

# **BEREC analysis of the European Commission legislative proposal for a Gigabit Infrastructure Act**

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## Executive summary

On 23 February 2023, the European Commission published its legislative proposal for a Gigabit Infrastructure Act (GIA) which aims to facilitate and stimulate the roll-out of very high capacity networks (VHCNs) so that such networks can be rolled out faster and at a lower cost. The GIA will repeal the Broadband Cost Reduction Directive (BCRD) of 2014. BEREC welcomes this initiative. BEREC regards it as an important building block to achieve the 2030 connectivity targets and hopes that it can be further improved based on the suggestions in this analysis. BEREC has carried out projects on the implementation of the BCRD in 2017 and 2019 and published its opinion on the revision of the BCRD in March 2021. BEREC's analysis of the proposed GIA is particularly important, as the tasks of the dispute settlement body (DSB) and the single information point (SIP), which are two central elements of the GIA, are carried out by the National Regulatory Authority (NRA) in nearly all Member States (DSB) or about half of the Member States (SIP). Moreover, the provisions of the GIA interact with the ex-ante regulation under the European Electronic Communications Code (EECC)(SMP regulation, symmetric regulation Art. 61(3)), which also lies within the responsibility of NRAs.

BEREC wants to point out that if certain provisions of the proposed GIA (mentioned further in the analysis), which in BEREC's view may result in an underutilisation of the potential of a revised legislative instrument to promote the deployment of VHCNs or may even have a negative impact on it, are not removed in the final version of the GIA, it is important that the GIA is a directive and not a regulation in order to allow Member States to adjust these provisions at national level according to the national circumstances.

BEREC considers necessary to ensure that Member States have without any doubt the possibility to maintain or introduce measures going beyond the GIA with a view to better achieving the aim of the GIA. BEREC believes that this important point would be best ensured through the legal certainty that would come with an article in a directive that explicitly states that measures going beyond the directive are possible, as for legal reasons such an article does not seem to be possible in a regulation.

BEREC sees neither the need for further guidance by the European Commission as foreseen in Articles 3(9), 5(5) and 9(6), nor would BEREC consider such guidance advisable, given that the most appropriate decision by the DSB will in many cases be highly specific to the Member State and to the case in question, and vary widely depending on circumstances.

BEREC considers it important to reduce the costs not only of VHCN deployment but also of (i) all State aid funded ECN deployments in order to ensure that public funds are used as efficiently as possible and of (ii) the deployment of network elements which can contribute to VHCN deployment (but are not necessarily part of a VHCN immediately after its deployment) e.g. fibre roll-out in general, as this also contributes to the achievement of the EU connectivity targets for 2030. BEREC therefore suggests to adapt the scope of the GIA accordingly. BEREC also wants to point out that if the scope of the GIA were to be limited to VHCNs, this would lead to methodological problems.



BEREC welcomes that the scope of Article 3(1) on access to existing physical infrastructure now also includes public sector bodies and agrees with the scope of physical infrastructure as defined in Article 2(2), however, the wording of the definition provided in Article 2(2) lit. (a) is not fully clear. BEREC also agrees with the conditions for refusal of access provided under Article 3(3). BEREC however is concerned about overly prescriptive provisions concerning the determination of prices as part of fair and reasonable terms and conditions under Article 3(2) and, therefore, suggests to remove the conditions laid out in Article 3(2) lit (c). BEREC welcomes the clarification in Article 3(5) regarding the scope of the legal principle of *lex specialis*, according to which access obligations imposed under the EECC and State Aid rules prevail over the more general access obligations stemming from the GIA.

BEREC agrees that an obligation to meet all reasonable requests for a coordination of civil works should apply to fully or partially publicly financed civil works and welcomes that this now also explicitly applies to associated facilities (Art. 5(2)). However, BEREC suggests to adapt the obligation in Article 5 (3) of the legislative proposal, as otherwise in some cases it could result in delays or even discourage investments.

BEREC agrees that also access to in-building physical infrastructure is important to reduce the cost of ECN deployment, however, BEREC considers that the GIA should make clear that Member States have the possibility to maintain or introduce the obligation that also access to in-building cabling needs to be provided.

BEREC welcomes in principle the provisions that certain buildings shall be equipped with a fibre-ready in-building physical infrastructure and with in-building fibre wiring (Articles 8(1) to 8(3)). However, BEREC suggests that the Member States should have the possibility to decide what national standards or technical specifications are necessary to ensure gigabit connectivity and to remove the list of minimum requirements in Art. 8(4).

BEREC welcomes the revised transparency regime for information on existing physical infrastructure and planned civil works. BEREC suggests envisaging earmarked EU-level funding, as the tasks of the SIPs will increase. BEREC suggests that the proposed wording of Article 4(1) and 4(2) should be authoritative, as information can be made available through both centralised and decentralised systems which can fulfil the requirements in Article 4(1) and 4(2), but part of Recital 25 should be revised accordingly to remove any doubts about this flexibility. BEREC considers the deadline of 12 months for making the minimum information concerning existing physical infrastructure available via the SIP (Article 4(2)) to be too short. BEREC recommends limiting information on planned civil works available via the SIP to cases where the network operator has an obligation to meet coordination requests, potentially supplemented by voluntary information on civil works where the owner wishes to allow coordination.

BEREC agrees with Article 12(2) on the independence of the DSB and furthermore suggests to include also political independence according Article 8 of the EECC. However, BEREC is severely concerned regarding the reduction of the DSB's deadlines to issue a binding decision to resolve a dispute (Article 11(2)(b)). BEREC proposes to keep DSB's deadlines of the 2014

BCRD as this ensures the high quality of DSB's decisions and avoids possible increase in appeals against a DSB decision as well as an overruling of the decision by courts which both would result in a slower rather than faster VHCN roll-out.

BEREC welcomes that according to Article 12(7) the DSB(s) and SIP(s) shall have adequate technical, financial and human resources to carry out the tasks assigned to them. This is particularly important as the proposed GIA increases the scope of the DSB's and SIP's tasks.

BEREC stresses that it is not possible that a SIP analyses all applications for permits and corresponding status information it receives from ECN operators and permit granting authorities, and that such a setup would be inefficient, prone to becoming a bottleneck, and result in a slower rather than faster approval of permits. BEREC considers the information obligation under Art. 7(2) sufficient to support the submission of applications to permit granting authorities and that it is inefficient that the SIP forwards the information on the status of an application to the ECN operator. Therefore, BEREC suggests to delete Art. 7(3), except the provisions regarding the right to submit applications in electronic format, and to replace it with an obligation on permit granting authorities to inform the applicants directly on the status of their application upon request.

