

**Draft**

# **BEREC Guidelines on the access to in-building infrastructure according to Article 11(6) of the Gigabit Infrastructure Act**

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## Executive summary

1. The new Gigabit Infrastructure Act (GIA)<sup>1</sup> entered into force on 11 May 2024 and replaces the Broadband Cost Reduction Directive (BCRD)<sup>2</sup> adopted in 2014. Most provisions of the GIA shall apply from 12 November 2025 onward. Article 1(1) of the GIA *“aims to facilitate and stimulate the roll-out of very high capacity networks (VHCNs) by promoting the joint use of existing physical infrastructure and by enabling a more efficient deployment of new physical infrastructure so that such networks can be rolled out faster and at a lower cost.”* One important measure to achieve this objective is Article 11 of the GIA: “access to in-building physical infrastructure” which lays down rights and obligations.
2. In Article 11(6) of the GIA, the co-legislators task Body of European Regulators for Electronic Communications (BEREC) with the provision of Guidelines *“on the terms and conditions of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions, and the criteria that the national dispute settlement bodies should follow when settling disputes.”* This is the objective of these BEREC guidelines, which were written based on inputs from National Regulatory Authorities (NRAs) and responses from stakeholders to a questionnaire issued during summer 2024, and a public consultation conducted in summer 2025 in close cooperation with the European Commission.
3. Keeping in mind the aim that *“networks can be rolled out faster and at a lower cost.”* and considering the value-added for the building owner of having these services available, BEREC recommends that the utilisation of the in-building physical infrastructure should in general remain free of charge by the building owner, where they own the in-building physical infrastructure, which is the case in many EU countries.
4. If the in-building physical infrastructure was installed and is owned by an electronic communication network (ECN) operator, typically this infrastructure will already host fibre wiring. Any co-deployment using that infrastructure would impact the investment made by the first mover. Fair and reasonable prices should in those instances not deplete a reasonable first mover advantage.
5. As BEREC considers that access to in-building physical infrastructure should in principle be provided for free, BEREC considers it preferable, that when it is available, access to the fibre itself is considered first, in order to avoid discouraging investments

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<sup>1</sup> Regulation (EU) 2024/1309 of the European Parliament and of the Council of 29 April 2024 on measures to reduce the cost of deploying gigabit electronic communications networks, amending Regulation (EU) 2015/2120 and repealing Directive 2014/61/EU (Gigabit Infrastructure Act) [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401309](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401309)

<sup>2</sup> Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks <https://eur-lex.europa.eu/eli/dir/2014/61/oj/eng>

by operators inside buildings. BEREC however notes that this may not always be a suitable solution for the operator asking for access. As a result, though BEREC believes this solution should be considered first, it does not mean it should necessarily be chosen (unless national law requires it) in the end.

6. These guidelines describe additional terms and conditions which may need to be considered during a negotiation of such sharing of in-building physical infrastructure. Time limits, in particular, should remain reasonable at every step of the process.
7. Regarding criteria to settle disputes, BEREC notes a strong willingness of most NRAs and stakeholders to focus on speed of the procedure and transparency. These principles should guide all Dispute Settlement Bodies (DSBs) in their work, and more particularly on issues about access to in-building physical infrastructure, since this issue has a strong impact on and is visible to the end-user. To that end, the GIA has established tight time limits both on negotiations and on dispute settlements.
8. BEREC believes that settling a dispute in one month will require that all necessary information is made available at the very beginning of the dispute by the party asking for settlement. In case the information provided in the initiation of proceedings by the requesting party is incomplete or unclear in the facts and/or alleged legal grounds, settling a dispute within the given time constraint may not be possible. In that case, DSBs may decide that this lack of information falls within the scope of exceptional circumstances justifying a delay in the settlement as provided in Article 13(2) of the GIA and recital 64. BEREC therefore considers that the one-month time limit for resolving the dispute either does not start until the requesting party rectifies its information provided, or equivalently that the one-month deadline will be extended in that situation. In order to make sure this remains an exceptional situation, BEREC suggests in these guidelines to provide predictability on these information requirements through some examples of information which the DSB may require before commencing work on a dispute settlement. As for avoiding potential delaying strategies from a particular party, BEREC recommends that preclusion rules are defined by the DSB, provided that such rules would comply with general administrative law in Member States (Preclusion rules determine until what time or under what conditions a party may submit new facts, evidence or objections during dispute settlement proceedings).

## 1. Introduction

9. The GIA entered into force on 11 May 2024 and replaces the Broadband Cost Reduction Directive (BCRD) adopted in 2014. Most provisions of the GIA shall apply from 12 November 2025 onward.<sup>3</sup> The GIA (Article 1(1)) “*aims to facilitate and*

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<sup>3</sup> Ibid. footnote 1

*stimulate the roll-out of very high capacity networks (VHCNs) by promoting the joint use of existing physical infrastructure and by enabling a more efficient deployment of new physical infrastructure so that such networks can be rolled out faster and at a lower cost.*” One important provision to achieve this objective is Article 11 of the GIA with respect to “access to in-building physical infrastructure”, which lays down rights and obligations as follows.

10. Provisions regarding the right of any provider of public electronic communications networks:

- to roll out its network at its own costs up to the access point (Article 11(1) of the GIA);
- to access any existing in-building physical infrastructure with a view to deploying elements of VHCNs if duplication is technically impossible or economically inefficient (Article 11(2) of the GIA);
- if fibre-ready in-building physical infrastructure is not available, to terminate its network at the premises of the end-user using the existing in-building physical infrastructure to the extent that it is available and accessible, and provided that it minimises the impact on the private property of third parties (Article 11(4) of the GIA).

11. Article 11(3) of the GIA also sets out provisions regarding the obligation of any holder of a right to use the access point and the in-building physical infrastructure and to meet all reasonable written requests for access to the access point and the in-building physical infrastructure from providers of public electronic communications networks under fair, reasonable and non-discriminatory terms and conditions, including price, where appropriate.

12. In Article 11(6) of the GIA, the co-legislators task BEREC with the provision of the Guidelines as follows:

*“By 12 November 2025, after consulting stakeholders, the national dispute settlement bodies and other competent Union bodies or agencies in the relevant sectors as appropriate, and taking into account well-established principles and the distinct situation across Member States, BEREC shall, in close cooperation with the Commission, publish guidelines on the terms and conditions of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions, and the criteria that the national dispute settlement bodies should follow when settling disputes.”*

13. Article 11(6) of the GIA and BEREC’s role providing Guidelines on that provision is further described in recital 58 of the GIA.

14. Furthermore, Article 13(2) of the GIA states that the national DSBs shall issue a binding decision to resolve disputes, *“taking full account of the principle of proportionality and the principles established in the relevant Commission guidance or BEREC Guidelines”*.



