rights has to be limited.

**Question 76:** To what extent does the spectrum assignment process in Member States determine the mobile markets and the competitive landscape for mobile electronic communications, including wireless broadband, such as the number and type of operators in the market and their economic models?

☐ significantly    ☐ moderately    ☐ little    ☐ not at all    ☐ do not know

Please explain your response and provide examples of the impact.

**Question 77:** Could greater coordination of methods for granting spectrum usage rights and of selection processes achieve greater consistency in the Union, thereby removing barriers to entry and promoting further competition and investment?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response and provide examples.

**Question 78:** Could more consistent spectrum assignment processes throughout the Union, based on greater harmonisation of the choice of selection or award methods on the basis of



experience and best practice:

a) ease the process for national administrations?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

b) increase the predictability and planning sought by investors?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples of the impact.

**Question 79:** Do you see benefits of greater coordination with regard to the elements of the spectrum assignment processes (listed in the table below) and if so, what would be the appropriate level of such coordination:

*A: **General Approximation:** setting only common or harmonised general objectives and principles, leaving the definition of exact criteria and solutions to Member States.*

*B: **Partial harmonisation:** setting out common or harmonised general objectives and principles, as well as specific solutions for some of the items below (to be indicated) while leaving room for additional national conditions.*

*C: **Full harmonisation:** setting out common objectives, principles and specific solutions for specific bands or types of wireless communications, with no room for national exceptions or additional conditions (e.g. definition of identical criteria and conditions for all Member States, creation of a common authorisation format or single common or totally synchronised selection process as used for mobile satellite systems).*

Please tick the relevant boxes in the table below. If you consider that none of these assignment parameters would benefit from greater coordination, please explain your response.

<i>Issue</i>	<i>This issue should not be covered by the Review: National measures adopted are sufficient, no need for legal certainty at EU level.</i>	<u><i>A - General Approximation</i></u>	<u><i>B- Partial harmonisation</i></u>	<u><i>C - Full harmonisation</i></u>
<i>Determination of need for selection process</i>				
<i>Level of transparency to the market regarding the selection process and conditions</i>				
<i>Determination of selection process type (auction, beauty contest, first come first served,</i>				

<i>hybrid model)</i>				
<i>Objectives pursued by the selection process</i>				
<i>The appropriateness of an ex ante competition assessment</i>				
<i>The national authority which is responsible for the ex-ante competition assessment</i>				
<i>The need for specific measures (spectrum caps/floors, new entrant spectrum reservation)</i>				
<i>Selection timetable</i>				
<i>Timing of advanced information to market participants.</i>				
<i>Frequencies covered, packaging of lots</i>				
<i>Spectrum valuation and pricing, fees, charges.</i>				
<i>Payment modalities.</i>				
<i>Enforcement and ex post auction assessment and enforcement.</i>				

Please explain your response.

### **c) Spectrum assignment conditions for wireless electronic communications (ECS spectrum)**

As is the case with regard to the process for granting spectrum usage rights, assignment conditions attached to such rights are set at national level pursuant to national circumstances. Also these conditions (e.g. coverage conditions, duration of the licenses, or renewal conditions and timing) have the potential to impact the competition structure of the markets, market entry,

the deployment of mobile networks and the development of the market for mobile services in general. It is therefore necessary to explore how to best define spectrum assignment conditions with a view to enhance consistency and legal predictability in the EU while leaving sufficient flexibility to Member States to adjust according to their specific national needs.

**Question 80:** Is there a need for more consistent assignment criteria and conditions between Member States, in particular with regard to those criteria and conditions which have the greatest economic significance for investment predictability and business decision-making, for driving competition and for achieving the future connectivity needs in the EU?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples of the impact.

**Question 81:** What spectrum assignment conditions (among those listed in the table below or others) have the greatest economic significance for investment predictability and business decision-making, for driving competition and for promoting the Single Market, in respect of electronic communications?

**Question 82:** For which of the following assignment conditions (listed in the table below) would you see benefits of greater coordination or harmonisation and what would be the appropriate level of such coordination or harmonisation:

*A: **General Approximation:** setting only common or harmonised general objectives and principles, leaving the definition of exact criteria and solutions to Member States.*

*B: **Partial harmonisation:** setting out common or harmonised general objectives and principles, as well as specific solutions for some of the items below (to be indicated) while leaving room for additional national conditions.*

*C: **Full harmonisation:** setting out common objectives, principles and specific solutions for specific bands or types of wireless communications, with no room for national exceptions or additional conditions (e.g. definition of identical criteria and conditions for all Member States, creation of a common authorisation format or single common or totally synchronised selection process as used for mobile satellite systems).*

Please tick the relevant boxes in the table below, provide a brief description including quantitative inputs (e.g. on licence duration, timing of renewal cycle) in the comments box below, and explain your overall response in detail. If you consider that none of them would benefit from greater coordination, please explain your response. If you consider there might be others please add them.

Issue	This issue should not be covered by the Review: National measures adopted are sufficient, no need	<u>A- General Approximation</u>	<u>B - Partial harmonisation</u>	<u>C- Full harmonisation</u>

	<i>for legal certainty at EU level.</i>			
<i>Licence duration</i>				
<i>Prior notice, timing and conditions of renewal</i>				
<i>Possibility to trade or lease assigned spectrum, and related conditions</i>				
<i>Coverage obligations</i>				
<i>Necessity of wholesale access conditions (e.g. MVNO)</i>				
<i>Limits under <u>technology</u> neutrality principles</i>				
<i>Requirements on technical performance characteristics</i>			X	
<i>Extent of services allowed and limits to <u>service</u> neutrality</i>				
<i>Possibility to share and pool assigned spectrum or mobile network as a whole</i>				
<i>In general, any condition covered by the Annex to the Authorisation Directive</i>				
<i>'Use it or lose it' clause</i>				
<i>Refarming conditions</i>				

Please explain your response(s)

Recent reallocation of UHF spectrum from broadcasting services to wireless broadband services has shown the importance of mandating harmonised technical parameters for equipment (e.g. out-of-band emission limits, maximum mean e.i.r.p) to protect other services sharing the spectrum from harmful interference. Additional interference mitigation techniques have been implemented at the national level in some countries.

#### **d) Pan-EU or regional licences or selection processes, cross-border services**

Currently the process for assigning spectrum and the granting of licences both fall within the competence of Member States and are organised and granted at national level. The organisation of such processes or the creation of rights across Member States appear apt to favour the emergence of cross-border services and operators and facilitate entry into new markets, thereby promoting competition and fostering the single market.

**Question 83:** Are there situations where regional selection processes involving a group of Member States, either combining national or providing pluri-national licences, for example for regions straddling several Member States which share similar characteristics in terms of economic or electronic communications development, could bring more value and a better development of electronic communications?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

**Question 84:** In which market circumstances would pan-EU spectrum selection processes and/or usage rights contribute to the development of electronic communications services in light of public-policy objectives in respect of coverage, choice, accessibility and take-up of high-performance wireless connectivity?

Please give and explain your response.

#### **e) More flexible availability and shared access to spectrum**

All radio equipment (e.g. both for ECS and non-ECS wireless applications) depends on reliable access to spectrum. In the EU, spectrum usage rights can be based on a non-exclusive general authorisation or on individual authorisations (e.g. spectrum licences). General authorisations are however the rule and individual rights are the exception under Article 5.1 of the Authorisation Directive. In order to ensure that spectrum is exploited to the fullest extent possible, it is necessary to harness more flexible use of spectrum to increase the availability and efficient use of spectrum. Further flexibility can be achieved in particular through: increasing market-based solutions to repurpose spectrum such as tradability and leasing of spectrum as well as shared access to spectrum such as using white spaces, spectrum pooling and infrastructure sharing. This requires engaging mutual responsibility of users over acceptable limits of interference and appropriate mitigation strategies. It is also important to provide legal certainty on applicable rules and conditions of shared access, on enforcement procedures as well as to be transparent about compatibility assumptions and protection rights. The shared use of spectrum should enhance competition from additional users and in particular should not create undue competitive advantages for current or future right-holders or result in unjustified restrictions of competition. In principle, beneficial sharing opportunities (BSO) can

be identified, in both licensed and licence-exempt frequency bands, wherever the combined net socio-economic benefit of multiple applications sharing a band is greater than the net socio-economic benefit of a single application, taking into account additional costs resulting from shared use (see Commission Communication on promoting the shared use of radio spectrum resources in the internal market ([COM/2012/0478 final](#))).

**Question 85:** Will a more flexible and/or shared access to spectrum be needed to meet the future demand for spectrum?

☐ strongly agree      ☒ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response.

Given the fact that spectrum is a scarce resource and that the demand for spectrum (for various uses) is increasing, spectrum sharing will indeed be important to continue to meet this demand. There are already different models of successful sharing as for example DTT and PMSE in the UHF band, or the unlicensed bands. These models are successful because sharing and compatibility conditions meet the requirements of the services involved.

As regards the question of whether UHF spectrum can be shared between broadcasting and mobile broadband services, recent studies carried out by ITU-R as well as test cases in Europe all conclude that this would be very difficult because of the very restrictive sharing conditions (e.g. separation distances of up to hundreds of km between the two services are required).

In contrast, the frequency allocation model according to which licensed TV spectrum is used on a secondary basis for PSME has proven its value as a flexible and effective model which should be maintained. Legal certainty on the continued availability of UHF spectrum for broadcasting is needed in order to secure this sharing model and to ensure further investments and innovation for a sustainable broadcasting platform, as affirmed by recent WRC-15 decisions.

Additional flexible use of spectrum could also be envisaged for the use of white spaces by cognitive devices. Cognitive radio has the potential to significantly improve the efficiency of radio spectrum use and notably, this option is not currently made available with mobile use of spectrum. The EBU believes that cognitive white space devices should be licensed with well-defined conditions (e.g. mandatory use of geo-location data bases) in order to ensure that they do not interfere with broadcasting services and PMSE. However, the technical complexity of making such systems work in practice and the resource burden necessary to achieve this form of sharing should not be underestimated. These should not fall unduly on the incumbent spectrum user and should be commensurate with the expected gains to be achieved.

A possibility of introducing mobile downlink on a flexible basis in the UHF band is not sufficiently well defined and requires further studies both technical and non-technical. Any such additional use of the UHF band should not constraint future development of the DTT platform.