BEREC proposes not to include in the final version of the GIA (i) mandatory tacit approval of rights of way (Art. 7(7)), (ii) that applications for rights of way are deemed complete if deadlines are not met (Art. 7(5)) and (iii) compensation in case of non-compliance with deadlines (Art. 7(11)), as these provisions would likely have significant negative impacts and may result in a slower rather than faster approval of rights of way. In case of permits other than rights of way the situation may be quite similar. BEREC does not consider it proportionate to restrict operators' right to apply for permits in cases where they do not provide information on civil works, unless they have an obligation to allow coordination for those civil works (Art. 7(4)).

BEREC recalls the essential role of digital infrastructure in achieving the twin green and digital transitions. The consequent application of joint use of existing physical infrastructure and coordination of civil works in itself contribute to the objective of reducing the environmental impact of ECN deployment. Thus, BEREC is of the view that this statement should be emphasized in the recitals of the final version of the GIA.



## 1. Introduction

On 23 February 2023 the European Commission published a legislative proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying gigabit electronic communications networks (ECNs), the so-called Gigabit Infrastructure Act (GIA),<sup>1</sup> which repeals the 2014 Broadband Cost Reduction Directive (BCRD). BEREC welcomes this initiative. BEREC regards it as an important building block to achieve the 2030 connectivity targets and hopes that it can be further improved based on the suggestions in this analysis. BEREC was involved in the revision of the BCRD and published in March 2021, at the request of the European Commission, the "BEREC Opinion on the revision of the BCRD",<sup>2</sup> which answers in detail the European Commission's 40 questions.

With this document, BEREC wants to feed its particular expertise into the legislative process, in order to ensure the best possible outcome in light of the ambitious policy goals. BEREC's analysis is particularly important as in nearly all Member States the National Regulatory Authority (NRA) is the dispute settlement body (DSB) and in about half of the Member States the NRA is the single information point (SIP), which are two main elements of the GIA and also of the BCRD. In addition, the provisions of the GIA interact with the ex-ante regulation under the European Electronic Communications Code (EECC)(SMP regulation, symmetric regulation Art. 61(3)), which also lies within the responsibility of NRAs. BEREC also examined the implementation of the BCRD and published a 'Report on the implementation of the BCRD' in 2017<sup>3</sup> and a 'Report on pricing for access to infrastructure and civil works according to the BCRD' in 2019.<sup>4</sup> BEREC is also active regarding the topic 'environmental impact of ECNs' and is currently working on relevant indicators to measure it.<sup>5</sup>

## 2. Type of legal document

BEREC notes that the European Commission legislative proposal for GIA is a regulation and not a directive. The European Commission states in its impact assessment that the 2014 BCRD has not been fully effective, mainly because of the flexibility given to Member States

<sup>1</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12463-High-speed-broadband-in-the-EU-review-of-rules\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12463-High-speed-broadband-in-the-EU-review-of-rules_en)

<sup>2</sup> BoR (21) 30, <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-the-revision-of-the-broadband-cost-reduction-directive>

<sup>3</sup> BoR (17) 245, <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-the-implementation-of-the-broadband-cost-reduction-directive>

<sup>4</sup> BoR (19) 23, <https://www.berec.europa.eu/en/document-categories/berec/reports/pricing-for-access-to-infrastructure-and-civil-works-according-to-the-bcrd>

<sup>5</sup> BEREC Report on Sustainability Assessing BEREC's contribution to limiting the impact of the digital sector on the environment, BoR (22) 93 <https://www.berec.europa.eu/en/document-categories/berec/reports/berec-report-on-sustainability-assessing-berecs-contribution-to-limiting-the-impact-of-the-digital-sector-on-the-environment> ; Draft BEREC Report on Sustainability Indicators for Electronic Communications Networks and Services, BoR (23) 46 <https://www.berec.europa.eu/en/document-categories/berec/reports/draft-berec-report-on-sustainability-indicators-for-electronic-communications-networks-and-services>

which is said to have resulted in an inconsistent implementation and a diverse interpretation of certain provisions.<sup>6</sup> Therefore, the proposed GIA is said to lead to a higher degree of harmonisation.

First, BEREC would like to point out that it does not agree with the assessment that the flexibility given to Member States has resulted in a lack of efficiency of the BCRD. In fact, the European Commission contradicts its own claim by stating that “*the digital agenda targets on which the BCRD was based have mostly been met*”.<sup>7</sup> The fact that the targets have been recently replaced by new targets cannot be used as an argument that flexibility of Member States has somehow rendered the 2014 BCRD less effective, as the original targets have been broadly achieved. To the contrary, BEREC would like to highlight that any review of the BCRD would need to start from the observation that the situation with respect to i.a. the state of VHCN deployment and SMP-based regulation of physical infrastructure vary widely between Member States and geographical areas. Therefore, the proper functioning of DSBs in particular requires flexibility to address case-specific and Member State-specific circumstances adequately.

BEREC also considers that there are general advantages of selecting a directive as the legal instrument to replace the BCRD, such as the possibility of seamlessly integrating the proposed provisions into the national legislation of the Member States, considering that some aspects also target areas other than electronic communications. On the other hand, BEREC does note that the full adoption and transposition of a new directive into national law by the Member States, replacing the BCRD, would likely take more time and sees the advantage of a regulation in this regard, time also having its impact on the incentives to invest.

Moreover, BEREC is of the view that several provisions of the proposed GIA may result in an underutilisation of the potential of a revised legislative instrument to promote the deployment of VHCNs or may even have a negative impact on it because they do not allow for sufficient flexibility to tackle national circumstances, which is described in detail in the sections below. If these provisions are included in the final version of the GIA, it would be important that the GIA is a directive and not a regulation in order to give the necessary flexibility to Member States to adjust these provisions at national level according to the national circumstances. Indeed, eliminating the possibility for Member States to adapt European legislation to the national circumstances could raise, per se, new barriers to investment.

### 3. Measures going beyond the GIA

BEREC considers it also important that Member States have the possibility to maintain or introduce measures in conformity with EU law which go beyond the minimum requirements established by the GIA with a view to better achieving the aim of the GIA. Member States

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<sup>6</sup> SWD (2023) 47 final of 23.02.2023, [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12463-High-speed-broadband-in-the-EU-review-of-rules\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12463-High-speed-broadband-in-the-EU-review-of-rules_en)

<sup>7</sup> Proposed GIA, page 1

already introduced measures which go beyond the minimum requirements established by the BCRD and go beyond the requirements in the legislative proposal for a GIA, as the following examples show: (i) coordination not only of partially/fully public financed civil works but also of privately financed civil works (see section 7), (ii) access to the deployment of antennas on rooftops of private buildings (see section 6), and (iii) exemptions from permits not listed in the European Commission eventual implementing act provided for in Art. 7(8) (see section 12).