15. These Guidelines, which were developed by BEREC, working in close cooperation with the Commission, are developed based on inputs from NRAs and on responses from stakeholders answering a questionnaire during summer 2024, and take into account a public consultation conducted in summer 2025. They do not take precedence over the GIA itself.
16. BEREC considers that DSBs need a sufficient level of leeway in the decision-making. Consequently, the guidelines focus on high level criteria and leave the specific provisions to be set on a case-by-case basis. Hence the guidelines allow for adaptations to respect unique situations or any specificities of Member States. They may be completed, if necessary, by national or local guidelines established by Member States or DSBs.

## **2. The terms and conditions of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions**

17. This section provides recommendations regarding the terms and conditions which can be considered as fair and reasonable with respect to:
  - when the in-building physical infrastructure is owned by the building owner. In this scenario BEREC recommends access should in principle be provided for free;
  - when the in-building physical infrastructure is owned by an ECN operator. In this scenario any pricing should be evidence-based (based on invoices for instance), and BEREC suggests to keep the methodology simple in that case;
  - timelines regarding access being kept reasonable at each step of the process;
  - BEREC also considers that attempting to share fibre, when suitable, rather than in-building physical infrastructure can be good practice in many situations.

### **2.1 Definitions**

18. In the context of the Guidelines, BEREC is adopting all the definitions included in Article 2 of the European Electronic Communications Code (EECC)<sup>4</sup> and in Article 2 of the GIA. In addition to the EECC definitions of VHCN, access and network termination point, relevant definitions relating to these Guidelines are the following GIA

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<sup>4</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code  
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018L1972>

definitions with respect to in-building physical infrastructure, access point and fibre-ready in-building physical infrastructure:

- “*physical infrastructure*” means any element of a network that is intended to host other elements of a network without becoming an active element of the network itself. Cables, including dark fibre are not physical infrastructure within the meaning of GIA.<sup>5</sup> [Consequently cables, including dark fibre are also not in-building physical infrastructure or fibre-ready in-building physical infrastructure].
- “*in-building physical infrastructure*” means physical infrastructure or installations at the end user’s location, including elements under joint ownership, intended to host wired and/or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building access point with the network termination point;
- “*access point*” means a physical point, located inside or outside the building, accessible to undertakings that provide or that are authorised to provide public electronic communications networks, where connection to the fibre-ready in-building physical infrastructure is made available;
- “*fibre-ready in-building physical infrastructure*” means in-building physical infrastructure intended to host optical fibre elements.

## 2.2. Identification of boundaries regarding the in-building physical infrastructure

19. This section determines the possible boundaries regarding in-building physical infrastructure.
20. As per the GIA definition of ‘access point’, the access point can be located inside or outside the building. According to GIA recital 48, building developers should provide for empty ducts from every dwelling to the access point, located in or outside a multi-dwelling building, allowing connections up to the network termination points, or in those Member States where the network termination point is placed, in accordance with national law, outside the end-user’s particular location, up to the physical point where the end-user connects to the public network.
21. An easily accessible access point is particularly useful for an operator to serve a multi-dwelling building, as that physical point can aggregate the wiring allowing connection to specific end-user locations inside the building itself. In order to enhance competition

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<sup>5</sup> For the exact definition, see Article 2 (4) GIA.

by allowing more than one undertaking to serve end customers, it is important that an access point is easily accessed by more than one operator, without excessive effort.

22. A physical access point nearer to end-users will be more beneficial to infrastructure competition and therefore Member States could consider choosing a point in a building or just outside a building, when they set the specification of the point in accordance with Article 10(4) of the GIA. An accessible access point that covers multiple buildings and individual residential premises can however sometimes be a necessary first solution to facilitate initial rollout of VHCN.
23. It is advisable for the access point to be set at a point within a building or just outside it and it may be the first “*concentration or distribution point*”<sup>6</sup> (“a physically accessible point close to the end-user where passive access to wirings, cables and associated facilities is possible”). The NRAs of the member states should use available BEREC guidelines when determining the first concentration or distribution point.<sup>7</sup> Accessibility means that operators must be able to reach and access the access point as well as the passive in-building physical infrastructure (from that point up to the network termination point inside the end user premises). Accessibility usually requires an accessible and manageable distribution facility to allow the establishment of a connection between the access seeker’s network and the existing in-building physical infrastructure. This facility should have enough space to allow access seekers to perform technical operations. It could be located in the basement of a building, or in any similar suitable facility just outside the building.
24. Access points can also be located outside the buildings based on network topologies and architectures deployed by network operators or due to different types of buildings e.g. a campus or multi-unit developments.
25. Any work regarding access to and the use of in-building physical infrastructure should be carried out in a manner which does not unduly restrict access to other potential operators wishing to access that infrastructure in the future, so as to prevent potential lock-in effects.
26. BEREC considers that the obligations under Articles 10(1) and (2) of the GIA regarding in-building physical infrastructure and fibre wiring are expected to increase the availability of fibre-ready in-building physical infrastructure and the availability of fibre wiring at a dedicated access point in the future. This may also lead to changes in the usual ownership of the in-building physical infrastructure and wiring (e.g. the ownership of this infrastructure could be expected to shift from ECN operators to building owners as new builds and buildings undergoing major renovations will be equipped with fibre

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<sup>6</sup> Article 2 (11) of the GIA

<sup>7</sup> BoR (20) 225, BEREC Guidelines on the Criteria for a Consistent Application of Article 61 (3) EEC, 10.12.2020; <https://www.berec.europa.eu/en/document-categories/berec/regulatory-best-practices/guidelines/berec-guidelines-on-the-criteria-for-a-consistent-application-of-article-61-3-eecc>



ready in-building physical infrastructure). This is already the case in Finland. The availability of in-building physical infrastructure is required to be made available to market participants under the GIA, whereas access to in-building fibre wiring is regulated under the EECC.

## 2.3 Different case categories

27. Considering the different conditions in Member States it is important to specify the entities obliged to provide access to the access point and the in-building physical infrastructure. The holder of a right to use the access point and the in-building physical infrastructure as referred to in Article 11(3) of the GIA should be understood as both the owner of the infrastructure or an entity to which the owner of the infrastructure has delegated control over it.

28. Case categories of ownership/Rights of use:

- Fibre-ready in-building physical infrastructure as defined in Article 2(8)<sup>8</sup> is owned by building owners or other holders of a right to use the access point and the in-building physical infrastructure (i.e. non-ECN operators);
- Fibre-ready in-building physical infrastructure is equipped/owned/managed by an ECN operator.

