

CONSUMERS AND EUROPE'S DIGITAL INFRASTRUCTURE

Contribution from the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband - vzbv) on the European Commission's consultation on the White Paper "How to master Europe's digital infrastructure needs?"

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Legal information

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The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V.) is registered in the German Lobby Register. You can find the respective entry [here](#).

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CONSUMER RELEVANCE

The White Paper is crucial for consumers as it addresses evolving digital infrastructure and identifies potential future needs in Europe's digital infrastructure. As the world gets more connected every day, consumers spend more time online and use the internet for a large variety of aspects in their life. Consumers are highly dependent on a functioning digital infrastructure. Many German households still are not able to access an adequate and affordable broadband connection. Consumers are one of the important pillars of the European telecommunications market: without them, there would be little need for a digital infrastructure and its services.

I. SUMMARY

The Federation of German Consumer Organisations (vzbv) suggests the following aspects to be taken into account with regard to the White Paper:

- There is insufficient evidence why the broadening of the objectives is necessary. A benefit for end-users was not explained in the White Paper. With it already being complicated to find good regulatory balance between the existing objectives, vzbv not support the addition of further objectives at this point.
- With regard to the establishment of a level playing field, vzbv sees a risk of an expansion of the full harmonisation of end-user rights. Harmonised consumer rights are not flexible enough to adhere to practical issues after implementation on national level. Therefore, vzbv continues to advocate the minimum harmonisation approach with respect to the telecommunication market.
- There has been no evidence of a market failure to justify a dispute resolution mechanism. With jurisdiction, there are already sufficient dispute mechanisms in place. vzbv sees a dispute resolution mechanism with a potential price regulation as another attempt to establish network fees and strictly rejects this approach.
- Network fees could potentially undermine net neutrality and thus put consumers' free and open access to the internet at risk.
- vzbv strongly supports maintaining the ex-ante regulatory system. This is the only way to ensure sustainable competition for all market players as well as an efficient fibre rollout.
- Access to universal services must be simple, fast and efficient for citizens.
- There should be less undefined legal terminology within the universal service obligations. Terms like the minimum bandwidth, which is defined through multiple different parameters overcomplicated the implementing process at national level.
- The process for determining an undersupply and imposing obligations by the National Regulator must be simplified, so that citizens can actually use their right to universal services.
- There must be a solution for people who want to have internet access or faster internet access if the property owner does not give the consent.
- vzbv welcomes the special focus on vulnerable end-users. After all, the data from the Federal Statistical Office in Germany also shows that among households without an internet connection, those on low income are particularly affected. Regardless of income, all citizens must be able to pay for basic services without jeopardising their basic needs for a normal lifestyle.
- A fixed date for an EU-wide copper switch off is not feasible, at least for the German market.
- "Forced migration" as well as the loss of internet access must be prevented.

II. INTRODUCTION

On 21 February 2024, the European Commission published the White Paper 'How to master Europe's digital infrastructure needs?'. vzbv would like to thank the European Commission for the opportunity to comment on the White Paper. The paper sums up the current state of the market and lays out potential future policy action. The primary focus is a resilient and sustainable digital infrastructure.

Consumers are an integral part of the telecommunications market – without them, there would be little need for the connectivity sector. With this in mind, vzbv suggests to put the interests of the end-user at the centre of the upcoming discussions.

With this paper, vzbv provides an initial statement on selected topics discussed in the White Paper. In view of the complexity of the topics, vzbv reserves the right to comment on further points in the course of a potential legislative process.

III. INDIVIDUAL POINTS IN DETAIL

1. PILLAR II - OBJECTIVE

The White Paper discusses several possible scenarios for public policy actions that could be part of future regulatory interventions. Scenario 4 suggests the broadening of the scope and objectives of the current regulatory framework. The European Commission aims to ensure a level playing field and equivalent rights and obligations for all actors and end-users of digital networks.

The White Paper suggests adding new objectives like sustainability, industrial competitiveness, and economic security into the "European Electronic Communications Code" (Code, EECC) or a potentially new regulatory framework. vzbv welcomes the European Commission's initiative to broaden the view and look for ways to achieve the existing goals laid out in the Digital Decade 2030. It is important to not weaken the existing objectives of the Code which already incorporated new aims such as the deployment and take-up of very high capacity networks in Art. 1 (2) a EECC. During the negotiations regarding the Code, it became clear at the time that a good balance of interests between the various objectives had great potential for conflict. In vzbv's opinion, the White Paper fails to show how a broadening of the objectives would benefit end-users.