For this reason, BEREC considers the provision “*this Regulation does not prevent national measures in compliance with Union law that serve to promote the joint use of existing physical infrastructure or enable a more efficient deployment of new physical infrastructure by complementing the rights and obligations laid down in this Regulation*” in Recital 11 to be important. However, this provision is included in a recital which does not have the same legal value as an article. BEREC considers it is necessary to ensure that Member States have without any doubt the possibility to maintain and introduce measures going beyond the GIA with a view to better achieving the aim of the GIA. In conclusion, BEREC believes that the need to maintain measures going beyond GIA is best ensured through the legal certainty that would come with an article in a directive that explicitly states that measures going beyond the directive are possible, as for legal reasons such an article does not seem to be possible in a regulation.

BEREC notes that the provision of Article 1(4) of the legislative proposal raises further questions as to which degree Member States are able to adopt measures going beyond the obligations laid out in the legislative proposal. Furthermore, Article 1(4) could generally unduly restrict the ability of Member States to adopt measures suitable with respect to national circumstances.

Finally, BEREC would like to point out the following regarding the first part of Recital 11. BEREC would like to stress that the claim of a perceived inability of undertakings to achieve economies of scale due to persistent fragmentation of electronic communications markets in individual national markets made in Recital 11 should be removed. First, BEREC considers this claim to be unrelated to the subjects addressed in the GIA and it is unclear how the provisions set out in the legislative proposal would have an impact on this point. Second, even though BEREC fully agrees that it is paramount that performant networks are in place across the EU, BEREC does not agree with the assumption that these networks would need to belong to one transnational operator in order to maximise macroeconomic benefits.

## 4. European Commission guidance

The legislative proposal foresees the possibility for the European Commission to provide, in close cooperation with BEREC, guidance on the application of key provisions of the regulation, i.e. access to physical infrastructure (Article 3 (9)), on civil works coordination (Article 5 (5)) and access to in-building physical infrastructure (Article 9 (6)).





While BEREC agrees that those topics might benefit in principle from further guidance in particular for industry players, BEREC considers that the body best placed to issue such guidance is the DSB and not the European Commission.

The proposed European Commission guidance would invariably be confronted with a highly divergent situation across Member States regarding the market conditions (e.g. the state of fibre roll-out) and/or existing regulatory regime. As regards pricing principles for access to physical infrastructure, the coordination of civil works and not least for the use of in-building physical infrastructures, BEREC considers that it would be of utmost importance to leave the relevant DSBs the necessary flexibility to set the right prices taking into consideration the case specific circumstances. Moreover, consistency with the given SMP regulation regime may have to be considered when setting the right prices for the case specific circumstances. BEREC considers that the proposed regulation would in principle allow sufficient flexibility. However, any more specific guidance by the European Commission might restrict DSBs in their flexibility to properly carry out a complex case-by-case assessment.

Some DSBs have already issued guidance in order to provide more certainty for the market, e.g. on principles for cost sharing regarding coordinated civil works based on their case experience. Those well-established principles will often already be reflected in private, commercial agreements. These precedents and guidance papers would risk being in conflict with or even invalidated by the envisaged European Commission guidance, which would bring additional uncertainty to the market and may delay VHCN deployment, contrary to the desired objective of the legislative proposal.

In conclusion, BEREC sees neither the need for further guidance by the European Commission, nor would BEREC consider such guidance advisable given that the most appropriate decision by the DSB will in many cases be highly specific to the Member State and to the case, and vary widely depending on circumstances. Therefore, the DSB may be best placed to provide the legal certainty as to the proper understanding of the provisions of the legislative proposal. However, if the European Commission is tasked with providing guidance in the final GIA, it is indispensable that such guidance would be provided in close cooperation with BEREC to ensure as best as possible that such guidance would not be disruptive to well established principles, does not violate DSB's procedural rules and would not be harmful for further VHCN roll out.

## 5. Scope

The European Commission's legislative proposal for a GIA (Art. 1(1), Art. 3(1), Art. 5(2), Art. 9(2)) aims to reduce the cost of deploying VHCNs, but not of other networks. BEREC agrees that it is very important to reduce the cost of deploying VHCNs, however BEREC considers the following. It is also important to reduce the costs of State aid funded ECN deployments in order to ensure that public funds are used as efficiently as possible. In addition, it is important to reduce the costs of the deployment of network elements which can contribute to VHCN deployment (but are not necessarily part of a VHCN immediately after its deployment) e.g.

fibre roll-out in general, as this also contributes to the achievement of the EU connectivity targets for 2030. Therefore, such ECN deployments should not be excluded from the scope of the GIA. In addition, if the scope of the GIA were to be limited to VHCNs also methodological problems would arise.

BEREC wants to point out that the European Commission Guidelines on State aid for broadband networks do not limit State aid to VHCNs and accept public funding for other ECNs if they comply with certain conditions.<sup>8</sup> Therefore, if the GIA were to apply only to VHCNs, the total amount of State aid for ECN deployment would increase compared to the situation where all State aid funded ECN deployments are included in the scope of the GIA, which is clearly to be avoided to ensure that public funds are used as efficiently as possible.

According to the definition of the term “VHCN” in the EECC (Art. 2(2), Rec. 13) and the BEREC Guidelines on VHCNs (BoR (20) 165), a VHCN is defined as an ECN where fibre is rolled out at least up to the building of the end-user or up to the base station or if a certain criterion regarding the quality of the end-user service is met, which typically means a fibre roll-out similarly close to the end-user. BEREC wants to point out that any deployment of fibre, even if not yet in the immediate proximity to the end-user, may be an important step towards a VHCN deployment. Therefore, if the GIA were to apply only to VHCNs, the costs of such ECN deployments would increase, which BEREC does not consider to be appropriate.

BEREC acknowledges that if the scope of the GIA were to be limited to VHCNs, operators that roll out fibre very close to the end-user, but not yet close enough for the ECN to qualify as a VHCN, might decide to go directly to a VHCN roll-out to benefit from the provisions of the GIA. However, they may also decide not to deploy at all and therefore postpone a useful fibre investment. Therefore, after considering benefits and drawbacks, BEREC is of the view that the scope should not be limited to VHCN for the reasons described above.

