

STANDARD FORM OF EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION AND DOCUMENTS

European Court of Auditors
Special report n°12/2018:

Broadband in the EU Member States: despite progress, not all the Europe 2020 targets will be met

Submitted by Department for Digital, Culture, Media and Sport on 12 July 2018.

SUBJECT MATTER

1. This report is an audit on the progress made on the Europe 2020 strategy Digital Agenda (“Digital Agenda for Europe”):
 - 1) by 2013, to bring basic (<30Mbps) broadband to all
 - 2) by 2020, to provide all with fast¹ broadband (>30Mbps)
 - 3) by 2020, to ensure take-up by 50% or more of EU households to ultrafast (>100Mbps) broadband.
2. The report covers the 2007-2013 and 2014-2020 EU programme periods plus additional focus on Ireland, Germany, Hungary, Poland and Italy.
3. This Explanatory Memorandum consists of a summary of the report and its recommendations with further details of the report. This is followed by a summary of the European Commission’s response to the report and the view of the UK Government.

Report Summary

4. Overall, broadband coverage has generally been improving across the EU, but the Europe 2020 targets will not all be achieved.
5. All member states except Estonia, Latvia and Lithuania achieved the target of basic broadband for all.
6. The proportion of households with access to superfast broadband increased from 48% in 2011 to 80% in June 2017 - the UK had 95% superfast coverage by the end of 2017, the 7th highest in the EU. However, it is very likely the target of superfast access for all by 2020 will be missed by all but a few Member States.

¹ Over 30Mbps is commonly referred to as superfast broadband, which is the term that will be used throughout this EM for speeds >30Mbps. Note, the Government defines superfast broadband as being provided through networks capable of delivering more than 24Mbps, rather than 30Mbps.

7. Rural areas remain less well connected than cities - by mid-2017, 14 member states had superfast coverage in rural areas of less than 50%. The UK's rural superfast coverage is around 82%.
8. Take-up of ultrafast broadband is significantly behind, at 15% against a target of 50%. Only 55% of EU households had access to ultrafast broadband in mid-2017².

Report Recommendations

9. Strategic Planning

- The Commission should request all Member States to highlight areas where targets may not be achieved by 2020, and include, where possible, remedial action. Target implementation is September 2018.
- Member States should develop new plans for the period after 2020. Target implementation date is December 2019.
- The Commission should, for post-2020, develop consistent output indicators to enable progress against high level objectives to be tracked.

10. Regulatory Environment

- Member States should review the mandate of their National Regulatory Authorities (NRA) to ensure they are able to impose recommendations and remedies on operators (this refers to issues in Ireland and Germany).
- The Commission to clarify guidelines for application of State aid (see paras 25-26 below)

11. Fostering Competition through Financing

- The Commission should support Member States in incentivising the setup of wholesale open access networks that facilitate a competitive environment, by developing an adequate legal framework, guidance and guidelines.
- The Commission should disseminate best practice on incentivising aggregation of smaller projects by authorities in Member States.
- The European Investment Bank (EIB) should focus its support through the European Fund for Strategic Investments (EFSI), and the Connecting Europe Broadband Fund, on small and medium size projects in areas where public sector support is most needed.

² Broadband Coverage in Europe 2017, IHS Markit / POINT Topic, page 46

12. The report includes a section on the potential benefits of broadband including increased GDP and higher labour productivity, together with details of the different technologies available to deliver it.
13. The report references further strategic objectives identified by the Commission as 'Gigabit Society for 2025':
 - Connectivity of >1Gbps for all socio-economic drivers such as schools, transport hubs, and main providers of public services
 - All urban areas and major transport paths to have uninterrupted 5G coverage
 - All European households to have access to >100Mbps broadband, upgradable to Gigabit speed.

Role of the European Commission

14. The European Commission estimated in 2013 that up to 250 billion euros will be required to achieve the 2020 broadband targets.
15. The report outlines the different sources for almost 15 billion euros available to Member States from the EU for supporting broadband in the 2014-2020 programme period.
16. The report concludes that the European Commission provided a wide range of guidance and support, covering multiple issues - e.g. a study for the Commission that reviewed broadband and infrastructure mapping.
17. European Commission monitoring was regular, but insufficiently coordinated, particularly with regard to other data capture such as Digital Economy and Society Index (DESI) that did not collect data on the Europe 2020 target for ultrafast take-up.
18. Commission monitoring had not picked up on particular issues in certain member states that were delaying progress, such as negotiations on virtual unbundled local access product in Germany.

Broadband Strategies for the 5 examined Member States

19. Looking at Ireland, Germany, Hungary, Poland and Italy, the report concludes that only Ireland had published their broadband strategy by 2012, in line with the Digital Agenda for Europe.
20. None of the 5 included targets in their plans to meet the Europe 2020 target for ultrafast take-up.
21. Germany's focus on Vectoring - a technology to gain greater speeds from copper networks (similar to BT's G-Fast in the UK) may be good enough for

Europe 2020 targets, but is likely to be insufficient for the Gigabit Society ambitions for 2025.