## 2.4 Access to the in-building physical infrastructure

29. Taking into account the general objective of the GIA (Article 1(1)) of the GIA “to *facilitate and stimulate the roll-out of very high-capacity networks (‘VHCNs’) by promoting the joint use of existing physical infrastructure*” it is important that existing in-building physical infrastructure is used where it is available.

30. According to Article 11(3) of the GIA, Member States may specify detailed requirements relating to administrative aspects of the request for access to in-building physical infrastructure. The administrative aspects of the requests should facilitate and simplify the agreement of access conditions to existing physical infrastructure within a building. In order to do so, NRAs/DSBs may provide a contract template that could be used as the basis for the specification of terms and conditions as well as relevant SLAs and KPIs. Member States may also apply under national law open access<sup>9</sup>, which

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<sup>8</sup> Examples of elements of such infrastructure are space (room) where the access point is located, optical distribution frames (ODF), mini-ducts connecting the access point to the vertical segments, final drop segment to the end user premises, etc.

<sup>9</sup> For example, in Finland, according to Section 111 (1003/2018) “Right to use an internal communications network”, open access to in-building physical infrastructure means that the free capacity of the infrastructure is equally



allows the same physical network infrastructure to be used by multiple providers delivering services to end-users, making the requirements for access to the physical infrastructure unnecessary.

31. In order to obtain access to existing fibre-ready in-building physical infrastructure, a streamlined process may contain clear timeframes and technical standards (aligned with SMP regulation, where applicable). The process should be as straightforward and effective as possible.
32. If a Member State decides to specify detailed requirements relating to the administrative aspects of the request, it is advisable to identify internal milestones related to the access request process, which should not last longer than one month. According to Article 13(1)(d) of the GIA any party shall be entitled to refer to the DSB a dispute that may arise *“where an agreement on access to in-building physical infrastructure referred to in Article 11(2) or (3) has not been reached within one month of the date of receipt of the formal request”*.
33. In order for operators to reach an agreement on access in a shorter period of time, and in any case within the prescribed period of one-month, appropriate milestones can be beneficial. For example, one of the milestones in the access agreement process could be related to an initial review of the availability and condition of the existing infrastructure. It is recommended to define a deadline within which the operator seeking access can receive information on the availability (available space and other conditions) of the physical infrastructure or a date for a physical inspection of the infrastructure inside the building. In addition, a deadline for the response to different written requests should be as short as possible. After the initial survey of existing in-building physical infrastructure, another procedural milestone could be regarding the appropriateness of the technical solution for the deployment of fibre wiring. Procedural deadlines will depend on the specific circumstances of countries that decide to implement a more detailed administrative procedure.
34. A detailed example of a streamlined procedure regarding requests for access to in-building physical infrastructure is provided in *Annex 1: Procedure of applying for access to in-building physical infrastructure*. This procedure has been proven to be useful in Poland, however, the exact time for the intermediary steps can be tailored to national circumstances. The strict tone of this procedure only applies if a Member State decides to adopt such a procedure.
35. Building owners or managers should cooperate with the access seeker by providing information about the existing in-building physical infrastructure within their property or by identifying the owner or the holder of a right (i.e. other operator or third party). Timely

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available to all providers on non-discriminatory terms and no provider has exclusive rights to the infrastructure. The provider has the right to connect its public communications network to the building infrastructure. Access is typically granted free of charge.

and efficient identification of responsible right holders is in some cases/countries is difficult to obtain and it is recommended that the availability of that information or the responsiveness in providing it should be improved.

36. In the scenario where existing in-building physical infrastructure is owned by the building owner or any other holder of a right to use (that is not an ECN operator, e.g. a building manager), and different operators request access to install necessary fibre wiring and equipment, access should be granted until the capacity of the in-building physical infrastructure is fully utilised, unless there are objective and provable reasons not to grant such access.
37. Where an ECN operator is the owner of the fibre-ready in-building physical infrastructure (i.e. an ECN operator has installed the infrastructure) or is the holder of a right to use that infrastructure, other operators should have reasonable opportunities to access it as long as there is sufficient space available. This does not prevent the ECN operator to reserve a duly justified proportion of space within that infrastructure for its future needs.
38. The conditions of use of in-building physical infrastructure could be defined through a contract. BEREC recommends that in order to facilitate a scenario where no written contract on access to in-building physical infrastructure may exist, it may be useful for Member States to provide appropriate instruments, such as contract templates etc. in order to ensure legal certainty. A written contract, covering important details regarding access conditions, protects both parties (i.e. access seeker and access granter), especially as building owners typically do not have the same level of knowledge on this point as ECN operators. Having agreed written conditions with respect to the specification of appropriate durations of use, applicable terms and conditions regarding access to the building and the related facilities (e.g. location of access point), and ECN service provisioning and the maintenance of such in-building physical infrastructure, etc. is likely beneficial to both parties.
39. According to GIA recital (53), the undertakings providing, or authorised to provide, public electronic communications networks should, to the extent possible, remove the elements of their network, such as obsolete cables or obsolete equipment, that have reached 'end of life' and restore the affected area to its previous state.

## 2.5 Price related terms and conditions for access to the in-building physical infrastructure

40. According to Article 11(3) of the GIA, *"Any holder of a right to use the access point and in-building physical infrastructure shall meet all reasonable written access requests...under fair, reasonable and non-discriminatory terms and conditions, including price, where appropriate."*

41. As represented in chapter 2.3 Different case categories, there are two main case categories noted by Member States related to the ownership/rights of the in-building physical infrastructure: (1) the in-building physical infrastructure is owned by the building owner and not by an ECN operator and (2) the in-building physical infrastructure is owned by an ECN operator.
42. In scenario (1) where the owner or holder of rights of the fibre-ready in-building physical infrastructure is not an ECN operator, BEREC considers that access to the infrastructure (i.e. ducts, micro-ducts and conduits) should be given to all access seekers without any charges, given the fact that this access is to the benefit of the property owner or its residents. Buildings with fibre-ready in-building physical infrastructure, and especially buildings equipped with in-building fibre wiring add value to the building and its residents, by, e.g., enabling easier connection of users to gigabit speeds or removing the need for renovation works.
43. According to the responses to the BEREC call for stakeholder input conducted in 2024, the provision of in-building physical infrastructure free of charge under scenario (1) was the most common practice in Member States. Keeping in mind that the general goal of the GIA under Article 1(1) is to facilitate and stimulate the roll-out of VHCN by promoting the joint use of existing physical infrastructure so that such networks can be rolled out faster and at a lower cost. Therefore, it is concluded that the EU legislator did not want to invite new and additional charges for deployment inside buildings (which are currently uncommon), which would make it more costly and more burdensome to deploy VHCN. Moreover, BEREC considers the use of existing in-building physical infrastructure for the deployment of VHCN would benefit not only connected customers but also the overall value of the building. Therefore, BEREC considers that access to physical in-building infrastructure under scenario (1) should in principle be provided free of charge by the building owners/managers to ECN operators. Notwithstanding the above, it should only be in very specific circumstances that Member States decide to allow owners/holders of infrastructure under scenario (1) to recover their costs providing access to their infrastructure. In this case and when determining such a price for access to in-building physical infrastructure, it is advisable that Member States identify access prices with reference to the following benchmarks and pricing principles<sup>10</sup>:
- the average commercial prices for in-building physical infrastructure that prevail in the Member State;
  - the regulated prices for in-building physical infrastructure already defined and approved by the NRA or defined by DSB;

<sup>10</sup> In line with the criteria set in the Communication from the European Commission Guidelines on State aid for broadband networks (2023/C 36/01).