Finally, BEREC wants to point out that if the scope of the GIA were to be limited to VHCNs, there would also be cases where it is not clear whether or not the GIA applies. For example, if an ECN operator uses the existing physical infrastructure of another operator to deploy fibre in a backhaul segment of its network to which end-users are connected based on FTTB/H and FTTC/Ex, it would not be clear whether or not the GIA applies. The reason is that according to the definition of the term “VHCN”, the ECN consisting of this backhaul plus the FTTB/H access would qualify as a VHCN, but the ECN consisting of the same backhaul plus the FTTC/Ex access would not. Therefore, it would be necessary to resolve such methodological problems.

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<sup>8</sup> See [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.C\\_.2023.036.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=uriserv:OJ.C_.2023.036.01.0001.01.ENG)

## 6. Access to existing physical infrastructure

In principle, BEREC welcomes the adjusted scope of Article 3(1) of the legislative proposal compared to Article 3 in the BCRD, which in addition to network operators now also includes public sector bodies. In this regard, Article 12(7) of the legislative proposal is important, as the widening of the scope will likely increase the administrative burden of the DSB. It has to be noted that not only the scope of the undertakings/bodies which might be obliged to meet requests for access is widened, but also the subject of the request, which now may also include e.g. street furniture.

BEREC also agrees with the scope of physical infrastructure as defined in Article 2(2), which now also includes items of street furniture and therefore seems to be aligned with Article 57(4) EEC. However, the wording of the definition provided in Article 2(2) lit. (a) is not fully clear. Entries to buildings and any other assets including street furniture are not elements of networks that are intended to host other elements of networks. BEREC regards it as likely that where such items are not suitable for network deployment, access will be refused based on either Article 3(3) lit. (a) or (b) of the legislative proposal. These safeguards should be sufficient to prevent an overly intrusive application of the expanded access provisions. BEREC also in general agrees with the proposed conditions for refusal of access provided under Article 3(3).

However, BEREC is of the opinion that it should be possible for Member States, depending on national circumstances, to extend the obligation for access to physical infrastructure beyond the scope of the GIA (see section 3). Denmark, for instance, has obliged private owners of buildings of more than two stories (e.g. apartment blocks) to give access to the deployment of antennas on their rooftops.

BEREC however is concerned about overly prescriptive provisions regarding the determination of prices as part of fair and reasonable terms and conditions under Article 3(2) lit (c). BEREC regards it neither necessary nor beneficial that more detailed guidance on fair and reasonable conditions including prices is provided as compared to the BCRD. As stated in its opinion on the revision of the BCRD, *“it is important to note that the notion of ‘fair and reasonable’ is not generally linked to a specific pricing mechanism under the BCRD, but serves instead as a broad concept that allows the DSB to set prices in a manner that will not distort market outcomes and also allows the DSB to take into account the requirement of consistency to pricing obligations linked to other regulations, in particular SMP regulation”*<sup>9</sup>. While Recital 19 of the BCRD provided valuable indications as to which factors a DSB should consider, when determining prices, these indications are now not only included in Recital 22 of the legal proposal, but also in its main body in Article 3(2) lit (c). These indications should be mere cornerstones when applying the principle of proportionality, however.

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<sup>9</sup> BoR (21) 30, p. 31, <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-the-revision-of-the-broadband-cost-reduction-directive>

Consequently, the conditions laid out in Article 3(2) lit (c) should be removed from the final GIA. This is of particular importance as the legal provision is intended to replace the directive with a regulation, further limiting DSBs' possibilities to deviate where necessary and justified.

Likewise, BEREC does not regard the provision of further guidance on the application according to Article 3(9) of the legal provision as appropriate (see also above, section 4 in general). DSBs have already decided a large number of cases, establishing a case law in line with requirements of the respective markets and in some cases also issued Guidelines e.g. on cost sharing/pricing principles in order to enhance clarity for market participants. Particularly for non-ECN operators, the principles of cost sharing / pricing principles include provisions to ensure that there is no double recovery of costs (from tariffs on main business, as well as tariffs for access to physical infrastructure). Also, as shown in the BEREC report on pricing for access to infrastructure and civil works according to the BCRD,<sup>10</sup> some NRAs have considered only incremental costs of granting access. Therefore, it could even be harmful to the market development and possibly detrimental to the objective of reducing the costs, if principles already known to market parties would suddenly become invalid.

BEREC welcomes the clarification in Article 3(5) regarding the scope of the legal principle of *lex specialis*, according to which access obligations imposed under the EECC and State Aid rules prevail over the more general access obligations stemming from the GIA. Otherwise, BEREC agrees with the provisions on access to existing physical infrastructure.

## 7. Coordination of civil works

Article 5(2) of the legislative proposal states that network operators when performing or planning to perform civil works that are fully or partially financed by public means shall meet any reasonable written request to coordinate civil works under transparent and non-discriminatory terms made by operators with a view to deploying elements of VHCNs or associated facilities.

BEREC welcomes that associated facilities now are included in the legislative proposal as this is a useful clarification. Moreover, BEREC agrees that an obligation to meet all reasonable requests for a coordination of civil works should apply to fully or partially publicly financed civil works.

However, the obligation in Article 5 (3) of the legislative proposal could in some cases result in delays or even discourage some investments. This provision obliges network operators to deploy physical infrastructure with sufficient capacity to accommodate possible future reasonable needs for third-party access, in the cases where the request to coordinate is considered unreasonable on the basis of the first paragraph of this Article. As BEREC agrees to this in cases of State Aid, it seems rather difficult in the cases of geographical survey.

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<sup>10</sup> BoR (19) 23, <https://www.berec.europa.eu/en/document-categories/berec/reports/pricing-for-access-to-infrastructure-and-civil-works-according-to-the-bcrd>

Changing the technical and financial features of a project in such a short time could be problematic. Therefore, BEREC suggests to adapt Article 5(3) accordingly.

A further consideration could be made to extend the obligation to privately financed civil works. While such an extension, on the one hand, would have a larger impact and strengthen the acceleration of deploying VHCNs by creating more opportunities for coordinated civil works, on the other hand, it could thwart private investors by potentially making their business cases less attractive and therefore could have an overall negative impact on VHCN deployment. BEREC is of the view that this trade-off is best to be solved on a national basis by the Member States considering the circumstances in the respective markets and therefore welcomes the explicit reference of this possibility in Recital 11 of the legislative proposal. However, BEREC considers it necessary to clarify in the GIA that Art. 1(4), which establishes that “*Member States shall not maintain or introduce in their national law provisions diverging from those laid down in [...] Article 5(2) [...]*” does not prevent the inclusion of privately financed civil works. Some Member States have already successfully used the opportunity of the BCRD to widen the obligation to coordinate also to privately financed civil works. For example, according to Romanian legislation, all works regarding construction, repair, upgrading, refurbishment or extension of the roadways or the public utility network must comply with the coordination procedure, irrespective of public or private financing. Another example is Italy where the NRA issued Guidelines which incentivise the installation of additional physical infrastructures able to host communication networks by civil works which are privately or publicly financed.