1.1 Level-playing field from an end-users point of view

Since the White Paper does not focus much on end-users, there is also no further explanation on what a level-playing field for consumers might mean. Looking back at fundamental changes for consumer protection that came with the Code, vzbv would like to take the opportunity to point out a few findings of the implementation of partially harmonised consumer rights.

vzbv continues to advocate the minimum harmonisation approach regarding telecommunication services. In December 2021 the new German Telecommunications Act (TKG) entered into force with the implementation of EECC which is a combination of harmonised and national consumer law. The implementation of the Code in Germany has shown that there were difficulties in maintaining the existing high consumer protection level in the German TKG.

1.2 Examples for conflicts regarding full harmonisation of consumer rights

Within the legal proceedings of implementing the Code into national law, there was a debate whether Germany can keep substantial parts of its Transparency Regulation (TK-Transparenzverordnung)¹ for the telecommunications market. The Transparency Regulation went into force in 2017 and has given consumers a better overview on information regarding telephone and internet contracts. With the help of a standardised product information sheet, consumers can find out about the key contract details before a contract is concluded and thus make an informed decisions. The obligation for providers to indicate the start of the contract and the current end of the minimum contract term on the monthly bill also leads to greater transparency for the consumers, because now they know when a provider switch or a contract termination is possible. One of the first draft bills of the revised TKG had replaced the product information sheet with the contract summary from Art. 102 EECC. Also the date of the first possible contract termination was cut from the legislation. vzbv successfully argued to keep those two important consumer rights after all.²

There are some problems with the implementation of the contract summary. Some consumers criticise the fact that one-time costs are not always clearly stated in the contract summary. Sometimes the prices or conditions in the contract summary differ from those discussed over the phone or on site. In other cases, the received contract confirmation differs from the previously received contract summary. Another current question is, if providers are allowed to conclude the contract on the phone as consumers have to agree to the contract summary in text form.³

Another issue arose with the automatic prolongation in Art. 105 (3) EECC. After implementation into national law, vzbv saw quite a few complaints from consumers who could not terminate their contract when they were in their extension period after the initial 24-month of the contract were completed. This happened with contracts which initial 24-month period was up before first of December 2021. Providers told their costumers that the new law only applies to contracts whose initial contract term expires after first of December 2021. In addition, there are complaints that consumers are being contacted well before the end of the contract term with small changes to the contract, maybe discounts, better conditions, but with the limitation that the 24-month term re-starts.⁴

Another example is the question if Art. 105 (4) EECC (and § 58 (1) TKG) gives providers a unilateral right to change the contract. In vzbv's opinion, with reference to the current jurisdiction regarding § 308 (4) German Civil Code (BGB) changes have to be specified.

This is only a brief outline and not a comprehensive list of problems after implementation. A couple of those will be clarified by case law. If the outcome is not favourable for consumers, changes to the law can take well over a decade. Harmonised consumer

¹ TK-Transparenzverordnung, <https://www.gesetze-im-internet.de/tktransparenzv/>, 10/06/2024.

² A detailed explanation can be found in a vzbv position paper: Informierte Verbraucherim Telekommunikationmarkt, p. 43ff., https://www.vzbv.de/sites/default/files/downloads/2020/11/23/20-11-20_stellungnahme_vzbv_tkmog-e.pdf, 10/06/2024.

³ Verbraucherzentrale Bundesverband: Kundenschutz im Telekommunikationsgesetz, Umsetzung der neuen TKG-Regelungen, 2022, p. 3f., https://www.vzbv.de/sites/default/files/2022-12/221128_Evaluierung-neuer-TKG-Kundenschutzrechte_final.pdf, 10/05/2024.

⁴ Verbraucherzentrale Bundesverband: Kundenschutz im Telekommunikationsmarkt, Umsetzung der neuen TKG-Regelungen, 2022, p. 6f., https://www.vzbv.de/sites/default/files/2022-05/vzbv_Kurzpapier_TKG-Kundenschutzrechte.pdf, 10/06/2024.

laws are not flexible enough to adhere to practical issues after implementation on national level. The relationship between consumer and provider remains asymmetrical as there is little leverage on consumer side. Dependence on adequate internet access increases.