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52023XC0131%2801%29>

- cost orientation or a methodology mandated in accordance with the sectoral regulatory framework.
44. When applying a cost orientation methodology, the DSB can decide on the relevant criteria/methodology that it will use to determine the fair and reasonable price for the access and use of in-building physical infrastructure. The DSB decision should reflect simplicity and timeliness, especially given the time constraints and the unlimited number of specific circumstances that relate to the construction of physical infrastructure or the equipping of buildings. In principle, the price should be no more than the efficient costs that are incurred in connecting the access seeker to the infrastructure within the building. In other words, the objective should be to ensure that any access prices charged are not excessive. In terms of typical costs, costs can be attributed either to providing for mini-ducts during the construction of a building or to equipping buildings with new gigabit infrastructure, and are usually related to the length of the deployment. In both cases, material and labor workforce (person-hours) need to be taken into account. In the latter case, also the required restoration works, which entail additional costs e.g., costs of opening and restoring the existing surfaces, need to be accounted for.
45. Other relevant factors to be considered in the evaluation of the appropriate price for using the in-building physical infrastructure for which access is required are the number of households that can be connected, occupancy of the infrastructure, the number of active clients etc. It might be reasonable that costs are shared proportionally to the occupancy of the infrastructure when multiple operators install their cabling within the same infrastructure.<sup>11</sup>
46. Any access provider, when charging for compensation under scenario (1), must be able to prove the costs incurred for building the infrastructure with appropriate documentation and level of detail; that value should be discounted according to a depreciation period that could be harmonized with the expected lifetime of the optical fibres, typically no more than 30 years<sup>12</sup>.
47. Under scenario (2), in case the owner of the in-building physical infrastructure is an ECN operator, different considerations may need to be taken into account.
48. If the physical infrastructure was installed at cost and is owned by an ECN operator, typically this infrastructure will already host fibre wiring (see section on access to fibre wiring below). Any co-deployment using that infrastructure could impact the investment made by the first mover. In such cases, fair and reasonable prices should not reduce

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<sup>11</sup> Another appropriate methodology was implemented by legislation in Portugal in 2009 (in the meantime repealed): According to this legislation, the cost incurred by ECN operators was shared as follows: The first ECN to reach the building would pay 100% of the costs. The 2nd operator to reach would pay 50% (and the first one the other 50%). the 3rd will pay 33,3% etc.

<sup>12</sup> ITU-T G-series Recommendations – Supplement 59 – 02/2018 - Guidance on optical fibre and cable reliability

or unduly deplete a first mover advantage. Similar to the approach under scenario (1), the operator must be able to prove the costs incurred for building the infrastructure with appropriate documentation and level of detail; that value should be discounted according to a depreciation period that could be harmonized with the expected lifetime of the optical fibres, typically no more than 30 years.<sup>13</sup>

49. Furthermore, in the case where a commercial agreement concerning the use of in-building physical infrastructure is in place between the building owner and an ECN operator, the payment terms should be considered by NRAs/DSBs when setting prices for in-building infrastructure access.

## 2.6 Fibre access

50. BEREC notes that Article 10(1) of the GIA states that *“All newly constructed buildings and buildings undergoing major renovation works, including elements under joint ownership, for which applications for building permits have been submitted after 12 February 2026, shall be equipped with a fibre-ready in-building physical infrastructure and in-building fibre wiring, including connections up to the physical point where the end user connects to the public network.”* This means that in many cases (i.e. all buildings which are newly constructed or undergoing major renovations), buildings will be equipped not only with in-building physical infrastructure but also with in-building fibre wiring.
51. BEREC notes that in some Member States, rules have been established to impose access to the in-building fibre itself under EECC provisions (rather than only the in-building physical infrastructure). Considering the potential lack of space inside residential buildings, and the overall savings in terms of time and investments, BEREC notes that this can present some advantages. In this situation, given the recommendation of the previous section that access to in-building physical infrastructure should be provided for free, it may be appropriate to first consider the possibility of access to the fibre itself before turning to the physical infrastructure, in order to avoid discouraging investments by operators inside buildings. The suitability of this practice may depend on national circumstances and on potential technological constraints.
52. BEREC however notes that access to fibre, under EECC provisions, will not always be a suitable solution for the operator asking for access. As a result, though BEREC believes this solution should be considered, it may not always be the appropriate

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<sup>13</sup>Another appropriate methodology was implemented by legislation in Portugal in 2009 (in the meantime repealed): According to this legislation, the cost incurred by ECN operators was shared as follows: The first ECN to reach the building would pay 100% of the costs. The 2nd operator to reach would pay 50% (and the first one the other 50%). the 3rd will pay 33,3% etc.

solution. In those cases, access to physical in-building physical infrastructure should be considered, while respecting national law.

## 2.7 Other non-price related terms and conditions of access to physical in-building physical infrastructure

53. The following is a non-exhaustive list of examples of non-price-related terms and conditions which BEREC considers useful to consider in the context of non-price related terms and conditions of access. This list is intended solely as a guide for the parties to clarify areas of responsibility and to facilitate processes with regard to access. These points will only be considered in dispute resolution proceedings, if raised by a party to the proceeding.