## 8. Access to in-building physical infrastructure

BEREC agrees that access to in-building physical infrastructure is important to reduce the cost of ECN deployment. In addition, BEREC considers that Member States should have the possibility to maintain or introduce the obligation that also access to in-building cabling needs to be provided. Some Member States (e.g. Finland, Portugal) have already introduced such measures even before the BCRD. In those countries, in-building networks are considered integral parts of the property and the owner of the property in principle also owns any in-building physical infrastructure, thus access to the in-building cabling may be appropriate and as it contributes to reducing the cost of ECN deployment. Therefore, BEREC considers it important that Member States have the possibility to maintain or introduce such measures. However, BEREC observes that such measures are out of scope of the proposed GIA, which includes joint use of existing physical infrastructure and a more efficient deployment of new physical infrastructure, but not access to cables (e.g. fibre), which the proposed GIA (Art. 2(2)) explicitly does not consider as physical infrastructure. Therefore, BEREC suggests to include in Article 9 the following paragraph: “*This Article is without prejudice to the right of Member States to maintain or introduce measures falling outside the scope of this Regulation/Directive, such as access obligations for in-building cables*” or a similar statement in a relevant recital, which may however not give the same legal certainty.



BEREC wants to point out that certain ECN operators may prefer access to the in-building physical infrastructure in order to deploy their own cabling instead of the use of existing in-building fibre wiring. For example, operators may have rolled-out fibre up to the building but in the building, they may prefer Category 6 cable or operators of a hybrid fibre coax (HFC) network may prefer coax cable in the building.

Finally, BEREC wants to stress that it considers European Commission guidance on the application of Article 9 not to be appropriate (see section 4) and therefore sees no need for Art. 9(6).

## 9. In-building physical infrastructure and fibre wiring

BEREC welcomes in principle the Articles 8(1) to 8(3). However, regarding Art. 8(1), BEREC would like to point out that the Member States should have the option to take a more technologically neutral approach based on the national circumstances and demand “gigabit-ready” instead of “fibre-ready” in-building physical infrastructure and “gigabit wiring” instead of “fibre wiring”.

BEREC acknowledges a need to ensure with relevant standards or technical specifications that the in-building physical infrastructure and fibre wiring are fit for purpose and can ensure gigabit connectivity. However, BEREC considers that Article 8(4) is not very well suited for this purpose as the minimum requirements listed in the proposed GIA are rather detailed and focus only on a small part of specifications that are relevant in this context. BEREC also notes that the minimum bend radius is cable-specific and no universal bend radius exists. Therefore, BEREC suggests that the Member States should have the possibility to decide what national standards or technical specifications are necessary to ensure gigabit connectivity and to remove the list of minimum requirements in Art. 8(4).

BEREC observes that generic cabling standards give a good basis for this specification with an observation that some of the requirements of the standards may be problematic in practice and should be carefully evaluated before making them mandatory. For example, the size requirement for home distributors is challenging especially concerning renovation works in old buildings. When not yet in place, BEREC suggests considering setting national specifications regarding:

- a) structure and used components;
- b) technical quality, performance and protection;
- c) installation, inspection, testing and documentation.

Inspection, testing and documentation are very relevant regarding Article 8(6) as without clear inspection reports, test results and documentation, it is rather hard to verify whether the standards or technical specifications are met. However, BEREC agrees that this is best decided by the Member States and not included in the GIA. BEREC also observes that 12

months might be a too short time to implement the ‘fibre-ready’ scheme and to ensure that the local or subnational authorities responsible for the building permits are capable of verifying that the national specifications are met.

## 10. Transparency concerning access to physical infrastructure and coordination of civil works

BEREC welcomes the revised transparency regime for information on existing physical infrastructure and planned civil works. Most proposed changes compared to the 2014 BCRD are in line with the BEREC opinion on the revision of the BCRD e.g. regarding the inclusion of geo-referenced information on physical infrastructure in electronic format to be provided via a SIP, the inclusion of associated facilities of ECNs and infrastructure owned by public sector bodies, and the scope of organizations having to make available information on planned civil works<sup>11</sup>. BEREC considers to be important that SIPs are allowed to choose the exact procedures and data formats for making available the minimum information on existing physical infrastructure. It seems this flexibility is possible under the proposed GIA, otherwise it would be necessary to make this clear. BEREC also supports publishing the tasks of each competent body via a SIP. These rules should ensure further cost reductions compared to the BCRD.

BEREC wishes to highlight that the legislative proposal for GIA increases its scope compared to the 2014 BCRD. This entails increased tasks for NRAs or competent bodies operating SIPs as well as for those network operators and public sector bodies that have to make available information via the SIPs (including some new parties). Therefore, BEREC recommends flexibility as well as earmarked EU-level funding to account for this. The provisions mandating adequate technical, financial and human resources (Article 12(7)), allowing the charging of fees for the use of SIPs (Article 12(5)), and giving the option for a cost-benefit analysis (Art. 4(4(b))), are crucial in this regard. However, in order to be able to ensure necessary resources and enable NRAs or competent bodies operating SIPs to make SIPs free to use, as well as ensure the proportionality of obligations to provide information via SIPs, earmarked EU-level funding for system development and further flexibility could be envisaged.

BEREC notes that the proposed Article 4(1) gives operators the right to access minimum information *upon request via a SIP* and Art. 4(2) states that network operators and public sector bodies shall make available this information via a SIP. BEREC welcomes this flexible wording. Recital 25 seems to be in conflict with this wording, as it states that entities subject to transparency obligations should “*proactively (rather than upon request) provide and maintain such minimum information via a single information point*” (italics added). BEREC notes that SIPs for information on existing physical infrastructure can be designed in a decentralised way, where requests for information trigger the automatic sending of information

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<sup>11</sup> BoR (21) 30 e.g. Q14, Q16, Q17, <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-the-revision-of-the-broadband-cost-reduction-directive>

pertinent to a geographically limited request directly from the databases of each entity subject to a transparency obligation, through the SIP (which “en route” can check correct data format etc.) and to the requesting party. This can normally happen instantly, thus ensuring full and immediate transparency (subject to relevant security checks, e.g. login, and/or security-based limitations). Similarly, Recital 26 can potentially be (mis)understood as foreseeing some (government-operated) digital tools where the information is stored, though this is not entirely clear. BEREC notes that while Recital 54 provides flexibility as to the number of SIPs, it does not directly address the decentralised data structure of a SIP that (automatically) fetches information directly from the database of each relevant network operator and public sector body. The final GIA should leave no doubts as to the possibility of using SIPs where data is stored in a decentralised way. It is BEREC’s understanding that allowing for this possibility is the intention of the proposal.