One of the aims of the EECC is to promote the interests of end-users and the full harmonisation approach is contrary to this.

1.3 Consumer-relevant topics in the context of broadband rollout

vzbv wishes to take this opportunity to draw further attention to other problems relevant to consumers in the telecommunications market in Germany.

Consumers in Germany not only pay to use the broadband infrastructure via their individual contracts. In many cases, property owners can pass on the cost of expanding the fibre infrastructure to their tenants due to the fibre-optic provision fee introduced to the German Telecommunications Act in 2021. vzbv strongly opposes this fee and the additional financial burden it places on consumers. Furthermore, consumers frequently complain about the business practices of telecommunications companies when it comes to selling fibre-optic products. Door-to-door sales are frequently criticised in Germany.⁵ The dual rollout of fibre networks by Deutsche Telekom in areas where fibre already exists should also be viewed critically. Scarce rollout resources are tied-up in favour of profit maximization, and consumers in less profitable areas have to wait longer for a fast internet connection.⁶ There are also frequent problems with providers not respecting users' freedom to choose their router.⁷ Finally, vzbv would like to mention the limited competition on the mobile market due to the absence of service provider obligations. In past spectrum auctions relating to 4G/LTE and 5G standard in Germany, there was no service provider obligation implemented. Only a mere requirement to negotiate was stipulated. It is currently unclear whether this instrument is conducive to competition in the German mobile market.

Price spikes have also hit consumers in the telecommunication market. New subscription prices for internet access for fixed networks have risen within the last year. For example, Telefonica and Vodafone raised prices by 5 euros per month in 91 percent and 75 percent of tariffs respectively. Telekom increased the price of 50 percent of its tariffs by 3 euros each.⁸ In 2023, vzbv started a class action against Vodafone for unilateral price increases.⁹

These are just a few instances of consumer-related problems with respect to fibre (rollout).

⁵ Federation of German Consumer Organisations: vzbv kritisiert mangelnden Schutz vor Haustürgeschäften (vzbv criticises lack of protection against door-to-door sales), 2021, <https://www.vzbv.de/pressemitteilungen/vzbv-kritisiert-mangelnden-schutz-vor-haustuer-geschaeften>, 01/04/2023.

⁶ CDU/CSU: Antrag der Fraktion der CDU/CSU, Glasfaser-Überbau einschränken (Request by CDU/CSU parliamentary group to limit fibre-optic superstructure), 2023, <https://dserver.bundestag.de/btd/20/059/2005986.pdf>, 01.04.2023.

⁷ Sawall, Achim: Vodafone und Deutsche Glasfaser abgemahnt (Vodafone and Deutsche Glasfaser issued with written warnings), 2022, <https://www.golem.de/news/routerfreiheit-vodafone-und-deutsche-glasfaser-abgemahnt-2205-165115.html>, 01/04/2023.

⁸ Golem: Preise für Festnetzinternet sind meist gestiegen, 2024, <https://www.golem.de/news/telekom-vodafone-o2-preise-fuer-festnetzinternet-sind-meist-gestiegen-2404-183960.html>, 10/06/2024.

⁹ Heise Online: Class action against Vodafone for price increases: Participation now possible, 2024, <https://www.heise.de/en/news/Sammelklage-gegen-Vodafone-wegen-Preiserhoehungen-Teilnahme-jetzt-moeglich-9696729.html>, 10/06/2024.

POSITION

There is insufficient evidence why the broadening of the objectives is necessary. A benefit for end-users was not explained in the White Paper. With it already being complicated to find good regulatory balance between the existing objectives, vzbv not support the addition of further objectives at this point.

With regard to the establishment of a level playing field, vzbv sees a risk of an expansion of the full harmonisation of end-user rights. Harmonised consumer rights are not flexible enough to adhere to practical issues after implementation on national level. Therefore, vzbv continues to advocate the minimum harmonisation approach with respect to the telecommunication market.

2. PILLAR II - SCOPE

In this chapter of the White Paper, the European Commission suggests the possible set up of a dispute resolution mechanism for commercial agreement between internet access providers (ISP) and content application providers (CAP). The White Paper states that the market functions well and there are few cases where intervention is needed. This type of mechanism could potentially lead to price regulation in the market. If two parties cannot agree on a price, the dispute resolution is a form to terminate a price. Which again brings us back to the network fee debate.