22. The report also felt financing in rural and suburban areas was not properly addressed in some Member States, with insufficient funds identified.
23. The report considered the legal and regulatory environment in the five examined Member States and found weaknesses regarding network access and pricing in Ireland. In Germany problems were identified with consumers changing broadband suppliers, contracted data transfer rates not being delivered, and the limitations of vectoring (see Para 21 above).
24. In three of the examined Member States, there was found to be an appropriate level of coordination supporting broadband deployment. In Poland there were problems coordinating funding sources. This had created delays but was improving, although less than 1% of the backbone capacity was being used. In Germany, lack of coordination between the funding sources at national and regional level (in addition to EU funds) resulted in a fragmented broadband infrastructure and no programs finalised at the end of 2017.

State Aid Areas

25. Separate areas are defined in relation to any operator's deployment plans -
White = no provider currently operating or expected to be in next 3 years.
Grey = one provider active, but unlikely to be additional ones in next 3 years.
Black = at least two providers active or expected to be in next 3 years.

- Whilst white areas are in principle eligible for state aid, in the grey areas the Commission must carry out a more detailed analysis in order to verify whether State intervention is needed and in black areas State aid is only permitted under certain conditions, including whether or not a 'step change' in service provision is delivered.
26. The report clarifies that State aid guidelines for intervention for broadband in relation to 30Mbps are also relevant for the 100Mbps and gigabit targets.
27. The report covers the problem of operators changing their deployment plans and the effect this has on the State aid areas and public interventions.

European Commission's key responses to the report

28. In response to Para 11 above, the Commission noted that the EIB's support is not meant to focus on areas where grant-type public sector intervention is most needed. The EIB notes that the EFSI Regulation requires EFSI projects to be economically viable and therefore is not designed to address exclusively those areas where market failure is significant.

29. The Commission states that the targets identified in the Digital Agenda for Europe Communication are not legally binding for the Member States. The Commission has encouraged Member States to adopt these ambitious goals when developing their national or regional broadband plans.
30. With regards the lack of data on ultrafast take-up - the Commission closely monitors developments in the broadband market and publishes a number of indicators that have evolved over time and currently look at different aspects.
31. While 100Mbps coverage and take-up data were already available, they were not included in the Digital Economy and Society Index (DESI). DESI country profiles for 2018 will include ultrafast broadband (of at least 100Mbps) coverage and take-up.
32. In response to para 11 above, the Commission confirms there is no obligation under State aid rules for private investors to declare their investment plans, although NRAs are free to adopt national rules and procedures to address the issue. Article 22 of the new European Electronic Communication Code (EECC) includes provisions designed to help address this issues.
33. The Commission considers that the additional advice on State aid already partially implemented through various measures from the Directorate-General for Competition, including an eState aid Wiki.

UK Government View

34. As the Commission noted in its response, the Europe 2020 targets are not legally binding. However, the UK Government is pleased that its ambitious broadband policy means that the UK is one of the highest ranked EU countries for access to superfast broadband (95% at the end of 2017).
35. In response to the recommendation for Member States to develop new plans for the period after 2020, the UK will no longer be an EU Member State after 29 March 2019. after which there will be an Implementation Period ending on 31 December 2020. During the implementation period, the UK will no longer be a Member State of the European Union, but market access will continue on current terms. To give businesses and citizens certainty, common rules will remain in place until the end of the period meaning businesses will be able to trade on the same terms as now up until the end of 2020.
36. The Government's Future Telecoms Infrastructure Review, due to be published in the Summer, will outline the conditions needed for the UK to reach national full fibre coverage by 2033.
37. In response to the recommendation for Members States to review the mandate of their NRAs to ensure they are able to impose recommendations and remedies on operators, Ofcom's powers are primarily set out in the

Communications Act 2003 and were recently strengthened by the Digital Economy Act in 2017.

38. In response to the recommendation about incentivising the setup of wholesale open access networks, Ofcom already regulates on this through its Wholesale Line Access regulations.

SCRUTINY HISTORY

39. Not applicable, as not a policy proposal, directive or regulation.

MINISTERIAL RESPONSIBILITY

40. The Minister of State for Digital and the Creative Industries, Margot James MP, has responsibility for the review of this report.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

41. We have shared the Explanatory Memorandum with the devolved authorities who have not raised any comments.

LEGAL AND PROCEDURAL ISSUES

42. There are no legal or procedural issues.

APPLICATION TO THE EUROPEAN ECONOMIC AREA

43. The report covers EU Member States only.

SUBSIDIARITY

44. There are no issues of subsidiarity.

POLICY IMPLICATIONS (including Exit implications where appropriate)

45. There are no new policy implications arising from this mid-term evaluation for the UK.

46. On 23 June 2016, the EU referendum was held and the people of the United Kingdom voted to leave the European Union. The Government respected the result and triggered Article 50 of the Treaty on European Union on 29th March 2017 to begin the process of exit. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will also continue to negotiate, implement and apply EU legislation.

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CONSULTATION

47. This is not a UK instrument or document requiring consultation.

IMPACT ASSESSMENT

48. This is not a UK instrument or document requiring an impact assessment.

FINANCIAL IMPLICATIONS

49. None

TIMETABLE

50. This report was published on 5 June 2018.

MINISTERIAL NAME AND SIGNATURE



Margot James MP
Minister of State for Digital and the Creative Industries