BEREC notes that both centralised and decentralised systems can fulfil the requirements in the proposed Article 4 as currently worded, meaning that any potential issues seem to be in the recitals. Replacing existing decentralised systems with centralised databases would not notably increase response times while entailing high costs. For these reasons, BEREC suggests it should be ensured that the proposed wording of Article 4(1) and 4(2) is authoritative by adjusting the recitals to remove any doubts, as described above. Specifically, the quoted part of Recital 25 should be revised accordingly to: “*proactively ensure that the minimum information they make available via a SIP is correct and up to date*”. This wording, applied to decentralised systems, would cover an obligation for operators to keep their own database up to date, which would then automatically send pertinent information via a SIP upon request. Applied to centralised systems, the meaning would be the same as with the original wording. Adjustments with the same objective could be envisaged for Recitals 26 and possibly 54.

BEREC considers the deadline of 12 months in Article 4(2) to be too short, as this deadline will necessarily encompass both the adjustment or new development of SIP systems (within the six months deadline in Art. 18(2)) and the subsequent adaptation of operators’ systems and procedures to these new and/or revised SIP systems. The proposed GIA regulation imposes the availability of SIP systems which support making available information on new types of physical infrastructures, meaning that new parties that did not have an obligation to make information available via the SIP under the BCRD, will now need to implement entirely new systems and procedures within as little as 6 to 12 months.

Article 6 obliges network operators to make available information on planned civil works even if these civil works are not partially/fully financed by public means, i.e. not covered by the obligation to meet coordination requests in Article 5(2). BEREC recommends limiting information on planned civil works available via the SIP to those cases where the network operator has an obligation to meet requests for coordination, potentially supplemented by voluntary information on civil works where the owner wishes to allow coordination, as information on civil works not covered by Article 5(2) is only useful if the network operator planning the civil works intends to allow coordination on a voluntary basis.



Whenever a network operator makes available information on privately funded civil works, but has no intention to coordinate the civil works, this information would not be useful for (other) operators, but rather be confusing. Other operators would risk spending time analyzing the viability of coordinating civil works not only in those cases where it is a real option, but also based on information provided purely to fulfil the transparency obligation. Operators may lodge requests for coordination, which would be legitimately rejected, expending time and resources for both involved parties.

While privately funded civil works are covered by the transparency obligation in the BCRD, the content of the obligation is changed significantly in the proposed Article 6 of GIA. With the proposed Article 6, the obligation is expanded in the following ways compared to BCRD (Art. 6(1)). (1) The information must now be provided proactively, rather than upon specific written request. (2) Information must now be provided at least three months before applying for a permit, where BCRD seems to allow network operators to freely apply for permits at any time, requiring only that any known projects where a permit application is expected to happen within the next 6 months are disclosed upon request, but not that network operators must wait 6 months before applying. (3) All civil works must be reported, as opposed to only information on civil works within the geographic area specified in each information request.

This means that compared with BCRD, many more civil works not covered by an obligation to allow coordination will be among the information accessible via the SIP, so that many more futile requests for coordination may be made. The reporting burden on network operators is also larger than with the BCRD, and operators will have to wait 3 months to apply for permits even if that waiting time only serves the purpose of formally complying with the transparency obligation (because the network operator in question does not wish to allow coordination of civil works and is under no obligation to allow it). To take these changes into account, the scope of Article 6(1) of the final GIA should be aligned with that of Article 5(2) of the proposed GIA.

On the other hand, it is necessary to ensure that Member States can maintain and introduce measures going beyond the GIA to achieve the GIA's aim better (see section 3). Where an operator performing civil works financed entirely from its own funds has an interest to coordinate its civil works with other operators on a voluntary basis, voluntary transparency can always be enabled.

## 11. Dispute settlement

BEREC welcomes the expansion of the independence requirements for DSBs and SIPs in Article 12(2) of the legislative proposal. It is important that the DSB is legally distinct and functionally independent from both any network operator and any public sector body owning or controlling physical infrastructure involved in the dispute. BEREC also agrees on the structural separation between, on the one hand, activities associated with Member States ownership or control of network operators and, on the other hand, the DSB and the SIP.



Both extensions compared to the BCRD are important to guarantee the quality of DSB's ruling. However, BEREC suggests to further expand the independence requirements and also include political independence as defined in Article 8 (1) of the EECC.

In line with this, BEREC also welcomes that according to Article 12(7) of the legislative proposal the competent bodies shall have adequate technical, financial and human resources to carry out the tasks assigned to them. This is explicitly important as the legislative proposal includes new tasks compared to the BCRD and might therefore increase the number of dispute settlement cases. Moreover, competent bodies as the DSB and the SIP are important actors for achieving the 2030 Digital Decade Gigabit connectivity targets and this is a further reason why it is important to equip them with adequate resources.

In Article 11 of the legislative proposal deadlines both for parties to be entitled to refer their dispute to the DSB as well as deadlines for the DSB to issue a binding decision have been reduced.

Shorter deadlines for parties to ask the DSB to open a case as proposed in Article 11(1) have ambiguous effects in BEREC's view: There clearly is an accelerating effect especially in cases where bilateral negotiations have reached a deadlock as the dispute can then be settled faster at the DSB. On the other hand, reduced deadlines may increase the number of cases brought before the DSB and consequently the administrative burden while there might not be an actual disagreement between parties. This can happen whenever the timeframe is too short for the obligated party to comply with all requirements. In particular, the reduction from quite long 60 days in the BCRD to only 15 days to provide requested information in connection to the rights and obligations set out in Articles 4 and 6 might be very ambitious in individual cases. For instance, about two weeks will not be enough to deliver all information if not every piece of the requested information is available in a digitized manner or only in a different format (and thus not part of an automatized system) or where the completeness of information has to be checked.