**Question 86:** Will shared access to spectrum on the basis of general authorisation be necessary for:

a) The availability of sufficient wireless backhaul capacity?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

b) The development of the Internet of Things?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

c) The development of M2M applications?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

If other, please specify and explain your responses and provide examples.

**Question 87:** Is there a need to better protect the use of spectrum for applications that rely on shared use of spectrum (such as Wi-Fi or short range devices), including in regard to out of band emissions?

☐ strongly agree    ☒ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

[See our reply to questions 82 and 85.](#)

**Question 88:** Is there a need for a common approach amongst Member States for documenting sharing conditions/rules and for granting shared spectrum access authorisations in the Digital Single Market?

☐ strongly agree    ☒ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

[Any common approach on shared spectrum access needs to address compatibility between different services to avoid harmful interference \(see our replies to questions 82, 85 and 87\). In that regard, documenting sharing conditions/rules applied in each country is important for the industry to understand the different markets and develop equipment which complies with such rules. Developing a common approach for such documentation would make it easier to compare the conditions in different countries.](#)

**Question 89:** Could a more flexible use of spectrum be achieved through any of the following:

a) Tradability and lease of spectrum

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

b) Use of white spaces

☐ strongly agree    ☒ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

c) Infrastructure sharing, including spectrum pooling

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

d) Incentive auctions

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know



If other, please specify and explain your responses. If yes, should any of these measures be further promoted from a regulatory point of view and how?

[See our reply to question 85.](#)

**Question 90:** So far, mechanisms such as trading and leasing of spectrum have been used only to a limited extent in the EU. Under what market and regulatory circumstances, would these mechanisms be more attractive for spectrum users?

Please give your response and provide examples.

[The EBU does not support trading and/or leasing of spectrum currently used for broadcasting services.](#)

[Trading spectrum licences of any service should respect the sharing conditions/rules under which the spectrum was initially licensed so as not to create harmful interference with incumbent services.](#)

Spectrum refarming refers to the process of changing or redistributing the allowed uses of spectrum for the sake of a more flexible access and an efficient use of spectrum. Specific regulatory requirements already apply in case of changes to or withdrawal of spectrum usage rights so as to protect right holders and competition. The question arises whether additional provisions should be considered to further facilitate spectrum management. For example where rights with long-term or undefined duration are at stake, specific withdrawal or amendment conditions and/or procedures in case of non-use or highly inefficient or non-intensive use of the band could be considered, such as 'use-or-lose it' clauses, with a view to rapidly cope with technological and market developments while adequately protecting right holders. Since refarming determines the availability of spectrum for applying new technologies and offering new services across the EU, the need for a certain level of coordination of such measures should be considered.

**Question 91:** Should spectrum refarming be further facilitated in the future? If so, is there a need to adopt measures to:

a) further protect existing right holders

☒ [strongly agree](#)    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

b) further support prospective spectrum users

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

c) maximise flexibility in spectrum management

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

d) allow new incentivising methods

☐ strongly agree    ☐ agree    ☒ [disagree](#)    ☐ strongly disagree    ☐ do not know

e) further protect competition

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

f) clarify compensation conditions

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☒ do not know

g) apply 'use it or lose it' clauses

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your responses. Please indicate any specific criteria which you would regard as an important component of co-ordinated measures (e.g. in the case of 'use it or lose it' types of triggering conditions)

Any spectrum repurposing initiative requires a clear transition roadmap including measures for cost compensation. As agreed by industry stakeholders in the Lamy report, clearing the 700 MHz band would be likely to involve significant disruption and costs to the broadcast industry, PMSE and citizens. Given the important benefits that DTT and PMSE services (which currently use the 700 MHz) deliver to citizens and consumers, the provision of a transition roadmap (as detailed in annex 2 of the Lamy report) should ensure that broadcasters and PMSE users are left neither worse off nor better off than they would have been without clearance of the 700 MHz band.

The EBU does not support using measures such as the reverse spectrum incentive auction applied in the US for the broadcasting bands because they would jeopardise the Geneva 2006 frequency plan which harmonised the use of spectrum for digital broadcasting. Allowing for additional flexibility in spectrum use should be carefully measured against harmonisation, given that flexibility of spectrum usage reduces harmonisation.

**Question 92:** Should the withdrawal or significant modification of rights by public authorities be excluded where the application of service or technology neutrality principles and/or the trading and leasing mechanisms are sufficient to ensure spectrum refarming?

☐ strongly agree    ☐ agree    ☒ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

There are clear benefits in allowing public authorities the flexibility to intervene, and to allow that flexibility on a member state level. In practice the bar for intervention by public authorities is rightly high. This has provided a high degree of security for investors and license holders alike which has resulted in widespread commercial investment in spectrum services. But the right of public authorities to intervene provides an important backstop against failure for example if trading mechanisms do not lead to the intended or desired outcomes.

### **g) The impact of network technologies developments**

The telecoms review offers also an opportunity to assess the regulatory framework's capacity to cope with the electronic communications sector's fast-moving technological environment, and in particular to identify regulatory areas which could require adaptations in order to keep up with the main trends in network technologies, operations and market developments. Against this background, it is necessary to already anticipate these developments taking into

consideration relevant time horizon(s) matching the technology's life cycles, from research and development to the roll-out of infrastructure, extending beyond 2020.

One of the most important trends in the network environment over the next decade is likely to be that of fixed-wireless convergence, crystallised by the commercial deployment of 5G networks which should be initiated by 2020. 5G will enable operators to cope with rapidly increasing data traffic, thanks to denser/smaller cells and even greater offloading to, for instance, fixed networks via Wi-Fi links. Furthermore, the benefits of 5G are expected to go beyond traditional ECS and to play a key role in other sectors of the economy, by enabling machine-to-machine communications (M2M) and the Internet of things, as well as connectivity needs for transport management and road safety (in-vehicle emergency calls).

From a user's perspective, fixed-wireless convergence means the seamless delivery of services, e.g. telephony, data, digital content, regardless of whether they are delivered via fixed or mobile networks, including the possibility to switch between the two while a service is active. One implication is that the convergence will not be limited to the commercial provision (e.g. service packages) but will also affect network and service operations.

From a network perspective, denser wireless networks will depend on increasing numbers of fixed back-haul links. Wireless network densification could benefit from available under-utilised radio spectrum at higher frequencies (licensed or licence-exempt) as well as from the deployment of small cells including RLAN and low-power small area wireless access points. This deployment could be specified at EU level and the requirements for use in different local contexts could be limited to general authorisations without additional restrictions from individual planning or other permits.

**Question 93:** In light of the increasing demand for mobile services in urban areas and the resulting densification of networks, do you foresee any obstacles in the roll-out of the corresponding infrastructure such as access points for small cells?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

**Question 94:** Should the deployment, connection or operation of unobtrusive small-area wireless access points be possible under a general authorisation regime, without undue restrictions through individual town planning permits or in any other way, whenever such use is in compliance with a harmonised technical characteristics for the design, deployment and operation of such equipment?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response.

**Question 95:** Should end-users be entitled to share the access to their Wi-Fi connection with others, as a key prerequisite for the sustainable deployment of denser small cell networks in licence-exempt bands?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response and provide examples.

**Question 96:** Should the deployment of commercial/municipal Wi-Fi networks in public premises (e.g. public transportation, hospitals, public administrations) be facilitated and if so, in what way?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response and provide examples.

**Question 97:** Is there a need for more unlicensed spectrum for M2M applications?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

#### **h) Mobile communication networks**

**Question 98:** Improved mobile communications networks could to a certain extent ensure public protection and disaster relief (PPDR) communications, as well as safety systems for utilities and intelligent transport services (ITS) for road and rail (as reported in a 2014 [study](#)). Would you consider it appropriate to include in the licence conditions for spectrum (or for certain spectrum bands), or otherwise to impose on (certain) mobile network operators, obligations in terms of quality of service, resilience of network infrastructure and hardening to enable such dual use of commercial mobile networks?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response

### **3.5 Sector-specific regulation for communications services**

Over-the-top (OTT) services are increasingly seen by end-users as substitutes for traditional ECS used for interpersonal communications, such as voice telephony and SMS. Such OTT services, however, are not subject to the same regulatory regime. As a consequence, the issue of a level playing field has been raised, with some stakeholders calling for a re-evaluation of the existing provisions, with a view to ensuring that wherever the activities of providers of competing services give rise to similar public-policy concerns, they would have the same

obligations and rights (i.e. end-users' protection, interconnection, numbering, etc.). At the same time, the existence of a wider range of choices for end-users may put in question continued utility of certain regulatory obligations. Therefore, it is important to evaluate whether the scope of the regulatory framework should be revised in order to create a level regulatory playing field that modernises the safeguards for end-users, incentivises investment and innovation, and boosts demand for communications services.

Technological and commercial innovations may require a modernisation of the provisions of the applicable regulatory framework, for instance those on end-user protection. In addition, it is important to consider the potential regulatory impacts of the most important trends that will drive the telecommunications sector's transformation over the medium to long term, such as for example the take-up of IP-based services offered by digital service platforms, the development of machine-to-machine (M2M) communications or the challenges for the European emergency number 112 and there is a need to evaluate the relevant framework provisions in that respect.

In addition, the scope and appropriateness of the provisions on 'must carry' and electronic programme guides is assessed in the last part of this section.

### **3.5.1 Evaluation of the current sector specific regulation for electronic communications services**

The first set of questions aim at providing input for the evaluation of the functioning of the current regulatory framework.

The current sector-specific rules for end-user protection as regards the access and use of electronic communications networks and services were last reviewed in 2009 and complement horizontally applicable (i.e. cross-sector) EU consumer protection law. For the purpose of this public consultation these are the most relevant legal instruments:

- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (Framework Directive) as amended by Directive 2009/140/EC (Better Regulation Directive) (scope of the framework and definitions).
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) as amended by Directive 2009/136/EC (Citizens Rights Directive) (provisions on end-users mainly in its chapter IV).
- Certain provisions in other Directives apply also to electronic communications services (such as interconnection and interoperability pursuant to the Access Directive). Directive 2002/58/EC (ePrivacy Directive) as amended by Directive 2009/136/EC (Citizens Rights Directive) also contains certain end-user rights, whose content and substance are not specifically the object of this consultation. However, these rights may be relevant for the questions on the scope of sector-specific regulation for communications services.