2.1 Price regulation for commercial agreements between ISPs and CAPs

To date, the debate around network fees/dispute resolution did not provide evidence indicating a market failure. However, it is necessary to prove a market failure to justify regulating a market that has proved itself to be functioning.

In vzbv's view, telecommunication companies did not provide evidence for a market failure, nor did a Federal Network Agency stakeholder workshop¹⁰ held in September 2022, a public session of the German government's Committee on Digital Affairs¹¹ in March 2023, or a hearing at the Federal Ministry for Digital and Transport in March 2023 and April 2024. Similarly, the Body of European Regulators for Electronic Communications (BEREC), as part of an initial analysis of the discussion about whether CAPs should pay ISPs, also found no justification for introducing network fees in the current market. BEREC states that the IP-interconnection between CAPs and ISPs represents a competitive feature of the market and any disputes arising from it can, as a rule, be solved without regulatory intervention. BEREC thus sees no empirical evidence that the market for IP-interconnection is no longer competitive.¹²

¹⁰ Workshop "Aktuelle Diskussion um einen Beitrag von Inhalteanbietern zu den Kosten der TK-Netzbetreiber – Chance oder Risiko?" ("Current discussion on content provider contributions to the costs of German telecommunications network providers – opportunity or risk?") in Bonn on 22/09/2022.

¹¹ Bundesregierung Deutschland: Öffentliche Sitzung zum Thema „Infrastrukturabgabe für Over-the-Top-Anbieter“ (Government of the Federal Republic of Germany: Public hearing on the topic of "Infrastructure charges for over-the-top suppliers"), 2023, https://www.bundestag.de/ausschuesse/a23_digitales/Anhoerungen/936364-936364, 10/06/2024.

¹² BEREC: BEREC preliminary assessment of the underlying assumptions of payments from large CAPs to ISPs, 2022, https://www.berec.europa.eu/system/files/2022-10/BEREC%20BoR%20%2822%29%20137%20BEREC_preliminary-assessment-payments-CAPs-to-ISPs_0.pdf, p.12, 10/06/2024.

The one prominent lawsuit between Meta and Deutsche Telekom showed that there are sufficient mechanisms in place to settle contractual agreements. Deutsche Telekom is now using this court case for their lobbying regarding network fees.¹³

POSITION

There has been no evidence of a market failure to justify a dispute resolution mechanism. With jurisdiction, there are already sufficient dispute mechanisms in place. vzbv sees a dispute resolution mechanism with a potential price regulation as another attempt to establish network fees and strictly rejects this approach.

2.2 Network fees as a threat to net neutrality

vzbv wants to take this response as another opportunity to flag the importance of Regulation (EU) 2015/2021. Telecommunications providers are obliged to treat all data traffic equally. Users have the right to use their selected broadband package as they please and to access whatever content they want.

The European Commission is committed to the Open Internet Regulation and promises that there are no plans to modify the regulation.¹⁴ vzbv strongly welcomes this. The problem with potential network fees and violations against net neutrality for consumers is that they have no means in ever proving that their rights were violated. How would a consumer prove that his ISP might treat traffic differently? If they are browsing the internet and some websites are loading slow or the streaming does not work as it should, how should a consumer prove that this is due to a net neutrality violation? A consumer might think that the internet is slow because its prime time or that the router has a problem.

Part of better regulation in the future must be to further anticipate the implementation of new laws and how they can be properly enforced.

From a consumer perspective, it is useful to look back at the discussion and legal proceedings in relation to zero-rating practices. Here, too, telecommunications providers argued that such products are compatible with net neutrality. The European Court of Justice ruled in 2021 that zero-rating practices are not compatible with net neutrality.

Zero-rating practices, examples of which include StreamOn from Telekom or VodafonePass, mean that the data volume entailed by the use of certain services (such as Spotify, Netflix, WhatsApp) does not count towards the total volume included in end-users' selected data package.

The telecommunications companies' own pricing structures not only incentivised the use of unlimited amounts of data for certain services, but also meant these companies benefited for years from the circumvention of net neutrality. It is hard to imagine these court cases brought forward by individual consumers.