- Placement of VHCN elements in the in-building physical infrastructure: the impact on private property must be minimized, therefore this term and condition should include the time (e.g. notice of work to be carried out to residents and/or other operators) and manner of performing the works (e.g. protection of wider common areas from potential damage of the work to be performed, aesthetic finish on work carried out, areas for storing work materials, etc.). The carrying out of work related to the installation and maintenance of VHCN elements must not violate generally applicable laws, must not prevent the reasonable use of the building, and should be the least onerous for the persons who have rights to the building (e.g., considering quiet hours and holidays). ECN providers should restore, to the extent possible, the property and building to the condition it was in before the installation work was carried out;
- Technical documentation of in-building physical infrastructure (e.g. type and dimensions) and of existing in-building wiring (e.g. type and dimensions, available space). The holder of the right to the in-building physical infrastructure should have up-to-date technical documentation containing, in particular, information about its dimensions, capacity and available space, entities using the infrastructure, etc., as well as about the elements of telecommunications networks placed in it (e.g., the type of cable/fibre). Such documentation should be available to operators requesting access, taking into account commercial confidentiality;
- Maintenance, in-life management and decommissioning (removal of element of their networks, such as obsolete cables, equipment). The ECN provider should obtain the right to enter the property and the building for the purpose of carrying out work necessary for the maintenance, operation, reconstruction or repair of VHCN elements located in the in-building physical infrastructure. The ECN provider should ensure that necessary works are carried out in a manner that does not cause interruption of services to other entities/operators using the in-building physical infrastructure;





- Identification of the owner or the holder of rights to use the access point and the in-building physical infrastructure (information on in-building physical infrastructure is made available to operators seeking access);
- Cables should be labelled and patch panels should be properly maintained by operators carrying out work;
- Contractual penalties should be specified by the parties;
- The holder of the right to the in-building physical infrastructure should be obliged to maintain this infrastructure in a condition that makes it possible to provide services of electronic communication through VHCN elements placed in it. The parties to the in-building physical infrastructure access contract should agree on the terms of cooperation in the event of a fault to the infrastructure that causes interruption of services to an operator using the access, with a view to ensure the repair and restoration of the electronic communication service is carried out without undue delay. The division of responsibilities should be clearly delineated in advance.

## 2.8 Reasonableness

54. According to Article 11(3) of the GIA *"any holder of a right to use the access point and the in-building physical infrastructure shall meet all reasonable written requests for access to the access point and the in-building physical infrastructure from providers of public electronic communications networks under fair, reasonable and non-discriminatory terms and conditions, including price, where appropriate"*.
55. Key considerations in this regard are mentioned in Article 11(2) of the GIA, namely if technical impossibility and/or economic inefficiency of duplication lead to a right to access to any existing in-building physical infrastructure.
56. Having regard to the need to ensure fair and reasonable terms and conditions of access to in-building physical infrastructure it is important to identify a set of objective reasons which might render an access request unreasonable. The holder of a right to use the access point and the in-building physical infrastructure may refuse to grant access for instance in case:
  - a. the placement of VHCN elements in the in-building physical infrastructure is not possible for duly justified technical reasons, in particular due to the infrastructure obstruction, occupancy or reservation of the in-building physical infrastructure,
  - b. there is no space available to accommodate VHCN elements, taking into account the infrastructure owner's demand for space in the in-building physical infrastructure for which access is requested, which should in that case be duly justified,



- c. it is not possible to use the in-building physical infrastructure due to public safety norms, public health, integrity and security of the network, in particular in the context of critical infrastructure,
- d. the planned telecommunications services may cause serious interference with the provision of other services through the in-building physical infrastructure, which should in that case be duly justified,
- e. the effective access to the existing infrastructure in the building (including wiring) other than the infrastructure specified in the request for access to the in-building physical infrastructure, is available to the requester on the basis of a separate offer<sup>14</sup>, which
  - i. meets operator's needs to provide VHCN and
  - ii. is offered under fair and reasonable terms and conditions.

57. According to Article 1(3) of the GIA, depending on their national circumstances, in case of access refusal to existing in-building physical infrastructure, Member States could define stricter rules that prevent opportunistic behaviour by the holder of a right to use the existing in-building physical infrastructure.

### **3. The criteria that the dispute settlement bodies should follow when settling disputes falling within the scope of Article 11 of the GIA**

58. This section covers various considerations about the ways DSB should settle disputes on access to in-building physical infrastructure based on Article 11 of the GIA:

- General dispute settlement rules (independence of the DSB, objectivity, transparency of the procedure, etc.) apply the same way they do for other disputes;
- Time constraints defined in GIA (1 month to settle the disputes) are demanding. Consequently, the parties should provide information to the DSB swiftly. Missing information may, when foreseen in national procedural rules, require a suspension of the 1 month deadline;
- Transparency on the information requirement is provided through a list of suggested requirements with respect to information requests;
- Consistency in applying principles.

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<sup>14</sup> In some situations, DSBs may consider that access to wiring is not equivalent to access to physical infrastructure, and thus decide that access to physical infrastructure has to be provided.



### 3.1 Procedures relevant to the access to in-building physical infrastructure

59. This section determines criteria that the DSBs should follow when settling disputes falling within the scope of Article 11 of the GIA.

60. In such cases, two deadlines apply:

- where an agreement on access to in-building physical infrastructure referred to in Article 11(2) or (3) of the GIA has not been reached within one month of the date of receipt of the formal request for access (Article 13(1)(d) of the GIA);
- the national DSB shall issue a binding decision to resolve the dispute: within one month of the date of the receipt of the dispute settlement request (Article 13(2)(b) of the GIA).

61. According to Article 13(1) of the GIA, without prejudice to the possibility to refer a case to a court, any party shall be entitled to refer to the competent authority where an agreement on access to in-building physical infrastructure referred to in Article 11(2) or (3) of the GIA has not been reached within one month of the date of receipt of the formal request for access.

62. BEREC considers that one of the most challenging issues in dispute resolution under Article 11 of the GIA is the setting of terms and conditions of access to in-building physical infrastructure, including the application of fair and reasonable and non-discriminatory terms and conditions. Taking full account of the principle of proportionality and the principles established in these BEREC guidelines in accordance with Article 13(2) of GIA, the national DSB shall issue a binding decision to resolve the dispute.

63. These BEREC guidelines seek to increase clarity of the rules for dispute settlement under the GIA. However, they are not intended to restrict DSB's flexibility. By 12 November 2025 established administrative practices of DSBs should not be affected by any recommendation of BEREC in these guidelines. On the contrary, BEREC considers that it is most appropriate that DSBs can make use of the widest possible toolbox, including general administrative rules and procedures to address the needs of complex case-by-case assessments.

#### 3.1.1. NRA and stakeholder experiences in resolving in-building physical infrastructure disputes

64. Only a few NRAs have issued formal recommendations due to a lack of practical experience.



65. Only a few countries have proceedings regarding in-building physical infrastructure access so far (5 out of 29). With the exception of Poland (529 proceedings initiated), the four NRAs that have initiated proceedings, have each conducted fewer than 7 proceedings.
66. Similarly, the other stakeholders, that responded to the NRA/DSB survey conducted in 2024, had limited experience to share. The participation of other stakeholders in the procedures is only practiced in 4 countries (18 NRAs did not comment).