The Commission proposal for a Telecoms Single Market Regulation of September 2013 (also known as Connected Continent) contained several end-user protection and empowerment measures. On 30 June 2015, the European Parliament and the Council reached a political agreement on the Regulation. The agreed text covers only a subset of the proposals related to Internet Access Services (IAS) and roaming while other end-users rights contained in the Commission proposal have not been included.

The purpose of the following questions is to evaluate whether the current sector-specific rules, mostly end-user provisions, have proven useful and whether they may have become obsolete, need to be adapted or amended by new provisions.

**Question 99:** To what extent has the current regulatory framework for electronic communications, as last amended in 2009, contributed to effectively achieving the goal of ensuring a high level of consumer protection in the electronic communications sector across the EU?

☒ significantly      ☐ moderately      ☐ little      ☐ not at all      ☐ do not know

Please explain your response and indicate the provisions which have contributed the most/less to this goal.

From our perspective, the rules on *must-carry* (Art. 31 USD), although optional for Member States, have been very effective, in particular with regards to cable TV networks, in ensuring access by end-users to public value content, thus achieving a high level of consumer protection (see Q. 102 and 143).

Must-carry rules have been usefully complemented by rules on the *interoperability of consumer digital television equipment* (Art. 24 USD). These rules have served consumer interests and have promoted access to information and media pluralism by ensuring an open and interoperable technical environment for digital television across the EU. Apart from Annex VI, par. 2, sub-par. 1 USD, which deals with *analogue* television sets and is now becoming obsolete, it is important to keep these rules.

**Question 102:** As regards sector-specific end-user rights provisions, have you identified existing sector-specific end-user rights provisions in the current framework which need to be adapted or amended?

For each provision you mention, please give reasons for its relevance (problems in the application; commercial or technological changes, including those which resolve the initial concern; new challenges for end-users; other, please specify):

It is vital to *maintain* the must-carry obligations in Art. 31 Universal Service Directive (USD) as an indispensable instrument to ensure end-users' access to audiovisual content of particular value for society.

At the same time, it is necessary to *update* the provision to take into account the increasing importance of non-linear audiovisual media services and the evolving consumption patterns in the multiplatform environment. The terminology of the provision should be modernised and thus explicitly refer to interactive and on-demand audiovisual media services alongside television and radio. Member States have variously applied must-carry rules to cable, satellite, IPTV and/or DTT. Given this variance, it should be clarified at EU level that must-carry is capable of application to all distribution networks and to associated services/interfaces on a *technology neutral basis*. See answer to Q. 143

### 3.5.2 Review of the sector specific regulation for communications services

### a) Future scope of sector-specific regulation for communications services

The EU regulatory framework on electronic communications services and networks emerged in the context of full liberalisation in the 1990s. At that time voice communications were the focus of attention and distinct from online services. The framework contains provisions for the regulation of both networks and electronic communications services. Services such as so-called over-the-top services (OTTs), providing communications (voice, messaging) and/or other services, do not usually fall within the scope of the current EU regulatory framework's rules on ECS or those on network regulation because these services do not themselves include conveyance of signals. Therefore the regulatory regimes which are currently applied to OTTs or comparable services, on the one hand, and electronic communications service and networks, on the other hand, differ considerably. The present section examines whether the scope of the regulatory framework should be adapted in this respect in order to ensure a level-playing field for players to the extent that they provide competing services and the manner in which this could be done.

**Question 108:** Do you consider that there is still a need for sector-specific regulation of communications services in the EU?

☒ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.

Sector-specific rules are still necessary to ensure a high level of consumer protection, notably considering network effects and high market concentration, including vertical integration (See questions 19 and 27). With regard to end-users' access to audiovisual media services via different delivery networks/platforms, must-carry rules continue to be of prime importance (Art. 31 USD).

**Question 109:** As regards the current definition of electronic communications services (ECS):

a) Do you consider that the current definition of electronic communications services should be reviewed?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☒ do not know

b) If the current definition of ECS is reviewed, do you consider that the "conveyance of signals" should continue to remain a necessary element of the definition of electronic communications services subject to sector-specific regulation?

☐ strongly agree    ☒ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

c) If the current definition of ECS is reviewed, do you consider that "transmission services in networks used for broadcasting" should continue to be considered as ECS?

☒ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response.



a) Instead of extending the *general* definition of ECS, with the risk that the delimitation of this notion and thus the overall scope of the telecoms Directives become blurred, it may be more appropriate to extend certain provisions or chapters of the telecoms Directives to functionally equivalent managed OTT platforms. Apart from the services mentioned in question 115, this may also apply to some new managed OTT platforms which play a similar role to the networks mentioned in Art. 31 USD (e.g. traditional cable TV networks).

b) While this criterion should remain a necessary element of the *general* definition of ECS, it should not exclude the extension of certain provisions or chapters of the telecoms Directives to services which are a functional substitute without (directly) involving the conveyance of signals (see under (a) above).

We would like to stress that the criterion ‘conveyance of signals’ has been very useful to date *inter alia* to help distinguish telecommunications from audiovisual services. The underlying principle is well explained in Recital 5 FD, according to which “*it is necessary to separate the regulation of transmission from the regulation of content*”, while this separation “*does not prejudice the taking into account of the links existing between them, in particular in order to guarantee media pluralism, cultural diversity and consumer protection*”.

The current definition requires that electronic communications services consist “wholly or mainly” in the conveyance of signals. This must *not* be understood in the sense that other kinds of services (e.g. audiovisual content services) which happen to be bundled with telecoms services fall under the telecoms regime.

c) It is necessary, with regard to ‘transmission services in networks used for broadcasting’, or more generally whenever audiovisual media services depend on electronic communications services for their delivery to the public, to take into account the links between telecoms and audiovisual regulation, and in particular with regard to the policy objectives of the AVMSD, including media pluralism, cultural diversity and consumer protection.

However, and especially in view of the convergence of networks, which are increasingly capable of delivering a variety of services, we do not see the point in excluding ‘transmission services in networks used for broadcasting’ from the general ECS definition; particularly if the consequence of such a step were not to reinstate the situation prior to the introduction of the telecom package (with a separate directive covering these specialised services/networks) but rather to *exempt* such services from the *ex-ante* regulation, despite the high level of concentration and vertical integration in this area. This would constitute a step backwards in terms of effective competition and consumer protection.

**Question 110:** If the current definition of ECS is reviewed, do you consider that the definition of services subject to sector-specific regulation should take into account the question whether a service is:

a) Managed or subject to best-efforts online provision only?

☐ strongly agree   ☐ agree   ☒ disagree   ☐ strongly disagree   ☐ do not know

b) Remunerated through monetary payment (directly or as part of a bundle)?

☐ strongly agree   ☐ agree   ☒ disagree   ☐ strongly disagree   ☐ do not know

c) Remunerated by other means (advertising supported, provision of data by users, etc.)?

☐ strongly agree   ☐ agree   ☒ disagree   ☐ strongly disagree   ☐ do not know

Please explain your response.

a) Sector-specific regulation should cover both; it should not be limited to best effort online provision but should also cover managed or specialised services. We also expect managed IP services to play an increasing role in the delivery of audiovisual media services to the public.

b), c) Sector-specific regulation should not depend on the business model used (e.g. subscription based or other). Criteria used in the telecoms Directives should be consistent with those used in the ISS Directive ('any service normally provided for remuneration') and the AVMS Directive ('service within the meaning of Art. 56-57 TFEU').

The internet access service (IAS) sets up the end-user's connection to the internet and many communications services as well as a host of other services are provided via this IAS. It could be argued that sector-specific rules only need to apply to the IAS but not to other communications services, and that general consumer protection rules will be sufficient to protect end-users in their communication activities.

**Question 111:** If sector-specific service regulation is maintained, do you consider that it should be confined to the IAS?

☐ strongly agree   ☐ agree   ☐ disagree   ☒ strongly disagree   ☐ do not know

Please explain your response.

It is important to have *ex ante* rules in place not only for IAS but for all electronic communications services *and in particular all managed networks and specialised services*, including for example cable TV, IPTV and satellite services.

Over the next decade, there is a great potential for managed IP services in delivering AVMS to audiences, in particular *multicast over managed IP* to deliver high quality linear streams (or multicast over OTT, which however does not yet exist).

**Question 112:** If a distinction is made between IAS and other communications services, do you agree in principle that the definition of IAS in the draft Telecoms Single Market legislative text could be used for this purpose, namely "*a publicly available electronic communications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used.*"

☐ strongly agree   ☒ agree   ☐ disagree   ☐ strongly disagree   ☐ do not know

Please explain your response.

We agree with the definition of IAS provided in the context of the TSM Regulation and with the distinction made between IAS and other communication services previously known as specialised or managed services. However, it is difficult to take a position on the definition in the more general context of the review of the Telecom Framework Directive when it is not clear for which purpose the distinction is made.

**Question 113:** Which sector-specific (end-user and other) provisions should apply to IAS? Please indicate these provisions (if already present in the current framework) or describe the content of such rights and obligations, and explain your response and the measures you suggest.

We are limiting our answer to aspects which are relevant to audiovisual media, and in particular the need for PSM to render their content universally available to reach all citizens in line with their public service remit.

Article 8 Framework Directive lays down broad policy objectives which should also be taken into account in the context of IAS. This includes for example the need to promote the interests of citizens, including specific social groups such as disabled users, elderly users and users with special social needs, and the protection of consumers in dealings with suppliers (availability of easy dispute resolution procedures etc.). The contribution by NRAs to the implementation of policies aimed at the promotion of cultural and linguistic diversity as well as media pluralism (see Art. 8(1) Framework Directive) is also relevant. The integrity and security of the network is an important objective too.

Moreover, some specific provisions in the Access Directive such as Art. 12(1)(f) could also apply in order to optimize traffic flows and may be explicitly extended so that NRAs may provide for the right to place caches in IT networks in order for content providers to be able to reach their audiences with sufficient quality and reliability of service, only in the event that this was no longer possible to arrange by agreement on reasonable terms (see question 23).

In general, the universal service mechanism is a useful tool for digital inclusion. In that respect, Art. 22(3) Universal Service Directive offers the possibility to set levels for minimum quality of service, to prevent degradation of service or a hindrance or delay in traffic over the Internet. Ensuring equivalence in access and choice for disabled end-users (Art. 23(a)) is also an important aspect that should be taken into consideration.