BEREC is severely concerned with the reduction of the DSB's deadlines to issue a binding decision to resolve a dispute in Article 11(2). Except for disputes on access to existing infrastructure all deadlines are to be halved to only one month. As a dispute settlement case includes the exchange of (frequently several) written statements and in many Member States also a (public) hearing of the parties, the DSB has to observe procedural rights such that it is almost impossible to carry out a decision within one month. Furthermore, the DSB has often to clear up the facts of the case and gather evidence, which also takes its time. Besides these practical considerations, BEREC is of the view that longer deadlines better contribute to an overall acceleration for the following two reasons. Firstly, decisions by the DSB do not only impact the individual case but are often precedents for similar cases in the future or guide the disputing parties already in their bilateral negotiations, especially when DSB decides according to Article 11(3) and settles fair and reasonable terms and conditions, including price. It is therefore very important that the decisions are well prepared, tailored to the exact case, and are of high quality, which is not possible in too short timeframes. Secondly, hastily written decisions may lack the needed exactness and balance of arguments such that they are more

prone to an appeal and may be overruled by courts, resulting in even longer waiting periods of the parties for the final decision and to longer overall legal uncertainty in the market on the relevant issues of the case. Consequently, BEREC would welcome to keep DSB's deadlines of the BCRD as this ensures the high quality of DSB's ruling (while cases at the DSB already lead to faster binding decisions compared to cases that are referred to a court).

BEREC suggests clarifying in Art. 16 that the new provisions should apply only to dispute resolutions initiated after the provision enters into force, while dispute resolutions initiated before that should still be handled under the national provisions which transposed BCRD's provisions.

In conclusion, BEREC agrees to strengthen the independent position of DSB's. To guarantee their high-quality ruling and its importance for the market even beyond an individual case (as mentioned above), BEREC suggests a revision of the deadlines in Article 11 of the legislative proposal, especially concerning the deadlines for the DSB to resolve disputes.

## 12. Permit-granting procedure

BEREC agrees that permit granting is an important step in the deployment of ECNs. BEREC understands that from the perspective of an ECN operator, streamlining and digitalising permit granting procedures would be beneficial. However, BEREC would like to point out the following regarding potential ways of achieving these goals.

First, the deployment of an ECN may require many different types of permits e.g. building permits, permits for digging, specific permits in case of conservation areas, and in a Member State, many authorities, e.g. local authorities, may have the legal competence to grant permits. Typically, there is not one authority responsible for all permits.

BEREC stresses that it is not possible or desirable that an authority operating a SIP analyses all applications it receives from operators and all status information it receives from permit granting authorities. The SIP is typically not a permit granting authority with the legal competences necessary for such a task. Even if the SIP were such an authority, this model would be inefficient and would result in a slower rather than faster approval of permits, as a further authority would be added in the permit granting process that would also have to examine the applications, which would need additional time. Consequently, all applications would be examined twice: once by the SIP and once by the authority that actually processes the applications. This would be inefficient. Furthermore, the SIP would have to examine all applications and therefore would likely become a bottleneck. This is particularly important in Member States which have implemented a decentralized solution at the level of local authorities resulting in a high number of local permit granting authorities. It also raises the question of what competence the SIP authority has vis-à-vis the authorities that actually process the applications.



BEREC would like to clarify that it would also not be efficient if the SIP simply forwards the applications it receives from ECN operators to all permit granting authorities (without analysing them) as this would be an additional step with little added value. All permit granting authorities would then have to analyse all applications from all ECN operators and formally decide whether to accept the application, and if not, they also would have to inform the applicant of the reasons for the rejection.

BEREC considers it more efficient that the SIP provides information on the permit granting authorities (including the relevant digital tools) as foreseen in Article 7(2). For example, a website of the SIP could provide the links to the permit granting authorities' websites (including digital tools) which enable an ECN operator to select and access the appropriate permit granting authority via the SIP. Then the ECN operator can submit the application via the permit granting authority's website.

BEREC considers it inefficient that information on the status of an application is forwarded from the SIP to the ECN operator. It is much more efficient for the permit granting authority to send this information directly to the ECN operator (SIP involvement is an unnecessary additional step, which may even result in delays). Moreover, this would only be possible if the permit granting authorities were legally obliged to send this status information to the SIP (if the SIP is distinct from the permit granting authority), together with information to whom it needs to be forwarded.

In conclusion, BEREC stresses that it is not possible that an authority operating a SIP analyses all applications and corresponding status information it receives from permit granting authorities, as a SIP is typically not a permit granting authority and if it were, this would be inefficient and result in a slower rather than faster approval of permits. BEREC considers the information obligation of Art. 7(2) sufficient for the submission of applications. A SIP could provide the links to the permit granting authorities' websites (including digital tools) and the ECN operator selects the appropriate authority and submit the application via this authority's website. BEREC considers it inefficient that a SIP forwards information on the status of an application to the ECN operator instead of the permit granting authority sending this information directly to the ECN operator. For these reasons, BEREC suggests deleting Art. 7(3), except the provisions regarding the right to submit applications in electronic format, and to replace it with an obligation on permit granting authorities to inform the applicants directly on the status of their application upon request.

BEREC would like to point out that the proposed GIA uses the term "rights of way", however, this term is neither defined in Art. 2 "Definitions" of the proposed GIA nor in Art. 2 "Definitions" of the EECC. Therefore, BEREC suggests that the GIA should make clear that the term "rights of way" means rights of way as defined in Art. 43 of the EECC.

BEREC notes that, depending on national circumstances and specific cases, Member States may apply tacit approval (see also section 3), however, BEREC proposes not to foresee mandatory tacit approval of rights of way, as foreseen in Art. 7(7) of the proposed GIA, for the following reasons. (i) BEREC considers it disproportionate that private persons would have to

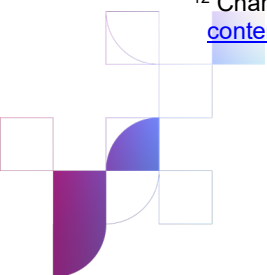
tolerate a significant intervention (e.g. digging or having a mast constructed on their premises) and maybe even a violation of their property rights just because an authority did not make the decision in time. (ii) ECN operators could misuse this provision and bundle their applications to submit them all at once to the competent authority, which then certainly would not be able to process all applications in time. (iii) Negatively affected persons may not have the possibility to appeal, if an appeal is only possible against a decision of an authority but not against a “non-decision”. (iv) Tacit approval also seems to contradict the rights guaranteed to affected parties (e.g. the landowner) under Article 47 of the Charter of Fundamental Rights of the European Union and the right to property according Article 17 of this charter.<sup>12</sup> (v) The use of public or private property without the express permission of the owner of that property may raise some constitutional issues. (vi) Tacit approval may also violate concerned parties’ right (at national level) to comment on a proposed project (e.g. in a public hearing), which may also have an adverse effect on public opinion on ECN infrastructure and therefore could lead to a slower roll-out of e.g. 5G. (vii) To avoid tacit approval, the authority may prefer to refuse the application, resulting in a slower rather than faster approval of rights of way. In case of permits other than rights of way, the situation, depending on national circumstances, may be similar.