BEREC believes that net neutrality is not at risk as long as the "best-effort principle" is pursued and all data is treated equally. According to BEREC, the best-effort principle is apparent in the current interconnection agreements between IP networks in the form of transit and peering agreements.¹⁵ However, changes to this approach at the wholesale

¹³ Deutsche Telekom: Landgericht Köln entscheidet: Meta muss für die Nutzung der Netze bezahlen – Wichtiger Schritt für „Fair Share“, 2024, <https://www.telekom.com/de/konzern/management-zur-sache/details/meta-muss-fuer-die-nutzung-der-netze-bezahlen-1066670>, 10/06/2024.

¹⁴ European Commissioners Vestager and Breton: Letter to Epicenter.works, https://epicenter.works/sites/default/files/reply_to_letter_-_net_neutrality_and_inter-connection.pdf, 10/06/2024.

¹⁵ BEREC: An assessment of IP interconnection in the context of Net Neutrality, 2012, p. 5.

level, as would be the case with network charges, could negatively affect net neutrality and end-users if they no longer have access to all internet content.¹⁶

vzbv believes that introducing network fees for CAPs could favour companies that are in a position to pay ISPs in order to reach end-users. This would inevitably discriminate against companies unable or unwilling to pay.

POSITION

Network fees could potentially undermine net neutrality and thus put consumers' free and open access to the internet at risk.

3. PILLAR II - ACCESS POLICY

The White Paper suggests transforming the system of ex-ante regulation into a system of ex-post regulation. This is not a new discussion. When proceedings for the Code began, the former European Commission's goal was to gradually dismantle sector-specific ex-ante regulation depending on the development of competition in the markets and ultimately regulate the telecommunications market solely through competition law. This step is premature, as the intensity of competition on the telecommunications market is not yet sufficiently developed or secured long term.

Market consolidation with the strengthening of a few companies operating throughout Europe harbours the risk of the return of monopolistic structures with unavoidable negative consequences for the quality, range and prices for consumer services.

Without competitive pressure, companies with market power have little incentive to invest in faster technologies and better quality network services. Competitors, on the other hand, lack planning security if market access secured by ex-ante regulation is undermined. Due to the sector-specific market conditions in the telecommunications sector, sustainably efficient competition cannot be maintained and further stimulated by general competition law alone. General competition law is based on the assumption of functioning competition and, in the event of abuse, provides ex-post intervention options to restore competition in the aftermath. However, this fails to recognise that the prevention of anti-competitive practices in advance plays a decisive role, especially for the infrastructure-dependent telecommunications market. This is still the only way to ensure that barriers to market entry remain low and that planning and legal certainty can be guaranteed for competitors. Furthermore, general competition law is susceptible to political influence, sometimes takes years to reach a court decision and therefore does not allow planning security for competitors and new market participants.

According to a market analysis by Ernst and Young, more than 700 companies, including municipal utilities, are currently working on Germany's fibre rollout.¹⁷ Maintaining a regulatory environment where small players can thrive is a crucial part of a successful nationwide fibre rollout.

POSITION

vzbv strongly supports maintaining the ex-ante regulatory system. This is the only way to ensure sustainable competition for all market players as well as an efficient fibre rollout.

¹⁶ Ibid.

¹⁷ Teltarif: Glasfaserausbau: Über 700 Unternehmen aktiv, 2023, <https://www.teltarif.de/glasfaserausbau-ftth-breitband-telekom/news/92736.html>, 10/06/2024.

4. PILLAR II - UNIVERSAL SERVICES

The White Paper states that the availability of adequate broadband internet services is ubiquitous throughout the EU. According to the German Federal Statistical Office, there were still 2.5 million households without internet access in 2023.¹⁸ There were around 38.4 million broadband connections in 2023 in Germany. Of these, around 1.2 million connections were still below 10 Mbps¹⁹ (download speed), which is the threshold for the minimum speed for universal services in Germany. The paper will assess some of the reasons why there is still a need for a strong universal service.

4.1 Universal Services in Germany – overview

To further improve the access to affordable Universal Services, it can help to look at the national implementation of the Universal Service Obligation of the EEC and look at the hurdles regarding the practical implementation faced at national level.