**Question 114:** In relation to IAS, is there a need for any further end-user rights in addition to those included in the provisionally agreed Telecoms Single Market Regulation? In case you strongly agree or agree, what should be the level of harmonisation?

	Strongly agree	Agree	Disagree	Strongly disagree	Full harmonisation	Minimum harmonisation
(i) Contractual information (e.g. related to quality parameter other than speed)		X				X
(ii) Transparency measures		X				X
(iii) Independent price and quality comparison tools						
(iv) Control of consumption						

(v) Contract duration						
(vi) Measures facilitating switching (receiving operator-led process; protection of end-users throughout the switching process, compensation in case of delay and abuse in the switching process)						
(vii) Measures to guarantee the effectiveness of end-user rights (in particular contract termination and switching) in relation to bundles of services						
(viii) Measures eliminating restrictions and discrimination based on nationality or place of residence						

Please provide a brief explanation for each of your responses.

**Question 115:** Do you think that traditional electronic communications services (such as voice or video telephony, SMS/text messages, e-mails operated by telecoms providers, other services) can be functionally substituted by OTT services or platforms with communication elements (e.g. internet telephony services, web messaging services, webmail services, social media platforms, other)?

	Strongly agree	agree	Disagree	Strongly disagree	Do not know
Voice telephony					
Video telephony					
Sms/text messages					
e-mails provided by telecom operators					
Other traditional telecommunications services					

Please explain each of your responses and provide examples of such OTT services.

In addition to the services explicitly mentioned above, the *electronic delivery of aggregated audiovisual content* via traditional cable TV or similar *managed* networks may be functionally substituted by managed OTT services/platforms during the lifetime of the revised regulatory framework, although at present there are limitations regarding quality, reliability and reach. NRAs must have tools to address any problems. This is particularly relevant for Art. 31 USD

(see question 143) and Art. 5(1) Access Directive.

**Question 116:** Should **all** communications services (mainly provided over the IAS) which are functionally substitutable to existing ECS fall under a new common definition for such communications services (which would be different from that of IAS and from the current definition of ECS)?

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

If you disagree, is it possible and appropriate to identify the relevant addressees of each communications-specific rule provision-by-provision? Please explain your response.

It may be difficult to find a generic definition to cover all functionally equivalent services with sufficient clarity. In contrast, it should not be too difficult to define functionally equivalent services in respect of different chapters or provisions of the telecoms Directives (including Art. 31 USD), taking into account the public interest objectives at stake.

**Question 117:** What should be the essential elements of a functional definition of communications services? Please explain your response.

See answer to questions 115-116.

**Question 118:** Which types of communications services, possibly including services currently not subject to sector-specific rules, should be encompassed by such a definition? Please explain your response.

See answer to questions 115-116.

**Question 119:** Should a definition of communications services include:

- ☐ one-to-one communications between persons
- ☐ interactive communications between several persons (e.g. via social media)
- ☐ communications between persons and machines (e.g. confirmation received by emails or
- ☐ communications between machines (e.g. M2M, IoT, eCalls)?

Please explain your response.

**Question 120:** Which sector-specific provisions (end-user and other, such as requirements for reasonable interconnection, or on integrity and security) should apply to communications services as newly defined in the light of your responses to the previous questions? Please indicate these provisions (in the current framework) or describe the content of such future rights and obligations, and explain your response.

All relevant end-user rights and access and interconnection rules, including in particular Art. 31 USD (must-carry) and Art. 5(1) Access Directive.

**Question 121:** In light of the broad choice of communications services which have become available, is it still justified that providers of communications services as newly defined would be potentially subject to the exceptional ex-ante regulatory regime based on markets and significant market power identified in accordance with competition principles?

☒ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response.

Audiovisual media service providers are dependent on fair and non-discriminatory access to networks to reach their audience. Currently only the “traditional” DTT, cable and satellite networks, and to some extent emerging IPTV networks, provide the quality/reliability and coverage required by audiovisual media service providers to fulfil their remits (whether commercial or public). There has been a marked trend of consolidation of these networks in the EU in recent years, creating powerful “gatekeeper” operators that often also compete in the downstream content markets. For these reasons, retaining a robust *ex ante* regulatory regime to safeguard access to audiovisual media platforms is more important than ever (see questions 19 and following), notably the specific competition tools under Art. 5 Access Directive as well as the must-carry rules under Art. 31 USD.

#### b) Adaptation of provisions to new challenges

**Question 129:** Do you consider that there are new or emerging sector-specific end-user protection issues (resulting *inter alia* from technological or commercial developments) which need to be addressed?

☐ strongly agree      ☒ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response. If your response is positive, please indicate the areas where you see a need for enhanced sector-specific end-user protection and whether such issues should be addressed at EU or at Member States level.

In the digital and converged environment, rules ensuring the *findability* or ‘discoverability’ of public interest content are a logical and necessary accompaniment for must-carry rules.

In fact, in the new environment, scarcity of transmission capacity is often no longer the major bottleneck. A bottleneck of increasing importance is the interface through which users find their favourite programmes, since a user's attention span is limited and there is only limited space on the home screen of any user interface, portal, programme guide, etc. Media convergence and connected devices will lead users to be increasingly dependent on interfaces, portals, guides, or recommendation engines to find the content they wish to access (see the 2012 Study by Communications Chambers on PSB Prominence in a Converged Media World). This puts operators of managed audiovisual platforms in a powerful position as gatekeepers.

The fact that services are increasingly personalised and viewers are shown content which predominantly matches existing tastes and interests, risks giving them more of the same (so-called “filter bubble effect”). By making ‘public interest’ content easy to find in a converged viewer environment, viewers will remain comprehensively informed and will continue to receive pluralistic/thought-provoking and diverse viewpoints which are indispensable for public opinion forming. Ensuring the findability of ‘public interest’ content will also reinforce

the protection of minors, not least owing to PSM's special responsibility in providing age-appropriate content and a safe viewing experience.

We therefore see a strong need for better end-user protection with regard to the findability of audiovisual content of particular value for society.

While such measures need to be taken primarily at Member State level, it is important that the principle as such is recognised at the EU level, and that Member States have the necessary policy flexibility. We have made proposals to this effect in the context of the AVMSD review, with regard to significant audiovisual platforms and user interfaces; see the EBU Reply to the Commission consultation on the AVMS Directive, in particular to Q. 1.1 and 6.2. It is however necessary to ensure the necessary leeway for Member States' policies also in the Telecom Package. Importantly, *Art. 6(4) Access Directive* recognises 'the ability of Member States to impose obligations in relation to the presentational aspect of electronic programme guides and similar listing and navigation facilities'. This provision needs to be *maintained* and it needs to be clear that this principle applies across the whole telecoms framework (see Questions 11, 24, 39 and 143).

**Question 133:** The current sector-specific end-user provisions are based on the principle of minimum harmonisation. This approach provides Member States more flexibility and allows them to maintain or adopt more protective measures. But it also leads to a fragmented level of end-user protection across the EU and additional complications for the cross-border provision of services. The Consumer Rights Directive of 2011 therefore adopted a full harmonisation approach. Should any (maintained, amended or new) sector-specific end-user provisions aim at:

☒ minimum harmonisation

☐ full harmonisation

☐ minimum harmonisation at a very high level

Please explain your response.

There are certain provisions such as Art. 31 USD (must-carry), which is of particular importance to ensure users' access to audiovisual media services, where full harmonisation would be inappropriate and unjustifiable in view of cultural differences, the different needs of society in different areas, and different media offers in the various Member States.

However, we are concerned that certain formulations which are included in the *current* Art. 31 USD go against the principle of minimum harmonisation and *may be understood as hindering* Member States from improving and extending the protection in the interest of consumers, such as the clear possibility which must exist to apply must-carry to on-demand and interactive services (see our reply to question 143). Such wording that hinders a higher protection of consumers should be removed.



### e) Scope of 'must carry' and Electronic Programme Guide provisions<sup>1</sup>

If broadcast content is considered relevant *inter alia* for pluralism, freedom of speech or cultural diversity, 'must carry' obligations ensuring the transmission of specified TV and radio channels can be imposed on providers of broadcast networks (e.g. cable TV or terrestrial TV networks).<sup>2</sup> Similar obligations cannot be imposed on platforms which provide TV services over the open Internet (such as e.g. Netflix, Magine). Furthermore, traditional TV and radio channels represent a declining share of audiovisual consumption patterns and relevant content can also be presented in videos, audio- and text files provided over the Internet and viewed on devices other than a TV set (e.g. smartphones, laptops, PCs).

Member States can also influence the scope and determine the order of TV channel listings in electronic programme guides in TV sets (electronic programme guides, EPG). Some stakeholders have suggested to extend these navigation facilities, e.g. to a general 'findability' facility which would make it easier for end users to find any particular item of relevant content via Internet access.

**Question 142:** Regarding digital content considered relevant for general interest objectives such as pluralism, freedom of speech or cultural diversity typically provided by public services broadcasters, but also by some designated private broadcasters and potentially by other sources, please indicate whether you have experienced:

X cases where availability of such content could be (or risks to be) prevented or restricted.

X cases where finding such content could be (or risks to be) made unreasonably burdensome for viewers.

X cases where finding and enjoying such content could be (or risks to be) unreasonably burdensome for disabled viewers.

X cases where such content is only available in a form which is modified or compromised by a third party beyond the control and without the consent of the broadcaster/source.

Please explain your response and provide concrete examples.

Currently, 'public interest' content, and particularly programmes provided by European PSM, are key for operators of new or emerging platforms to attract audiences; this is also true for global players which need local content for their launch in different European countries. This may explain why PSM so far have not had major difficulties in being present on these platforms.

However, this situation is not certain to continue once these platforms have matured, and in particular once some of them may have gained strong positions in European audiovisual markets. At that stage there is a serious risk that 'public interest' content, which is generally provided to consumers for free or without any extra payment, will come into conflict with the commercial business interests of platform operators, which will have an incentive to give preference to their own competing programme offers, or to those of their affiliated companies, and more generally to content which generates extra revenue for them (e.g. through the

<sup>1</sup> Similar issues have been raised in the context of media regulation, see the consultation document at [http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc\\_id=10119](http://ec.europa.eu/newsroom/dae/document.cfm?action=display&doc_id=10119) pp 18-29. Further information on the consultation is provided at <https://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

<sup>2</sup> The obligations may include the transmission of services specifically designed to enable appropriate access by disabled users.



sharing of subscription or pay-per-view revenues, revenues from online advertising).