### **3.2 Evaluated criteria to consider during the processing of dispute procedures**

67. According to the NRA/DSB survey conducted in 2024, the most relevant criteria for effective dispute resolution are:
- transparent proceedings;
  - dispute resolution timeframe;
  - national procedural rules;
  - sufficient information or documentation necessary to make proportionate decisions;
  - independence of DSBs.
68. In all Member States that have conducted proceedings so far, all DSBs provide for an oral hearing (with the exception of Poland that foresees a public consultation) which is public in most Member States (in Czech Republic, an oral hearing is generally not open to a wider public but conducted mainly between parties to the dispute). This shows that these DSBs are endeavouring to ensure some form of public participation and transparency.
69. Other criteria mentioned by NRAs/DSBs, such as the guarantee of the independence of the DSB, or the need to comply with national procedural rules regarding the rule of law (Germany and Denmark), are general principles, which all DSBs must pursue in their actions and procedures such as resolving disputes.
70. According to the stakeholder survey, their key demands of criteria for effective dispute resolution partially overlap with the ones of the NRAs.
71. In line with the results already obtained, stakeholders point out:
- the need for transparent, speedy and efficient procedures;
  - clear timeline;



- objective, fair, comprehensible and robust decisions;
- the protection of property rights.

72. In addition to transparency and fairness, stakeholders demand fast procedures and decisions of the DSBs. The tight timeframe allowed for a dispute resolution (1 month) stresses that DSBs need to ensure that national procedural rules are adhered to in a timely manner in the interests of the relevant stakeholders.
73. In sum, considering the criteria to settle disputes, BEREC notes a strong willingness of most NRAs and stakeholders to focus on the speed of the procedure and transparency. These principles should guide all DSBs in their work, and more particularly on issues about access to in-building physical infrastructure, since this issue has a strong impact and visibility on the end-user. In addition, the GIA has established tight time limits for settling disputes. To settle a dispute in one month, BEREC considers it necessary that all required information is made available when the party submitting a dispute for resolution does makes such a submission. In the next section, to achieve that goal, BEREC recommends that the deadlines of the procedure may need to be extended if this condition is not met. Moreover, BEREC recommends that preclusion rules might be used by the DSB provided such rules would comply with the general administrative law in Member States.
74. In order to meet timelines with respect to dispute resolution, DSBs are required to follow various legal requirements and respect due process. Some of the issues to be considered in a dispute can be highly complex, and can relate to making proportionate decisions only after being aware of all relevant circumstances and respecting personal and commercial confidentiality of the parties.
75. Nevertheless, a lack of sufficient information or documentation necessary to make a decision by the DSB is very common. For example, it could be necessary to collect additional information from the holder of the right to use the access point and the in-building physical infrastructure, (information about who supplies end customers, the design of the in-building physical infrastructure, explanations of the reason for rejection, cost details). Moreover, the DSB may need to collect information from the provider of public electronic communications networks interested in access to existing in-building physical infrastructure with a view to deploying elements of VHCNs that were not provided at the time of submitting the dispute.
76. The need to request this information may significantly extend the 1-month period established in the GIA to resolve these kinds of disputes. For that reason, guidelines on the criteria to be followed by the DSB in resolving disputes falling within the scope of Article 11 of the GIA should guide these preliminary issues, which are addressed in the next section.

### 3.3 Aspects to be considered when taking a decision within the scope of Article 11 of the GIA?

77. The tight timeframe of one month according to Article 13(2)(b) in connection with Article 13(1)(d) of the GIA allowed for a dispute resolution, which includes the consideration of responses of potentially many stakeholders, stresses the importance of ensuring that the DSB can settle the dispute in a timely manner in the context of Article 11 of the GIA. The delay caused by insufficient information or documentation impacts the process of making a decision especially in:

- analysing the condition for economic inefficiency in the duplication of network infrastructures;
- examining the reasonableness of the shared use request;
- examining the price related aspects.

78. The examination of reasonableness of the shared use request requires the weighting and balancing of multiple relevant factors in relation to the fulfilment of the necessary conditions and must comprehensively examine and take into account the circumstances of the individual case. Rather, reasonableness as a concept is to be interpreted by the DSB in light of the specific circumstances of the individual case and taking all interests into account. In particular, positions protected by fundamental rights of each Member State must be respected. The access request may be reasonable if it is appropriate with regard to the shared use request, i.e. if it is not disproportionate to the desired goal. Although the particular issue is whether the application made is reasonable for the respondent, ultimately there must also be an appropriate balance of interests between the parties. It is not just the reasonableness for the respondent that needs to be checked, but rather the interests of the applicant must also be taken into account. In particular, the regulatory objectives and the targets of the national law must be taken into account when assessing reasonableness.

### 3.4 Procedure to be followed in the handling of disputes

#### 3.4.1 Optional procedure prior to initiating the dispute

79. The possibility of an optional informal mechanism<sup>15</sup> designed to aid in the dispute can be helpful to all involved parties, in light of the tight deadlines mentioned above. This is also recognized in the Connectivity Union Toolbox<sup>16</sup> of best practices, in its Recommend 19: *“A prior/parallel conciliation mechanism with the aim to find a timely*

<sup>15</sup> Examples of such mechanisms could be conciliation, mediation etc.

<sup>16</sup> The Connectivity Toolbox Recommendation <https://digital-strategy.ec.europa.eu/en/policies/connectivity-toolbox>

*mutual agreement under guidance of the dispute settlement body might speed up the process considerably. If such an agreement cannot be reached, a formal binding decision of the dispute settlement body can be issued at the end of the standard dispute resolution procedure, within the deadline set in the Broadband Cost Reduction Directive".* Therefore, mediation can take place prior to or in parallel to (at an early stage) the formal dispute resolution process but is optional (see also recital 65).

80. For this reason, to improve information flow, BEREC proposes, as an option, that the DSB could define a contact point for in-building physical infrastructure access (for example in the form of an email address), with the task of helping a potential party before it submits a dispute for resolution. It could provide information about the procedure to be followed and the legal framework and start gathering the necessary data and background information about the access to the in-building physical infrastructure itself and the issues which might cause the request for dispute settlement. This also ensures that the relevant information is available prior to the dispute settlement request. This optional mediation would take place after the request for access to in-building physical infrastructure has been made, in case any of the parties consider that the negotiation does not seem to be successful and a dispute is likely to happen.
81. The contact point in the DSB could – in accordance with Article 14 of the GIA - also informally request information from the parties involved and explore both positions. If this mediation succeeds, there are chances of settling the dispute in this preliminary period, without a formal dispute settlement procedure, as the mere mediation of the DSB could compel both parties to reach an agreement. Should this previous handling not succeed in avoiding the dispute, the DSB will have already obtained relevant information, and the dispute might have a much better chance to be settled in the one-month timeframe.<sup>17</sup>
82. As part of its procedures for initiating disputes, the DSB may also ensure all necessary information is provided before a dispute is considered "received". If these conditions are not met, the dispute should not be considered "received," and the one-month timeline should not begin or should be extended in line with Article 13(2) of the GIA (see next section on suspension rules). The DSBs could facilitate a mechanism for submitting disputes which could include formal online-intake-forms with mandatory fields, as well as public guidance on the assessment of submissions. Where key information required for settling the dispute are not provided, the dispute would not be considered "received" by the DSB. This is a non-exhaustive list of possible information that the parties involved in the dispute should provide to the DSB or that the DSB may request from them as appropriate:

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<sup>17</sup> This is without prejudice to the possibility of conciliation/mediation after the dispute settlement proceeding at DSB is initiated in accordance with Recital 65.