BEREC also considers the provisions of Art. 7(5) of the proposed GIA, that applications for rights of way are deemed complete if deadlines are not met, to be inappropriate. While the proposal is understandable in theory, in the absence of all necessary information, the permit-granting authority would have to decide on the basis of an incomplete application and could be forced to allow e.g. unsafe constructions and to take other inadequate decisions. It would also no longer have the possibility to reject the application because of incomplete information. To avoid this, the authority will likely prefer to refuse the application, resulting in a slower rather than faster approval of rights of way and permits. If these provisions of Art. 7(5) are not deleted in the final GIA, BEREC considers it important to substantially extend the 15-day period or to establish an option for extension similar to that for the 4-month period, where one valid reason for extending the 15-day period should be cases with a large amount of documentation that an authority would have to screen in order to meaningfully assess the completeness of an application. In case of permits other than rights of way, the situation may be the same.

BEREC acknowledges the provisions in national law regarding compensation, however, recommends deleting the proposed Article 7(11) on compensation in case of non-compliance with deadlines in the final version of the GIA in order not to go beyond these national measures for the following reasons: (i) The risk of having to pay compensation can give an authority incentive to refuse the application if there is a risk of exceeding the deadline, rather than finish processing it. This would result in a slower rather than faster VHCN roll-out. (ii) Authorities having to pay compensation may need to take the funds from the same budgets that fund the employees and systems processing permits, leading to a downward spiral in the available resources of these authorities and thus to even longer processing times. (iii) Quantifying the damage may be impossible in practice. If the permit granting authority which issues the

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<sup>12</sup> Charter of fundamental rights of the EU (2000/C 364/01), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32000X1218%2801%29&qid=1679084333782>



decision cooperates with other authorities, it is unclear and it may be difficult to decide which of them is responsible for not meeting the deadline, and to what extent. (iv) Point (iii) implies that determining the responsibility and amount of damages to be paid can itself be a lengthy and complex procedure, draining authorities of resources that could be used to process applications. (v) Unequal treatment of ECN operators to other applicants which do not have the right to receive compensation. Moreover, there is no need for Art. 7(11), as it seems that such claims can be brought under general state liability.

Art. 7(4) proposes that permit applications for which information according to Art. 6(1) has not been provided shall be rejected. BEREC recommends limiting Art. 7(4) to apply only to the same categories of civil works covered by Art. 5(2), i.e. civil works partially or fully financed by public means. BEREC does not consider it proportionate to restrict operators' right to apply for permits in cases where they do not provide information on civil works, unless they have an obligation to allow coordination for those civil works. Art. 7(4) in its current form risks slowing down VHCN deployment by making the provision of non-actionable information a prerequisite for applying for a permit (see also section 10).

Article 16 states that national measures that specify categories of deployment not subject to any permit-granting procedure shall continue to apply until the European Commission's implementing act provided for in Article 7(8) enters into application. BEREC refrains from commenting on the proposed Article 7(8), as most NRAs do not grant permits. However, BEREC finds that the wording of Article 16 can raise doubts as to the legality of maintaining any permit exemptions that are not included in the eventual implementing act. BEREC notes that abolishing any existing permit exemptions for ECN elements would run counter to the aims of the GIA and, therefore, considers it important that Member States can maintain or introduce measures going beyond the GIA (see section 3) and the European Commission implementing act.

BEREC notes that Art. 7(6) proposes a derogation from Article 43(1), point (a) of Directive (EU) 2018/1972. From the point of view of the quality, accessibility and transparency of EU legislation, BEREC is of the view that one legal text should not contain changes to another legal text. BEREC is of the view that Directive (EU) 2018/1972 should remain authoritative if read on its own, and that any changes to a legal text should lead to that legal text being updated.

### **13. Environmental impact of electronic communications networks**

BEREC acknowledges the essential role of digital infrastructure in achieving the twin green and digital transitions. BEREC highlights that the fast and smooth deployment of the infrastructure is of utmost importance and should be in line with efforts to reduce its environmental impact to a level as low as possible.



As stated in the BEREC Opinion on the revision of the BCRD<sup>13</sup> “*the coordination of civil works, the use of synergies between different network operators and the joint use of existing physical infrastructure might not only help to save investments, but might also reduce the environmental load by reducing the need for additional civil engineering works.*” The BEREC external study on Environmental impact of electronic communications<sup>14</sup> also highlights that the re-use of physical infrastructure (including duct access) and the co-ordination of civil works can contribute to achieve the environmental goals. For these reasons, BEREC would like to stress that widening the scope of the GIA (not limited to only VHCNs) as suggested by BEREC (see section 5) might also decrease the environment impact of ECN deployments by making use of existing physical infrastructure and coordination of civil works.

BEREC is of the view that the GIA could reduce costs and also mitigate the environmental impact of deploying ECN, and in order to emphasize this, BEREC suggests that this argument is included in a recital of the final GIA.

BEREC notes, however, that certain implications of the proposed GIA, e.g. tacit approval (Article 7 (7)), will likely have potential negative impact on the environment and might not be in line with the objectives of nature conservation.

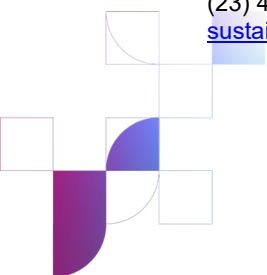
Finally, BEREC would like to point out that it is working on the issue of the environmental impact of ECN deployment, in particular on the need to collect data on the environmental impact of ECN and that the related project reports<sup>15</sup> may be of interest to co-legislators in future legislative initiatives.

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<sup>13</sup> (BoR (21) 30), <https://www.berec.europa.eu/en/document-categories/berec/opinions/berec-opinion-on-the-revision-of-the-broadband-cost-reduction-directive>

<sup>14</sup> (BoR (22) 34), <https://www.berec.europa.eu/en/document-categories/berec/reports/external-sustainability-study-on-environmental-impact-of-electronic-communications>

<sup>15</sup> Draft BEREC Report on Sustainability Indicators for Electronic Communications Networks and Services, BoR (23) 46) <https://www.berec.europa.eu/en/document-categories/berec/reports/draft-berec-report-on-sustainability-indicators-for-electronic-communications-networks-and-services>



## 14. List of abbreviations

BCRD	Broadband Cost Reduction Directive
DSB	Dispute Settlement Body
ECN	Electronic Communications Network
EECC	European Electronic Communications Code
FTTB	Fibre To The Building
FTTC	Fibre To The Curb
FTTEX	Fibre To The EXchange
FTTH	Fibre To The Home
GIA	Gigabit Infrastructure Act
NRA	National Regulatory Authority
SIP	Single Information Point
SMP	Significant Market Power
VHCN	Very High Capacity Network