In theory, consumers have had an individual legal right to internet access since the 2021 amendment to the Telecommunications Act (TKG). This became enforceable for consumers when the Telecommunications Minimum Supply Ordinance (TKMV), set out by the Federal Network Agency (BNetzA), came into force in June 2022. The minimum quality requirements for internet access are defined in the TKMV, after a public consultation.²⁰ The requirement currently refers to bandwidths of at least 10 Mbps for download speed, 1.7 Mbps for upload speed and a latency of 150 milliseconds.²¹

The principles for determining affordable prices were set by the Federal Network Agency after a public consultation.²² Approximately 30 euros/month was determined as an affordable price.²³

In order to receive an internet access through Universal Services, citizens have to register an undersupply with the BNetzA. The Federal Network Agency then has to confirm this undersupply, for which they are using different methods. It is important to know that the right to an internet access is technological neutral, which means it can be achieved via landline, satellite or mobile. The BNetzA therefore has to check all technical possibilities and determine if there is an undersupply. There are cases where the BNetzA will check the bandwidth on-site, through technical analysis, contacting providers, overviews for broadband availability etc..²⁴ If they determine an undersupply, providers can

¹⁸ Statistisches Bundesamt: Statistischer Bericht - Informations- und Kommunikationstechnologien privater Haushalte (Mikrozensus-Unterstichprobe - IKT) - Endergebnis 2023, table 12231-01, https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Einkommen-Konsum-Lebensbedingungen/IT-Nutzung/Publikationen/Downloads-IT-Nutzung/statistischer-bericht-ikt-privater-haushalte-2150400237005.xlsx?__blob=publicationFile, 10/06/2024.

¹⁹ Bundesnetzagentur: Bundesnetzagentur: Jahresbericht Telekommunikation 2023, 2024, p. 12f., https://data.bundesnetzagentur.de/Bundesnetzagentur/SharedDocs/Mediathek/Berichte/2023/240515_JB_TK_23_web.pdf, 10/06/2024.

²⁰ Bundesnetzagentur: Recht auf Versorgung, [https://www.bundesnetzagentur.de/DE/Fachthemen/Telekommunikation/Grundversorgung/start.html#\[Anker2\]](https://www.bundesnetzagentur.de/DE/Fachthemen/Telekommunikation/Grundversorgung/start.html#[Anker2]), 10/06/2024.

²¹ TKMV, https://www.bundesnetzagentur.de/DE/Fachthemen/Telekommunikation/Grundversorgung/TKMV.pdf?__blob=publicationFile&v=3, 10/06/2024.

²² Bundesnetzagentur: Grundsätze über die Ermittlung erschwinglicher Preise für Telekommunikationsdienste, 2022, https://www.bundesnetzagentur.de/DE/Fachthemen/Telekommunikation/Grundversorgung/GrundsätzeErschwinglichkeit.pdf?__blob=publicationFile, 10/06/2024.

²³ Connect: Recht auf schnelles Internet: Grundversorgung über die Bundesnetzagentur, 2024, <https://www.connect.de/ratgeber/recht-auf-schnelles-internet-grundversorgung-bundesnetzagentur-3205591.html>, 10/06/2024.

²⁴ Bundesnetzagentur: Allgemeinverfügung nach § 160 Abs. 1 TKG zur Feststellung der Unterversorgung, 2024, https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Unternehmen_Institutionen/Grundversorgung/Unterversorgungsfeststellungen/95100/Unterversorgungsfeststellung_Selb_2022-09-22-0105.pdf?__blob=publicationFile&v=4, 10/06/2024.

voluntarily provide an adequate internet access. If no provider is willing, the BNetzA can oblige telecom operators to provide an internet access. So far, over 5000 request from citizens were registered.²⁵ Out of those, the BNetzA issued 29 findings of an undersupply (various households) but only ever ordered one operator to provide access.²⁶

4.2 Qualitative requirements for an adequate internet access

As mentioned above, citizens are currently entitled to an internet access service with a download bandwidth of at least 10 Mbps, an upload bandwidth of at least 1.7 Mbps and a latency of no more than 150.0 milliseconds. According to § 157 (3) TKG, this speed can also be lower in some cases if it is proven that the services mentioned also work with lower requirements.