- The request for access to in-building physical infrastructure sent/received to/from the entity that owns or controls the in-building physical infrastructure, including acknowledgement of receipt;
- Details of capabilities and technical specifications of all equipment and network elements to be implemented in in-building physical infrastructure;
- Proposal of terms and condition of the in-building access negotiated between parties to the dispute;
- A copy of the response to/refusal of the in-building physical infrastructure access request sent by the owner or controller of the in-building physical infrastructure to the access seeker and any other negotiations, discussions, or mediations between the parties; in case the owner of the in-building physical infrastructure has not responded at all, this should be explicitly mentioned by the access seeker.
- The cost of access to in-building physical infrastructure proposal, if applicable;
- A copy of all communications between the parties relevant to the dispute;
- Current consent of subscriber according to Article 11(4) of the GIA, if applicable;
- Other documents deemed appropriate for the defence of their interests in the dispute.

### 3.4.2 General procedural rules

83. It should be noted, that no standardised proposal for all DSBs of the Member States is possible, as the measures must be in line with the national procedural rules. There are considerable differences between the procedural rules of the Member States.

84. General mechanisms therefore need to be found that can comply with transparency obligations and national rules and yet are suitable for speeding up procedures. The following list of such general mechanisms can be useful for the DSB to consider:

- Burden of proof: It is essential to establish and communicate clear rules on the presentation and burden of proof to the disputing parties. Along with the preclusion rules described below this will allow for a complete and reliable factual situation to be quickly established in many cases. Only when a complete factual situation has been established it will be possible to make a decision within one month and provide the necessary level of transparency in relation to it.

Therefore, the claimant must provide specific information and documentation to support its claim. All relevant facts must be submitted with the application. Additionally, they must immediately disclose confidential information or business secrets, provided these are needed for resolving the dispute, and this disclosure is proportionate and justified. The infrastructure owner must without undue delay justify





why a refusal is necessary and explain the relevant circumstances, including potential claims to confidentiality of information provided. Any delay in providing the necessary information could work to the detriment of the party responsible for the timely provision of said information. Finally, it is up to the DSB to determine when the matter is ready for a decision.

- Transparency measures: Despite the effort to obtain a quick decision, sufficient transparency measures must be observed. The DSB should ensure that both public participation if relevant and applicable according to national law, and the rights of the parties to express their position are fully exercised. At the level of transparency, high standards have already been largely established in the national regulations of the Member States. In cases where national rules do not make the following procedural requirements mandatory, it is advisable for the national DSB to consider them. The following key procedural steps must be respected:
  - a. The right to be heard must be adequately guaranteed while at the same time protecting legitimate confidential information (e.g. operational and business secrets). It is important that the confidentiality requirement does not delay the process. With the assistance of the preclusion measures, however, tighter timeframes can be set for the respective hearing deadlines (including other related deadlines such as summons deadlines, etc.),
  - b. Participation rights: The right to participate must be adequately respected, in accordance with applicable rules. This can be achieved, for example, by holding public oral hearings or through public consultations,
  - c. It may be appropriate to ensure the possibility of a private hearing between litigants in front of the DSB under certain circumstances that may require such procedure for confidentiality/business secret reasons.
- Third party rights: Depending on national administrative law, third parties whose rights are affected by the dispute may need to get the opportunity to get involved in the procedure by the DSBs. Sufficient rights to be heard and to make statements should be given to third parties. Depending on the selected addressee of the claim, other property rights or rights of network infrastructure operators may be affected. These rights can be guaranteed through early notification and the necessary participation. In addition, to hear affected third parties can not only protect the rights of third parties, but also help to clarify the actual situation. This can be achieved if necessary, by an immediate summons of identified third parties upon receipt of the application.
- Publication: In accordance with recital 65 third sentence and Article 13(4) of the GIA, an important element of transparency, but also of targeted regulation, is the publication of the decision. Awareness of the market about relevant decisions (with





confidential information redacted where necessary<sup>18</sup>) not only promotes transparency but also ensures that the decisions can have a broader impact on the market despite their strict case-by-case nature.

- The independence of DSBs: Finally, the national DSBs must always ensure that they make their decisions independently in accordance with Article 14(2) of the GIA.

Furthermore, it must be ensured that DSBs are able to exercise their powers impartially, transparently and in a timely manner. This can only succeed if it is ensured by Member States that according to Article 14(7) of the GIA the DSBs have adequate technical, financial and human resources to carry out the tasks assigned to them.

- Factual basis for the proceeding: There are various types of incidents that may affect the processing of the dispute procedure. This is due in particular to the fact that it is the sole responsibility of the parties to the dispute to provide all necessary facts relevant to the decision. Inadequacies in this regard have an excessive impact on the DSBs decision-making timeframe. Subject to Article 13(2) of the GIA, Member States can consider appropriate procedures comply with the rules of the national rule of law without being an extension of the procedural deadline. Insofar as national rules do not make the following procedural requirements mandatory, it is nevertheless advisable for these to be included by the national DSB. The DSB must consider the possible existence of reasons for the suspension of the administrative procedure or other types of incidents that may affect the processing of the dispute procedure.
  - a. Preclusion<sup>19</sup>: DSBs may apply preclusion/suspension rules in line with general rules for administrative procedures, where such rules exist. In particular, this may limit parties right to provide new documents for the procedure due to the passage of time or the failure to meet established deadlines. This tool may be suitable to ensure efficiency and speed in administrative procedures, by avoiding unnecessary delays and ensuring that parties act within the stipulated timeframes.
  - b. Suspension or extension: BEREC considers that a variety of case specific circumstances can qualify as exceptional circumstances under Article 13(2) of the GIA and therefore may allow for the suspension<sup>20</sup> or extension of the DSB deadlines to resolve a conflict in the context of access to in-building physical infrastructure. Examples of such circumstances may be:

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<sup>18</sup> In the interest of time, a non-confidential version should be submitted without delay.