Audiovisual platforms also seek to monetise prominence on user interfaces or reach global prominence deals having no regard to local markets and audiences.

It is thus time to take precautionary measures on *access and findability* by making tools available to national authorities so that they are able to pre-empt these major risks. If one were to wait until such risks have materialised, it could be too late, as irremediable harm could have been done to the European audiovisual system, especially taking into account the time it takes to adopt and implement new legislation.

To safeguard the editorial responsibility of media service providers and the functioning of the audiovisual value chain, it is necessary to protect audiovisual media services not only against unauthorised modifications but also against commercial overlays and other parasitic business practices across platforms. Accordingly, platform operators should be required to respect *signal and content integrity*. It is at the platform level that the main risks arise and that easy remedies are available.

For more details, see the EBU Reply to the Commission consultation on the AVMS Directive, in particular to questions 1.1 and 6.2 (access and findability), 2.1 (content integrity) and 6.3 (accessibility).

**Question 143:** Is there a need to adapt or change the provisions on

	Yes	no
'Must carry'	X	<input type="checkbox"/>
Electronic Programme Guides (EPG)	X	<input type="checkbox"/>

Please explain your response.

We see a strong need for *updated rules and safeguards to ensure that citizens can easily find and access content of particular value for society, on all significant audiovisual platforms, in a converging media environment*. By 'audiovisual platforms' we mean *significant* platforms containing aggregated audiovisual content for consumers and/or a user interface to guide viewers. We refer to our reply to the AVMSD consultation (Q. 1.1 and 6.2) regarding the general need for *ex ante* regulation on access and findability of 'public value content'. As for the conditions under which the content may be distributed see Q. 31.

#### ***Access to public value content – must-carry rules***

Must-carry rules are essential legal safeguards to ensure citizens' access to public value content and need to be *preserved* and *updated* in line with new technological and market developments. Their importance may increase in the future with regard to wireless networks

Although Art. 31 USD does not prevent the application of must-carry rules beyond cable networks, the possibility to apply them to all key networks and platforms (including managed OTT platforms) should be clarified and certain conditions should be updated:

a) Art. 31 USD is not flexible enough in the sense that it does not cover the possibility for Member States to extend must-carry rules to *interactive and non-linear AVMS*.

Audiovisual media consumption is shifting to non-linear viewing, and public value content is increasingly available on-demand (including broadcasters' catch-up services). Converging Networks can increasingly handle both linear broadcasting and on-demand streaming and downloads. Media players and Apps play an increasingly important role in integrating and making accessible offers of public value content. Must-carry obligations should also cover hybrid TV signalling, which allows viewers to interact with the programme and to access complementary on-demand content.

b) Art. 31 USD needs to be adapted to multiplatform modes of consumption, so as to cover *all key networks* and associated services for the delivery of AVMS.

Restricting must-carry obligations to providers whose networks are used by a significant number of users as their '*principal means* to receive radio and television broadcast channels' is no longer justified. Apart from the fact that the wording needs to be updated to refer to 'audiovisual media services and/or radio', users should not be restrained to *one principal means* of accessing audiovisual content. They are entitled to access audiovisual services via different means of delivery depending on where they are (e.g. at home, at work, on the move) and which device they use in each situation. Accordingly, the concept of a single 'principle means' becomes obsolete: viewers use different means at different times, or even in parallel, and expect public value content to be available there.

c) To the extent that the scope of the Telecoms Package is broadened to cover OTT providers, the scope of Art. 31 USD should follow suit, so that it can apply to *managed OTT platforms* that play a similar role (see Q. 115).

Access to public value content needs to be ensured on all significant audiovisual platforms. Within the scope of application of the Telecoms Package, it is necessary to secure sufficient policy flexibility for Member States to adopt rules to ensure that citizens can easily find and access public value content.

### ***Findability – EPGs and user interfaces***

As a complement to must-carry rules, Member States must have the possibility to ensure the 'findability' (i.e. due prominence) of public value content on user interfaces of significant networks and audiovisual platforms (see Q. 142).

While Art. 31 USD does not cover such measures, *Art. 6(4) AD* recognises the ability of Member States to impose obligations in relation to the 'presentational aspects' of EPGs and similar listing and navigation facilities. This principle should be *maintained* and it needs to be clear that it applies across the whole telecoms framework (see Q. 24 and 129).

## **3.6 The universal service regime**

With the opening of the telecommunications market to competition there was a need to provide safeguards for those circumstances where competitive market forces alone would not satisfactorily meet the needs of end-users, in particular the case where they lived in areas which were difficult or costly to serve, or who had low incomes or disabilities.

The three basic characteristics of the current universal service concept relate to availability, affordability and accessibility, while minimising market distortions. The scope of universal service as determined at EU level includes: (i) access at a fixed location comprising: a connection to a public communications network enabling voice and data communications services at data rates sufficient to permit functional internet access, and access to *publicly available telephone services* (PATS); (ii) a comprehensive directory; (iii) comprehensive directory enquiry service; (iv) availability of public payphones. Furthermore, Articles 7 and 9 of the Universal Service Directive contain additional elements which may be a part of the universal service obligation(s), namely measures for disabled users and affordability of tariffs.

The current rules do not explicitly mandate the provision of a broadband connection within the scope of universal service at EU level. However, Member States have the flexibility to do so in light of their national circumstances. So far, a few Member States (Belgium, Croatia, Finland, Malta, Spain, Sweden and, only for disabled end-users, Latvia) have decided to include broadband connections within the scope of universal service (from 144kbps up to 1 and 4 Mbps).

The universal service regime provides for the following means to finance the universal service obligations: (a) a public fund, (b) a fund to which providers of electronic communications networks and services are required to contribute, or (c) a combination of both.

The EU has developed other policy tools outside the universal service regime in order to address the needs of users, in particular as regards the deployment of broadband and access to digital services. For instance the Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks; promotion of and usage of public funding from Structural Funds or from the Connecting Europe Facility; promotion of stability of prices for regulated wholesale access to SMP copper networks, and pricing flexibility for non-discriminatory regulated access to SMP NGA networks; advocacy of broadband coverage requirements in less densely populated areas as part of the spectrum assignment conditions; and adoption of the EU state aid rules to support the deployment of broadband networks in areas where there is a market failure.

### **3.6.2 Review of the universal service rules**

#### **c) Provision of broadband connectivity and access to Internet service to all end-users**

Access to the Internet through a broadband connection has become an essential service over which a number of specific services are being used by a majority of consumers. On average, 75% of Europeans use Internet, either via fixed or wireless means. New developing services, such as digital media content, cloud computing, Internet of Things, eHealth or eGovernment are becoming crucial for EU citizens and businesses to actively participate in the digital society. It can be reasonably expected that in future, the role of broadband as an enabler of access to services becomes even more prominent.

By 2014, basic broadband has been made available to all in the EU, when considering all major technologies (xDSL, Cable, Fibre to the Premises, WiMax, HSPA, LTE and Satellite ). Fixed and fixed-wireless terrestrial technologies covered 96.9% of EU homes in 2014. However, coverage in rural areas is substantially lower for fixed technologies (89.6%) (See [Digital Agenda Scoreboard](#)).

Broadband take-up has increased considerably in past years. 78.3% of EU households had a broadband connection in 2014, however the number of connected households in rural areas is

substantially lower. Fixed broadband penetration (by households) rose to 69.9% and mobile broadband was used by 72% per 100 inhabitants.

In view of rapid deployment of 4G in recent years, and further deployment of fixed networks in parallel (in rural and sparsely populated areas facilitated by available public funding or through territorial coverage requirements in spectrum licences or national legislation), it is likely that the 30 Mbps DAE broadband target will largely be met by 2020 through a combination of fixed and mobile technologies.

However, even assuming a very broad deployment of 4G, some areas, including extremely low density areas and places with very difficult geographical conditions (such as mountain valleys, islands, or other peripheral areas) are likely to remain not covered with networks providing 30 Mbps connectivity.

**Question 157:** Do you see reasons for or against explicitly including access to a broadband network connection allowing functional Internet access within the scope of universal service at EU level?

☒ For including                      ☐ Against including                      ☐ Both

Please explain your response, in particular what would be the possible implications for the economy and society.

Including access to broadband network connection, in particular broadband access to the Internet, within the scope of universal service at EU level is an essential condition for an "inclusive" digital society and to allow all citizens to take part in the democratic public sphere.

Universal access to broadband networks also plays a vital role for public service media services to serve all audiences in an Internet era and moreover, the availability of high quality European content is among the main drivers of the broadband take-up.

**Question 158:** If included in the universal service, how should the broadband connection be defined in a manner that would allow sufficient flexibility to cope with different Member State situations? Or should it be defined in a way that enables end-users to use certain categories of services (i) used by the majority of end-users or (ii) considered as essential for the participation in the digital economy and society?

☒ By requiring a minimum download/upload speed                      ☐ By enabling the use of certain services  
☐ By speed AND service use                      ☐ Other parameters

Please explain your response.

Universal service should include minimum coverage and quality of service requirements for broadband access to the Internet. Universal broadband service should provide sufficient capacity to support media services. The quality of users' experience largely depends on the bitrate capacity (connection "speed") that is actually provided, which in most cases is below the advertised or the subscribed speed. Consequently, minimum requirements for bitrate capacity should refer to the connection speed actually provided. Coverage obligations should be associated with the minimum requirements for download/upload speed.

Minimum requirements, including those that define technical conditions and access to services and content, and which are realistic for all Member States could be defined at EU level, to support those services which are integral to the Information Society, including media services. This would ensure a minimum degree of harmonisation throughout the EU. Additional requirements could be adopted at the national level, in accordance with specific national circumstances and objectives.