The minimum bandwidth used by at least 80 percent of consumers is a requirement for determining the qualitative design of the universal service. This is based on a list of criteria from the European Communications Committee (COCOM) from 2011. In 2011, COCOM defined 80 percent as the “majority of subscribers”.²⁷ The 80 percent rule now enshrined in the German TKG is based on the outdated Universal Service Directive of 2002, which, as is well known, has been amended many times and whose revised regulations have been incorporated into the EECC.

The 2011 COCOM paper was based on recital 25 of the 2002 Universal Service Directive. This still speaks of a “substantial majority of the population”²⁸, i.e. an overwhelming majority, which certainly justifies an 80 percent hurdle. The paper itself even mentions that the surveys were conducted in 2008 and that the provisions of the amended Universal Service Directive 2009 were therefore not included in the COCOM paper. This is because the 2009 amendment to the Universal Service Directive already refers to a ‘majority of subscribers’ in Art. 4 and Recital 5.²⁹ Art. 84 (3) EECC and recital 215 use the term ‘majority of consumers’. Consequently, “majority of consumers” can only be understood as a simple majority (more than 50 per cent). This of course has some impact in determining the minimum speed requirement, which subsequently would be higher with a lower threshold.

In the legislative process for the TKMV here in Germany, the committees of the Bundesrat called for the quality parameters to be raised to 30.8 Mbps/s for downloads and 5.2 Mbps for uploads.³⁰ Ultimately, the Bundesrat's approval of the TKMV in 2022 was largely based on promises made in a protocol declaration by the federal government to raise the download speed to 15 Mbps by mid 2023.³¹ So far, this did not happen.

²⁵ Drucksache 20/11415: Antwort der Bundesregierung auf die Große Anfrage der Fraktion der CDU/CSU – Drucksache 20/10683, 2024, <https://dserver.bundestag.de/btd/20/114/2011415.pdf>, 10/06/2024.

²⁶ Bundesnetzagentur: Bundesnetzagentur verpflichtet Anbieter zur Versorgung mit Telekommunikationsdiensten, 2024, https://www.bundesnetzagentur.de/SharedDocs/Pressemitteilungen/DE/2024/20240311_VerpflichtungTK.html, 10/06/2024.

²⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the region: Universal service in e-communications: report on the outcome of the public consultation and the third periodic review of the scope in accordance with Article 15 of Directive 2002/22/EC, 2011, S.10, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0795:FIN:EN:PDF>, 10/06/2024.

²⁸ 2002/22/EG: recital 25.

²⁹ 2009/136/EC: Art. 4 Abs. 2, recital 5.

³⁰ Bundesrat: Drucksache 227/1/22, 2022, S.3f.

³¹ Bundesrat: 1022. Sitzung – Redeprotokoll, 2022, p. 232, https://www.bundesrat.de/SharedDocs/downloads/DE/plenarprotokolle/2022/Plenarprotokoll-1022.pdf?__blob=publicationFile&v=2, 10/06/2024.

4.3 Summary of most important issues

Since entering into force in 2022, only one household has been provided an internet access via Universal Services. It is not clear why some of the findings of undersupply were not further pursued by the BNetzA. Telecom operators are delaying the process by filing complaint after complaint.

The process of registering and determining an undersupply itself is already long and complicated enough for citizens. The chances of success are very low.

In order to gain a better insight into the process, vzbv has launched a consumer appeal. The aim is to find out the lengths of the process for citizens, what hurdles they face and whether they were provided with internet after the procedure was completed.³²

The still existing gap of inadequate or no internet access is alarming. Some of the citizens without access may decide to do so voluntarily, but there are other reasons for the sometimes poor coverage. Germany is the number one country in the European Union with the most tenants. More than half of the population (53.5 percent) lived in rented accommodation in Germany in 2022. In other countries, the proportions were significantly lower, for example France (36.6 percent), Spain (24.0 percent) and Poland (12.8 percent).³³ A tenant needs the consent of the property owner if the internet access entails contractual measures (this includes installing a satellite dish). This is also a problem regarding the low take-up rate in fibre connections. The rights of property owners (Art. 13 (1) of the basic law (Grundgesetz, GG) and Art. 14 (1) sentence 1 GG) are also the reason why the minimum speed for universal services only has to be achieved up to the outer house wall.³⁴ This means that the speed citizens get inside their homes can be less.

