

Pillar II: Support in adopting the legal, institutional and regulatory changes that will enhance commercial broadband investments

The legal and regulatory framework for broadband infrastructure must provide the enabling conditions for an open competitive market in modern communications services. The EU framework has already achieved very high coverage for both fixed and mobile broadband services¹.

The EU regulatory framework contains specific market safeguards and broadband investment enablers to achieve universal high-speed broadband access (>30Mbps) by 2020. By adopting an enabling legal and regulatory framework, countries will benefit from more effective competitive markets with their inherent advantages of consumer and investor safeguards.

The National Broadband Plan should specify the timing of the adoption of these legal and regulatory measures at least three years before the target of universal broadband access can be achieved.

The legal, institutional and regulatory changes known to enhance commercial broadband investments include:

- **General regulatory enablers for broadband** – Under the National Broadband Plan, the National Regulatory Agency for electronic communications should be required to implement regulatory measures that will promote efficient markets with consumer choice, encourage innovation in new and enhanced infrastructures and services, and also to mediate on the arrangements between market players (both service providers and consumers) in an independent, non-discriminatory and transparent manner.
- **Specific regulatory measures for broadband cost efficiency** – Among the most important enablers to infrastructure investment are the known cost efficiency measures that can be successfully applied to electronic communications infrastructures. These include:
 - Access to existing physical infrastructure (e.g. ducts, poles, masts) including that belonging to energy and other utilities, for operators willing to deploy high speed broadband networks
 - Efficient coordination of civil works
 - Faster, simpler and more transparent permit-granting procedures
 - New buildings and major renovations are equipped with high-speed physical infrastructures (e.g. mini-ducts, access point)
 - Access to existing in-building infrastructure
 - Economic exploitation of spectrum resources, including spectrum sharing and other measures to maximise spectrum efficiency
- **Technology and services** – The required technology-neutral policy will give service providers the freedom to offer competitive broadband services tailored to customer demands. The competitive safeguards inherent in a modern legal and regulatory framework, together with the specific measures for broadband investment and cost efficiency will ensure affordability.
- **Institutional set-up** - Even where a leading institution does have a clearly defined responsibility, there are usually a large number of parties involved in the execution of a

¹ <https://ec.europa.eu/digital-agenda/en/download-scoreboard-reports>

National Broadband Plan, including state and regional administrations, local authorities, municipalities and the private sector. National Regulatory Authorities (NRAs) are increasingly involved in the process, in particular in organising full public consultation, developing civil infrastructure registers, issuing spectrum authorisations or by providing advice on state aid rules and compliance.

The responsibilities for decision-making, public consultation and participation in the implementation of the National Broadband Plan have to be clearly defined. Another relevant institutional aspect is administrative capacity at local and regional levels. Insufficient expertise on the part of the responsible authorities in planning, managing and implementing co-funded projects can compromise the effectiveness of measures and severely inhibit the timely mobilisation of available budgets. Running infrastructure databases and common (“one stop shop”) procedures for permit granting, site surveys and coordination of civil works are also key procedures that greatly facilitate infrastructure investments.

- **Institutional capacity and resources** - The capacity of the various institutional bodies (in terms of staffing and expertise) must be sufficient. Effective spectrum management will also play an important role, particularly in allowing service providers to exploit fully the “digital dividend” spectrum for broadband services.
- **Private and public-sector involvement** – It is very unlikely that full universality of modern electronic communications services can be achieved in a reasonable timeframe without some form of public subsidy intervention. Reliance only on private investment will not achieve geographical coverage in areas where returns are not sufficient. Where public money is used as a primary vehicle or to accelerate or top-up private investment, a set of regulatory “state-aid” rules are needed to ensure that the normal investment market efficiencies are not unduly degraded.

The most important safeguards used in the EU with respect to broadband infrastructure investments are the requirements for

- Detailed mapping and analysis of coverage
- Public consultation
- Most economically advantageous solution, including cost reduction measures
- Technology neutrality (exploiting spectrum, fibre and legacy networks)
- The existence of wholesale access offers (to ensure competition at the retail level)

Governance options need to be clearly defined with relation to infrastructures where the public and private sectors are jointly involved. For example, legal certainty has to be provided for any public institution wishing to subsidise the construction of passive infrastructures. Public procurement procedures need to be transparently applied for the construction and operation contracts for networks. Regulatory rules need to be defined for wholesale access and charging. All potential broadband service providers should have wholesale access to infrastructures where state funding is involved.

- **Overall costs and sources of finance** – The National Broadband Plan needs to have an estimate of the overall cost of meeting the universal broadband target and the participation levels of private investors and state funds. Private sector financing will use normal commercial

sources of finance, while state contributions will have to be clearly stated and justified in the public domain.

- **Demand for broadband and measures to maximise economic impact** – Measures need to be defined that seek to reduce the lack of digital engagement arising from specific societal groups, namely among people who are elderly, on a low income, socially disadvantaged or poorly educated, unemployed or disabled. In the business sector, specific measures may be needed to stimulate take-up and usage of broadband in SMEs.

These measures can take the form of transparent public subsidies (for example vouchers to assist the purchase of ICT equipment and broadband connections by disadvantaged citizens and SMEs). There could also be initiatives to promote digital skills, or an increase in eCommerce and on-line public services.

Commitments to transparency and public consultation for the agreement of the National Broadband Plan and its implementation - The National Broadband Plan should define the implementation scheme, including local and national projects, and timescales for each. These projects and timings should be transparent to all possible interests so that consumers, businesses, service providers and investors can base their own plans and make decisions within a predictable framework, based on the existence of effective broadband services, as defined in the Plan.