**Question 159:** If broadband connection were to be included in the universal service regime and defined "by services used", what would be such 'essential' minimum online Internet services? *(more than one answer is possible)*

- ☒ Sending/receiving E-mails
- ☐ Voice communication over the internet
- ☒ Access to information (online news; information about goods and services)
- ☒ General Web browsing
- ☐ cloud services
- ☒ E-Government
- ☐ Internet banking
- ☐ E-health
- ☐ E-learning
- ☐ E-Commerce/ online shopping
- ☐ Social Networking
- ☐ Maps and transport
- ☒ Streaming music/internet radio
- ☒ Streaming video/video on demand
- ☐ Other Multimedia
- ☐ Gaming
- ☒ Assistive tools for persons with disabilities
- ☐ Other

Please explain your response.

For audiovisual media service providers, in a digital era it will be of utmost importance to be able to reach all audiences through universal broadband access. The objective is to guarantee, for all European citizens, including persons with disabilities and those on low incomes, access to a wide range of public service media services (including accessibility services) in the easiest and most appropriately priced way.

## **f) Financing of universal service**

Increasing broadband connectivity provides benefits not only to the electronic communications sector, but also to online service and content providers as well as users and the society as a whole, as broadband is an enabling technology that facilitates the use of a wide range of online services by citizens and businesses.

A possible inclusion of broadband services within the scope of universal service is likely to increase the cost of providing the universal service. At the same time, the inclusion of broadband would certainly expand the number and range of beneficiaries of a universal service – all providers of online content, applications and services potentially benefit from the business opportunity presented by ubiquitous very high-capacity connectivity. The same is true of individual end-users, who are increasingly "prosumers", generating large amounts of online material available to a wide audience.

Taking into account the need to close the digital divide, one question to be addressed is whether a future funding mechanism should be administered, as now, at national level, or should be administered at EU level in order to permit contributions to be distributed across Member States.

**Question 163:** What is the most appropriate and equitable way of financing the universal service, in particular in light of a possibility to include broadband into universal service scope, taking into account all those who benefit from its provision?

- ☐ public funding
- ☐ electronic communications sector
- ☐ providers of online content, applications and services
- ☐ all end-users (e.g. by an extra charge on their monthly invoice)
- ☐ a combination of public funding and industry funding
- ☐ other sectors

Please explain your response.

It is quality content which drives forward the uptake of broadband by consumers. It is important to ensure that resources intended to finance European content are not diverted. Therefore, content providers, should not bear any costs generated by a universal broadband connection service, including universal broadband access to the Internet since European audiovisual media service providers already heavily invests in the production of high quality European content as well as the promotion of digital skills, which benefit telecoms cable and broadband network operators business models.

### 3.7 Institutional set-up and governance

Whilst the lack of consistency in the regulatory approach taken at national level is not solely attributable to the regulatory set-up in the EU, it has become apparent over the past years, that it is – to a degree at least – the result of the institutional set-up (see [Study on How to Build a Ubiquitous EU Digital Society, November 2013, IP/A/ITRE/ST/2012-09](#)) and the way the various institutional players (i.e. mainly the NRAs, the Body of European Regulators, i.e. BEREC, and the European Commission) interact and can influence the regulatory outcome (see background for more).

Diverging regulatory conditions in the individual national markets can have a profound effect on cross-border trade and, thus, on the development of a Single Market in electronic communications and may significantly distort competition across the EU. Significant divergences by the individual institutional actors in the pursuit of existing regulatory principles and regarding how the objectives of the regulatory framework are implemented across the EU

can create considerable obstacles to cross-border trade and market entry. Therefore, whilst consistency across the EU is not a primary goal in itself, it is necessary to address concrete obstacles arising from divergence. For example, on the fixed side, only a few operators are offering pan-European services to multi-national corporations. (see Annex for more).

In addition, in particular the benefits of wireless innovation can only be realised if Member States and the European Commission cooperate efficiently and effectively, based on a spectrum governance framework that is aimed at ensuring economies of scale for wireless equipment and coherent spectrum usage conditions throughout the Digital Single Market for users.

### **3.7.1. Evaluation of the current institutional set up and governance structure**

The first set of questions aim at providing input for the evaluation of the functioning of the current regulatory framework.

**Question 167:** Are the current rules regarding the political independence of the NRAs, as set out following the 2009 review in Article 3(3a) of the Framework Directive, complete and clear enough and have they been effective in attaining the objective of ensuring that in the exercise of its tasks, a national regulatory authority is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response. If possible, please specify what improvements, if any, could be envisaged to reinforce the political independence of the NRAs.

**Question 168:** In your view, has the current EU consultation process under Article 7/7a of the Framework Directive been effective in achieving a consistent application of the EU rules for market regulation in the electronic communications sector?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 169:** To what extent has BEREC efficiently achieved its main objective, i.e. contributing to the development and better functioning of the internal market for electronic communications networks and services by aiming to ensure a consistent application of the EU regulatory framework for electronic communications?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 170:** To what extent have the current rules on resolving disputes between undertakings by the NRAs, as set out in Articles 20 and 21 of the Framework Directive, been efficient in their outcome?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 171:** In your view, to what extent is there a sufficient degree of coherence in the application of the regulatory framework by the various institutional players (NRAs, BEREC, the European Commission) to ensure the fulfilment of the policy objectives established in Article 8 of the Framework Directive?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response (in doing so, please set out in which areas increased consistency would bring improved outcomes and would help fostering the single market for electronic communications).

**Question 172:** In your opinion, would a common EU approach (i.e. a more prescriptive EU framework which would further foster regulatory harmonization) add value in addressing the differences in the regulatory approach chosen by NRAs for individual markets in similar circumstances?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response. When doing so please set out what you consider to be the main variables, whether there are any justifications for such differences, where you see areas with less consistency and how you consider the EU governance process may influence the outcome.

**Question 173:** Do you consider that there are areas, in which the current requirement to undergo an EU consultation process pursuant to Article 7 of the Framework Directive does no longer add value with regards to furthering the Single Market for electronic communications?

☐ yes ☐ no ☐ do not know

Please explain your response.

**Question 174:** To what extent has the Radio Spectrum Policy Group (RSPG) efficiently achieved its role of assisting and advising the Commission on radio spectrum policy issues, on coordination of policy approaches, on the preparation of RSPPs and on harmonised conditions with regard to the availability and efficient use of spectrum?



☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response and provide areas for improvement as appropriate.

The EBU believes that the current EU governance for spectrum is efficient and sufficient. The RSPG has provided to the Commission Opinions, Communications, Reports and Decisions harmonising the availability of spectrum for different services. The RSPG has efficiently worked to coordinate policies across Member States while taking into account the different national requirements.

The issue of mandates to the CEPT has resulted in the harmonisation of technical conditions which go even further than EU countries in providing a large unified market. The RSPG has worked at ensuring that the RSPP objectives were met and in particular those regarding the timely availability of spectrum for wireless broadband services (see question 175).

**Question 175:** To what extent has the current governance for spectrum efficiently and effectively contributed to the provision of electronic communication services across the EU?

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

The EBU believes that the current governance for spectrum has efficiently and effectively contributed to the provision of electronic communication services across the EU. As an example, the RSPP set a target of 1200 MHz for wireless broadband. The EC Report on the Spectrum Inventory includes an overview of the frequency bands that have been harmonised at the European level for use by wireless broadband (ca. 1000 MHz in total). The Commission has adopted additional measures via mandates to CEPT:

- to develop technical conditions for wireless broadband in the 694-790 MHz (700 MHz) band, potentially also applicable to PPDR use;
- to study the technical conditions needed to allow sharing of the frequency bands 1452-1492 MHz (1.5 GHz band) and 2300-2400 MHz (2.4 GHz band) between wireless broadband and incumbent users.

The European Commission recently noted that in some Member States, not all of the spectrum bands harmonised for wireless broadband (ca. 1000 MHz in total) had also been licensed often due to a lack of demand. The European Commission therefore believes that there is currently no need for additional spectrum harmonisation, beyond the 1200 MHz target, in the range 400 MHz-6 GHz for licensed wireless broadband. Further, we note that the use of targets as a tool to release spectrum are not always helpful. Targets do not allow the different levels of demand between member states to be recognised and can be said to focus on quantity of spectrum identified for release, over the identification of the most suitable band for any particular use.

### 3.7.2 Overall institutional set-up and the role of BEREC

### a) The role of BEREC and its set-up

The EU regulatory framework has been designed with flexibility in mind in order to allow national regulatory authorities to take account of national circumstances. However, the Commission has repeatedly pointed out (in particular, the Commission Staff Working Document "[A Digital Single Market Strategy for Europe - Analysis and Evidence](#)" of 6 May 2015) that many differences in the national regulatory approaches cannot be sufficiently explained by varying national circumstances.

The Body of European Regulators for Electronic Communications (BEREC) was established by [Regulation \(EC\) No 1211/2009](#), as part of the review of the telecoms framework. According to its mandate, BEREC shall contribute to the development and better functioning of the internal market for electronic communications networks and services. It should do so by aiming to ensure a consistent application of the EU regulatory framework.

The experience so far suggests that the procedural and institutional set-up currently in place appears to be ill equipped to ensure a more consistent approach in similar circumstances. In particular, with regards to imposing remedies, the balance between achieving harmonisation in a flexible framework appears to be tilted in favour of flexibility neglecting needs for consistency.

For example, whilst remedies are imposed on operators by NRAs at the national level, the Commission and BEREC almost exclusively input through non-binding instruments in order to attempt to achieve EU-wide regulatory consistency on this level. In the past, this "soft law" approach has led to significant differences in some areas, clearly proving to be an obstacle for the development of a Single Market.

The question arises whether BEREC has achieved and, in its current two-tier governance structure, can achieve its main objective of ensuring consistency amongst its members in the application of best practice telecoms regulation. BEREC, as one of the key stakeholders at European level, has been faced with some criticism. According to the study on "[How to Build a Ubiquitous EU Digital Society](#)", in its current governance structure, BEREC is primarily motivated by a desire for self-determination, and that it delivers verdicts based on a 'lowest common denominator', or prioritises flexibility over consistency in the Single Market.

Besides, in July 2012, the European Parliament, the Council and the European Commission endorsed a Joint Statement on decentralised agencies, which included a range of principles within the so-called Common Approach. The Common Approach aims at making EU agencies more coherent, effective and accountable and addresses a number of key issues: the role and position of the agencies in the EU's institutional landscape, the creation, structure and operation of these agencies, funding, budgetary, supervision and management issues, etc. The Common Approach is meant to serve as political blueprint for guiding both the establishment and review of EU agencies.