In 2022, around 77000 single homes were built. Those houses also need new connections to electricity, water/waste water and a telephone and internet connection. Prior to the changes of the Universal service regulations in the EECC, Deutsche Telekom voluntarily provided telephone and internet access.³⁵ They do not offer that service anymore. Now, homeowners have to claim their right to universal services and have to wait longer for their telephone and internet access.

POSITION

Access to universal services must be simple, fast and efficient for citizens.

There should be less undefined legal terminology within the universal service obligations. Terms like the minimum bandwidth, which is defined through multiple different parameters overcomplicated the implementing process at national level.

³² Verbraucherzentrale Bundesverband: Haben Sie keine Internetversorgung an Ihrem Wohnort?, 2024, <https://www.verbraucherzentrale.de/marktbeobachtung/haben-sie-keine-internetversorgung-an-ihrem-wohnort-94224>, 10/06/2024.

³³ Statistisches Bundesamt: Deutschland ist Mieterland Nr. 1 in der EU, 2022, <https://www.destatis.de/Europa/DE/Thema/Bevoelkerung-Arbeit-Soziales/Soziales-Lebensbedingungen/Mieteranteil.html>, 10/06/2024.

³⁴ Bundesnetzagentur: Allgemeinverfügung nach § 160 Abs. 1 TKG zur Feststellung der Unterversorgung, p. 4, https://www.bundesnetzagentur.de/SharedDocs/Downloads/DE/Sachgebiete/Telekommunikation/Unternehmen_Institutionen/Grundversorgung/Unterversorgungsfeststellungen/95100/Unterversorgungsfeststellung_Selb_2022-09-22-0105.pdf?__blob=publicationFile&v=4, 10/06/2024.

³⁵ Sawall, Achim: Bundesnetzagentur nennt 56 KBit/s funktional, 2029, <https://www.golem.de/news/internetanschluss-bundesnetzagentur-nennt-56-kbit-s-funktional-1911-145016.html>, 10/06/2024.

The process for determining an undersupply and imposing obligations by the National Regulator must be simplified, so that citizens can actually use their right to universal services.

There must be a solution for people who want to have internet access or faster internet access if the property owner does not give the consent.

vzbv welcomes the special focus on vulnerable end-users. After all, the data from the Federal Statistical Office in Germany also shows that among households without an internet connection, those on low income are particularly affected. Regardless of income, all citizens must be able to pay for basic services without jeopardising their basic needs for a normal lifestyle.

5. PILLAR II - COPPER SWITCH OFF

The White Paper argues that the copper switch-off is important for the connectivity objectives. It could also promote the use of new services. The switch-off can also help to increase the profitability of investments in fibre networks and support the achievement of the Digital Decade goals. The paper suggests a switch-off for large parts of the EU by 2028. For the remaining 20 percent, the paper sees 2030 as an appropriate switch-off date. For the German market, these dates are not feasible. In Germany, around 24 million broadband connections are still active with this technology.³⁶

From a consumer's point of view, it is not acceptable to be put in a position where the internet access might be jeopardized. Part of this debate needs to be how fibre can be affordable and accessible so the take-up rate rises. In the representative survey commissioned by Verivox in 2023, more than 30 percent of respondents stated that they were not interested in a fibre connection because it was not needed, was still too expensive or because they only rented their home and could not decide for themselves as they need the approval of the property owner.³⁷

When it comes to a switch-off, customers will no longer be able to conclude certain contracts until a fixed date and existing contracts could be cancelled. Consumers may then remain without internet access or would have to book more expensive tariffs, which they might not want or even cannot afford.

POSITION

A fixed date for an EU-wide copper switch off is not feasible, at least for the German market.

“Forced migration” as well as the loss of internet access must be prevented.

³⁶ Bundesnetzagentur: Bundesnetzagentur: Jahresbericht Telekommunikation 2023, 2024, p. 12f., https://data.bundesnetzagentur.de/Bundesnetzagentur/SharedDocs/Mediathek/Berichte/2023/240515_JB_TK_23_web.pdf, 10/06/2024.

³⁷ FAZ: Viele Deutsche wissen nicht, ob sie einen Glasfaser-Anschluss wollen, 2023, <https://www.faz.net/pro/d-economy/glasfaser-warum-viele-deutsche-beim-internet-anschluss-unsicher-sind-19052918.html>, 10/06/2024.