**Question 176:** Do you consider that the current institutional set-up at EU level should be revised in order better to ensure legal certainty and accountability?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response. In doing so, please consider the Common Approach on decentralised agencies and indicate whether in your view there are examples of institutional arrangements in other sectors which could serve as a model for the electronic communications sector.

Please express also your views as to how to ensure that BEREC has greater medium-term strategic direction and can devise positions which pursue the common EU interest, going beyond a lowest common denominator approach.

**Question 177:** Do you consider that establishing an EU Agency with regulatory decision-making powers within a clear framework of rules could positively contribute to achieving regulatory harmonisation in the EU telecoms single market in any of the following areas:

a) market regulation

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

b) spectrum management in the EU

☐ strongly agree ☐ agree ☒ disagree ☐ strongly disagree ☐ do not know

c) end user protection

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

d) other

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

Please explain your response and specify if other.

The EBU does not see a need for establishing an EU Agency regarding spectrum management as the current EU institutions provide the required regulatory harmonisation of spectrum use across EU countries. Every country already has its own Agency which coordinates spectrum policies at the national level, coordinates with neighbouring countries and shares policies and best practices with other countries in the context of the CEPT in order to harmonise spectrum usage.

**Question 178:** Should BEREC be given more executive tasks or binding powers in specific areas, for example numbering or addressing?

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

Please explain your response. In particular, please specify the tasks or powers you would consider appropriate to confer on BEREC.

**Question 179:** As regards the enforcement of EU communications sector-specific end-user rights, should the enforcement of EU communications sector-specific end-user rights at national level fall within the core competence of the independent national regulatory authorities for communications?

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

Please explain your response.

**Question 180:** As regards the enforcement of EU communications sector-specific end-user rights, should other national authorities (also) be competent for the enforcement of EU communications sector-specific end-user rights?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and specify which authorities and for which provisions.

**Question 181:** As regards the enforcement of EU communications sector-specific end-user rights, does the degree of harmonisation of the EU communications sector-specific end-user rights (maximum/minimum harmonisation) play a role in your reply to the previous questions?

- ☐ yes, it is the most important factor
- ☐ yes, it is one of several factors considered
- ☐ no

Please explain your response.

**Question 182:** As regards the enforcement of EU communications sector-specific end-user rights, should the authority or authorities in charge of enforcement of EU communications sector-specific end-user rights at national level be able to cooperate among themselves to enforce EU communications sector-specific end-user rights cross-border in the EU (e.g. when consumers and providers are located in two different Member States, or when the same practices are encountered in several Member States)?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response.

**Question 183:** Have you identified any provision related to BEREC and the BEREC Office which in your opinion should be revised in terms of i) set-up (structure, composition, etc.), ii) mandate (objectives, roles, tasks, evaluation, etc.), iii) deliverables (powers, type of acts, content, timely delivery, etc.) and iv) functioning (procedures, working methods, internal rules, etc.)?

☐ yes      ☐ no      ☐ do not know

Please explain your response.

**Question 184:** Have you identified any provision in the regulatory framework (including the BEREC Regulation), which in your opinion should be revised in order to ensure that individual NRAs more systematically follow BEREC's opinions and guidance?

☐ yes ☐ no ☐ do not know

Please explain your response. If your answer is yes, please specify which provisions would benefit from a revision.

#### **b) NRAs' independence, powers and accountability**

The 2009 review of the regulatory framework aimed at strengthening the independence of the national regulatory authorities. In addition to independence from the regulated companies, safeguards aiming at ensuring political independence of the regulatory authorities were introduced.

**Question 185:** Have you identified any provision in the regulatory framework, which in your opinion should be revised as regards NRAs' independence and powers?

☐ yes ☐ no ☐ do not know

Please explain your response.

**Question 186:** Should the NRAs have a role in mapping areas of investment deficit, or infrastructure presence (including for State Aid purposes)?

☐ yes ☐ no ☐ do not know

Please explain your response.

**Question 187:** Should the provisions established in Article 3 of the Framework Directive be revised in order to adequately ensure that NRAs enjoy budgetary autonomy and adequate human and financial resources to carry out the tasks assigned to them?

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

Please explain your response.

**Question 188:** Do the current rules on the accountability of the NRAs (i.e. Article 3(3a) of the Framework Directive on "supervision in accordance with national constitutional law" and Article 4 on the exercise of effective judicial control) strike the right balance between independence and accountability of NRAs?

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

Please explain your response, and develop, if applicable, in which direction should this balance be altered, such as for example, by prescribing in more detail the scope of judicial review (minimum, maximum control), or how can the NRA accountability be reinforced while guaranteeing independence.

According to the EU Guidelines for the application of state aid rules in relation to the rapid deployment of broadband networks (January 2013), NRAs should have certain responsibilities with regard to the implementation of state aid decisions in the broadband markets; indeed the Guidelines urge Member States to reserve an important role for the NRAs in the design and assessment of national projects. For instance, NRAs should be consulted as regards the identification of target areas, on access prices and conditions and resolution of disputes. It calls on Member States to create appropriate legal bases for such involvement.

**Question 189:** Taking into account the current EU Guidelines on state aid, should any provision of the current regulatory framework for electronic communications be revised in order to improve the outcome of these processes?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response.

### **c) Market regulation: EU regulatory consultation process and harmonisation of regulatory conditions**

There are two particular areas, market regulation and the management of scarce resources, in relation to which it is particularly appropriate to assess whether an increased consistency could contribute to further integration *en route* to a true Single Market. With regard to both areas, there may be various sub-themes, which could benefit more broadly from an institutional set-up that was geared more thoroughly towards ensuring consistency. For example, issues surrounding the independence and funding of NRAs, the constitutional set-up of BEREC, the design of the EU consolidation process under Article 7, the conditions applicable pursuant to the general authorisation regime or the rights of use for radio frequencies, the Commission's powers to adopt harmonisation measures under Article 19, standardisation, rights of way, numbering, spectrum management, naming and addressing to name but a few.

Concerning market regulation, one area, in relation to which a more consistent approach is particularly important, is the choice and design of access remedies. Unfortunately, it is especially in this area where there is the most notable divergence across the EU. Whilst competition still predominantly takes place at the national level, EU-wide consistency in designing access remedies is increasingly considered important, in particular by pan-European operators, in order to create a level playing field so as to provide opportunities for entry and competition across national markets whilst ensuring efficient investments and innovation, all in order to ensure the best outcomes for consumers and citizens in terms of product offerings, price, choice and value across an EU-wide Single Market. In addition to access remedies, fragmentation of other regulatory conditions (e.g. authorisation conditions) may also represent an obstacle to market entry and cross-border provision of services. The negative impact a fragmentation of conditions has on the provision of connectivity services has been widely

reported by the BEREC consultation on the cross-border obstacles to business services and by various studies.

**Question 191:** Do you consider that there are any ways in which the current EU consultation process could be streamlined in order to reduce the burden for all actors involved?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response (When doing so please set out what you consider to be the most burdensome parts of the current EU consultation process for the stakeholders involved and how the burden could be reduced).

**Question 192:** Are there any current conditions attached to the general authorisation for the provision of electronic communications services and networks (as listed in the Annex of the Authorisation Directive and/or specified at national level) which should be revised in order not to hinder the cross-border provision of electronic communications services and networks?

☐ yes      ☐ no      ☐ do not know

Please justify your response by indicating, if applicable, which kind of services are most affected.

**Question 193:** According to the national provisions as well as your experience, should national notification requirements under the general authorisation regime be revised in order to allow that they are fulfilled in practice by operators non-established in the country of provision of the service?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response if possible by indicating also which kind of obstacles, if any, occur.

**Question 194:** Under the general authorisation regime, an undertaking which intends to provide electronic communications networks and or services may be required to submit a notification whose content is limited to what is necessary for the identification of the provider.

Based on your experience, would it generate added value if notification requirements were standardised at EU level (in a standard template) and if the notification on such a standard template was centralised at BEREC or equivalent level, without this being a prerequisite for commencement of activity?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 195:** To what extent have you experienced changes of financial and competitive conditions attached to rights of use having a significant impact on the structure of the market and/or the financial sustainability of the provision of services?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response by indicating, if applicable, specific examples of changes of market conditions and of related impacts.

**Question 196:** Are there regulatory obligations (including general conditions attached to the general authorisation or to rights of use as well as specific obligations imposed on operators) that would benefit from technical harmonisation at EU level, in order to reduce red tape in general, costs of cross-border provision and more generally to exploit economies of scale?

☐ yes ☐ no ☐ do not know

Please explain your response by indicating, if applicable, also which kind of regulatory obligations and/or services would benefit most from such harmonisation and, if available, any quantification of these benefits.

### 3.7.3 Efficient and effective Spectrum Governance in a Digital Single Market

With regard to the management of radio spectrum, as one of the most important scarce resources for the digital economy, the existing governance structures focus on the harmonisation of basic technical parameters, because the benefits of wireless innovation rely on the making available on the market and putting into service in the Union of radio equipment (governed by Directives 1999/5/EC and 2014/53/EU) and the use of such equipment throughout the Digital Single Market based on common allocation of spectrum by Member States and the technical harmonisation of the usage parameters under the Radio Spectrum Decision 676/2002/EC. However, with the exception of spectrum made available on a licence-exempt basis via a general authorisation (e.g. Wi-Fi, or other short range devices) spectrum users may not benefit from harmonised usage conditions, based on sufficient consistency of the timing of effective assignment or of associated conditions.

It is therefore necessary to investigate whether the current governance model in this area falls short of ensuring consistent assignment conditions throughout the Union as well as whether the current processes to making harmonise spectrum available throughout the Digital Single Market present a potential barrier for home-grown wireless innovation to reach the market in Europe. A common approach to best practices in spectrum management and governance would reduce the administrative burden at national level and at the same time increase the predictability sought by investors, while taking into account the principles of subsidiarity and proportionality and national ownership of the relevant assets.

Maximising spectrum-based economic benefits via economies of scale means more revenue for Member States – directly in fees and indirectly by increased added economic value; revenues,



which would remain exclusively with Member States. A common and transparent fast-track procedure for undertaking technical compatibility and sharing studies might equally reduce the administrative burden at national level, and at the same time would also reduce the resources needed for stakeholders to gain access to spectrum for new applications or technologies.

**a) Evaluation of the functioning of the current regulatory regime and processes.**

**Question 197:** To what extent is the current applicable regime to define technical harmonisation parameters based on Commission Mandates to CEPT:

a) Satisfactorily transparent in regard to the way the necessary technical studies are conducted?

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

b) Efficient and timely in responding to technology developments and/or market demand?

☒ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

c) Effective in terms of providing legal certainty to operators throughout the EU?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know#

d) Successful to spur the benefits of wireless innovation in the EU?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your responses:

The CEPT is the recognised expert organisation in European spectrum management which assembles experts from different domains. The current EU approach of issuing mandates to CEPT to define technical harmonised parameters is transparent, efficient and timely. In the framework of the CEPT, members and interested stakeholders provide their technical studies which are thoroughly analysed and discussed by all parties. All information required to fully understand the studies is made available in a transparent manner.

**Question 198:** How significant for your organisation are the resources needed to follow and contribute to the CEPT procedures in response to a Commission Mandate?

☐ very high ☒ High ☐ moderate ☐ do not know

Please explain your response, including how satisfactory you find the CEPT process in general from your organisation's point of view.

The EBU and its members follow and actively contribute to the CEPT technical studies that relate to broadcasting services. This requires important resources from the EBU and its members but is necessary given the importance of ensuring that broadcasting services have access to adequate spectrum resources and are protected from the harmful interference of other spectrum users such as wireless broadband services.

**Question 199:** For SMEs, how do you view the current CEPT technical spectrum

harmonisation process ? (several answers possible)

☐ efficient ☐ supportive of SME innovations ☐ a comparative advantage for the EU  
☐ supportive to disruptive or innovative applications ☐ opaque ☐ cumbersome ☐ difficult to access for SMEs ☐ unsupportive to disruptive or innovative applications

Please explain your response and provide suggestions for improvement if any.

**Question 200:** Are specific measures necessary to ensure access of small and medium sized enterprises to harmonised spectrum?

☐ strongly agree ☐ agree ☐ disagree ☐ strongly disagree ☐ do not know

Please explain your response.

**Question 201:** Given the current upstream involvement of CEPT, ETSI and other stakeholders in the preparation of technical studies for future spectrum harmonisation measures, to what extent is it possible to protect commercial secrets of an innovative wireless application, when aiming at harmonised spectrum access in the EU?

☐ significantly ☐ moderately ☐ little ☐ not at all ☐ do not know

Please explain your response.

**Question 202:** Do you see a need to accelerate or streamline the Radio Spectrum Committee/CEPT process, with a view to coping with rapid market and technological changes and improving "time to market" for wireless innovations in the EU?

☐ strongly agree ☐ agree ☒ disagree ☐ strongly disagree ☐ do not know

Please explain your response. If yes, please provide suggestions.

The EBU believes that CEPT fully supports new innovative applications and works towards finding harmonised solutions that support them. New wireless services have been introduced in the European market at the adequate speed and there is no need to accelerate the process (see also question 175).

## b) Modernised Spectrum Governance for a Digital Single Market

**Question 203:** In order to serve the future wireless connectivity needs of the EU, would a common EU approach to governing spectrum access as a strategic resource in the Digital Single Market be necessary, while taking into account the principles of subsidiarity and proportionality and the character of spectrum as a national asset?

☐ strongly agree    ☐ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response and provide examples.

**Question 204:** Do you see the need for more transparency in the preparatory steps before the Commission takes binding technical harmonisation decisions to ensure legal certainty for spectrum access in the EU, i.e before and after the Commission issues a Mandate to CEPT?

☐ strongly agree    ☒ agree    ☐ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response and provide examples.

The EBU would support increased transparency by the Commission in the preparatory process of taking binding technical harmonisation decisions. We believe that the CEPT responses to Commission mandates are sufficiently transparent but these are only one of the aspects considered by the Commission before taking a binding decision. Thus, we would welcome more transparency and visibility for all stakeholders as to which other sources are taken into account by the Commission (data on market requirements, economic considerations etc.).

**Question 205:** Do you agree that a common and transparent fast-track procedure for undertaking technical compatibility and sharing studies would be a benefit for both administrations and stakeholders?

☐ strongly agree    ☐ agree    ☐ disagree    ☒ strongly disagree    ☐ do not know

Please explain your response and provide examples.

The EBU does not support a fast-track procedure for undertaking sharing and compatibility studies. The time needed to carry out the necessary studies is justified to ensure the quality of the results. Accelerating the process risks undermining the quality of the studies, this could in turn have an impact on the interference levels with incumbent services.

For example, the introduction of new wireless services requires allocating parts of the spectrum which often are already used by other services. Sharing spectrum requires detailed technical studies to ensure compatibility between services to avoid harmful interference.

**Question 206:** Would you see the benefits of supporting the current contribution-driven process with the services of independent full-time technical experts that could be called upon to perform technical studies as input to preparatory steps needed before the Commission can take binding technical harmonisation decisions?

☐ strongly agree    ☐ agree    ☒ disagree    ☐ strongly disagree    ☐ do not know

Please explain your response and provide examples.

The EBU does not see the need for full-time technical experts working for the Commission to perform technical studies such as sharing and compatibility studies. The current process where interested parties provide input to the CEPT as per Commission Mandates and where expert regulators take the decisions is the correct approach.

In addition, the CEPT already relies on the additional assistance of technical experts at the European Communication Office (ECO) which also perform technical studies.

On a case-by-case basis, the Commission already relies on the expertise from external experts to perform certain studies (e.g. spectrum inventory report) and this course of action has been successful.

**Question 207:** Given the overall lack of vacant spectrum and the increasing need for all users to use spectrum efficiently, do you agree that NRA's responsible for spectrum management should monitor the actual usage of bands listed in their inventory of existing use?

☒ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

The EBU supports regular monitoring of actual spectrum use in different countries. The Commission Report on the Spectrum Inventory has been a very useful exercise in identifying frequency bands which are underutilised or unused across Member States. This work should be continued and even expanded by NRAs to provide additional information regarding the actual usage of the licensed frequencies: e.g. coverage achieved in terms of area and population, penetration in terms of users, the extent to which the most efficient technologies are used, traffic load of networks.

**Question 208:** Can the Radio Spectrum Decision process, including the preparatory steps in CEPT, be accelerated and/or simplified, with a view to cope with the rapid market and technological changes?

☐ strongly agree      ☐ agree      ☒ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

The EBU does not see the need to accelerate or simplify the Radio Spectrum Decision process. The current process is necessary to perform all required technical studies for introducing new services in the spectrum, a limited resource which is already used by many services which need to be protected from harmful interference (see also questions 202 and 205).

In addition, the process has proven to be efficient in responding in a timely manner to rapid market and technological changes (see also question 175 related to wireless broadband services).

**Question 209:** Should Member States take a common approach when designing spectrum assignment procedures and conditions, with the aim to deliver the required regulatory predictability and consistency in the internal market while reflecting local market specificities?

☐ Yes      ☐ No      ☐ Don't know

If yes, how?

- ☐ On the basis of EU-level guidance (e.g. Commission recommendations, Commission implementing decisions, RSPG Guidelines, BEREC common positions, other)
- ☐ On the basis of peer-review discussions (e.g. between Member States authorities or NRAs grouped at EU level)
- ☐ Other

Please explain your response and provide examples.

**Question 210:** What would be the most important features of an EU-level body, which could support and develop in particular peer-review based guidance on assignment procedures and conditions, in order to promote network coverage and wireless connectivity in the Digital Single Market?

- ☐ based on EU advisory group entrusted with some implementing competences (e.g. RSPG enhanced)
- ☐ based on EU-level governance procedures and financed by the Union budget (e.g. like the BEREC office)
- ☐ based on EU-level cooperation of national competent authorities (e.g. like BEREC)
- ☐ based on intergovernmental cooperation of national competent authorities inside and/or also outside the EU (e.g. like CEPT)
- ☐ Other

Please explain your response and provide examples. Hybrid responses are also possible.

**Question 211:** Do you see the need for binding guidance on certain aspects of assignment procedures and conditions to increase regulatory predictability and legal certainty for spectrum rights holders?

- ☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

**Question 212:** In view to the harmonisation or coordination of assignment conditions and/or procedural aspects, would you consider appropriate that the Commission exercise its power under Article 19 of the Framework Directive to issue recommendations?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

If agree, what would be the most appropriate EU level body to advise the Commission in this area, any of the existing ones (BEREC, RSPG, COCOM) or others newly created?

☐ RSPG      ☐ BEREC      ☐ COCOM      ☐ Other

Please explain your response.

**Question 213:** Do you consider that regarding certain key assignment parameters, a mechanism similar to that set by Article 4 of the Radio Spectrum Decision should be available, whereby common rules would be set in implementing measures by the Commission assisted by a committee of Member States representatives?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

**Question 214:** Should such powers also cover the question whether the assignment of a given band should be conducted on a national, regional or EU-wide basis?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response.

**Question 215:** Do you consider that, in addition to general EU-level guidance or rules on assignment, individual national authorities would benefit from consultations with the Commission and with their peers on all aspects of spectrum assignment procedures being prepared by them, and that this would favour the development of more efficient and convergent spectrum assignment proceedings across the EU?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

If you agree, when would be the best moment for such consultations?

☐ in advance of the public consultation

☐ in parallel to the public consultation

☐ shortly before launch of the procedure

**Question 216:** Given the potential cross-border implications of spectrum refarming decisions in Member States, do you consider that the outcomes of cross-border coordination efforts between Member States, such as those facilitated via the "good office" service of the Radio Spectrum Policy Group, should guarantee equitable access to harmonised radio spectrum among the relevant Member States and be enforceable under Union law?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and provide examples.

### c) Scope for co- and self-regulation

When reviewing the regulatory framework for electronic communications, it is important to examine whether there are areas which could benefit from self-regulation and co-regulation (see [Principles for better self-regulation and co-regulation](#)).

**Question 217:** Do you see a need to establish a greater role for co-regulation and self-regulation in areas of the current regulatory framework?

☐ strongly agree      ☐ agree      ☐ disagree      ☐ strongly disagree      ☐ do not know

Please explain your response and indicate the areas concerned.

**Question 218:** Do you have any further comments or suggestions on the future scope and/or content of possible rules in the sector? Please explain your response.