<sup>19</sup> Preclusion rules determine until what time or under what conditions a party may submit new facts, evidence or objections in proceedings. It does not involve, for instance, a limited timeframe between dispute arrival and 1<sup>st</sup> contact with the DSB.

<sup>20</sup> If provided for in national administrative law

- i. Lack of/insufficient specification of the facts, reasons or unclear requests in the dispute: rectification of the dispute documents within a certain period, depending on each national regulation.
- ii. Existence of a pending appeal or claims: If there is an appeal or claim that could be resolved before continuing with the procedure, depending on the national regulation in this matter.
- iii. Need to gather additional reports or documentation: When additional information is required to make a comprehensible and robust decision.
- iv. Failure to provide non-confidential versions of the documentation.
- v. Failure to respond in a timely manner to additional requests for information coming from the DSB, not enabling it to gather all the information it requires.
- vi. unusual complexity of the dispute.

Under those, or similar circumstances, the DSB may want to consider the possibility for suspension or extensions of the procedures.

Any such a suspension or extension should remain in the scope GIA allows through recital 64 and should be compliant with general administrative law in the Member State.

- Accumulation: If there are several related disputes DSBs should consider to resolve those disputes together.
- Provisional orders: The possibility to make provisional orders under the final decision to obtain a preliminary quick decision, in line with general principles of administrative procedures where relevant. BEREC considers this as an important means of protecting rights and to prevent creating facts by the parties involved. In accordance with Article 13 of the GIA, these measures could be considered exceptional circumstances due to the complexity of the dispute (recital 64), which extend the deadline.



## Annex 1: Procedure of applying for access to in-building physical infrastructure

85. The Polish NRA UKE was, by the time these Guidelines are issued confronted with the largest majority of disputes regarding in-building physical infrastructure under the BCRD, by a significant margin. This annex provides the Polish example, how UKE structured the procedure prior to GIA. It should be noted that any rights and obligations stemming from GIA, would prevail. This procedure has proven to be useful, however, its use is fully optional and details such as the exact time for the intermediary steps can be tailored to national circumstances. It should be noted that throughout the whole process, the parties should have the opportunity to go back to the negotiation table.

86. For the purposes of the annex Guidelines define the following abbreviations:

ECNP	Provider of Public Electronic Communications Networks
HRI	Holder of the right to use the access point and the in-building physical infrastructure
IBI	In-building physical infrastructure

87. Submission of “Inquiry for IBI access possibility”

- In order to determine the possibility of access to IBI, ECNP shall submit to the HRI an “Inquiry for the possibility of access to IBI” (the ‘Inquiry’). One Inquiry may concern only the possibility to access to an IBI within one building.
- The HRI shall, within 7 (seven) days from the date of reception of the Inquiry, carry out the formal verification of the Inquiry. If the Inquiry is found to be incomplete, the HRI shall indicate the deficiencies and call on the ECNP to supplement the Inquiry or provide additional clarifications. ECNP shall, within 7 (seven) days from the date of reception of this request, send the supplemented Inquiry to the HRI.
- In the case of positive formal verification, within no more than 7 (seven) days, counting from the date of reception by the HRI of a complete Inquiry, the HRI shall first verify the existence of the reasons for refusal to provide access to the IBI and then, if it is aware of the technical possibilities of making the IBI available, shall provide a response to the ECNP.
- In case HRI cannot indicate the technical possibility of providing access to IBI without the ECNP conducting an inspection, the HRI shall offer ECNP a date for an inspection at the address indicated in the Inquiry, in order to verify the technical possibility of installing the ECNP's VHCN elements in the IBI. The date for conducting the Inspection shall be no longer than 14 (fourteen) days from the date of HRI's response.

- The HRI shall prepare a note from the conducted Inspection, and in the case of positive technical verification, also an illustrative sketch describing the possibility of using the IBI by ECNP and indicating what part of the IBI can be made available to ECNP. Based on the sketch, ECNP will make a diagram of the proposed installation of VHCN elements in the IBI. In the event that ECNP participates in the inspection, the HRI shall provide ECNP with a note together with an illustrative sketch describing the possibilities of ECNP's use of the IBI, if such was made during the Inspection. Otherwise, the HRI shall provide the documentation of the Inspection conducted within 2 (two) days from the date of the Inspection. The note from the Inspection shall constitute the response to the Inquiry.
- When access is denied, the HRI shall give its detailed justification for it.
- If the HRI provides the response, reference to the lack of technical capabilities without conducting an Inspection, the ECNP may request the HRI to conduct an Inspection, submitted to the HRI within up to 14 (fourteen) days from the date of transmission of a negative response by the HRI. The parties shall jointly carry out the Inspection within the period agreed upon by the Parties, which shall not be longer than 7 (seven) days from the receipt by HRI of the request for Inspection. After the conducted Inspection, the Parties shall immediately draw up a protocol of the Inspection.
- In the event that the Inspection does not confirm the lack of technical feasibility of placing the VHCN elements, the Inspection Protocol shall constitute an answer to the Inquiry. If ECNP participates in the HRI Inspection, during the Inspection, transmits the Inspection protocol to ECNP. Otherwise, the HRI shall provide this protocol within 3 (three) days from the date of the Inspection.
- When giving a positive answer without conducting an Inspection, the HRI shall attach to the answer information necessary for the preparation of the installation diagram of ECNP's telecommunications cables in the IBI and indicate the person responsible for ongoing contacts with ECNP.

#### 88. Submission of "Request for Access"

- In order to conclude an Access Agreement, the ECNP shall apply to the HRI with an "Request to conclude an Agreement on Access to IBI based on the Inquiry" (the "Request").
- The ECNP may submit a Request to the HRI within no more than 14 (fourteen) days from the date of the inspection confirming the technical capabilities or a positive response. After this deadline, the HRI does not guarantee the possibility of access to the IBI covered by the Request.



- ECNP shall attach to the Request a diagram of the installation of ECNP's telecommunications cables in the IBI ("Diagram").
- If the Request or Diagram is found to be incomplete, the HRI, indicating in detail the deficiencies, errors or ambiguities in the provided documents, shall summon ECNP, within 7 (seven) days of receipt of the Request, to supplement, correct or provide clarifications.
- The ECNP shall send the corrected Request or Diagram to the HRI immediately, but no later than within 7 (seven) days of receipt of the request to supplement the Request/Diagram.
- If ECNP fails to supplement, correct or provide the clarifications or the Request is submitted beyond the deadline referred to in paragraph 2 and there is no technical possibility of access to the IBI, the HRI shall inform ECNP of the negative result of the formal verification of the Request together with the Diagram.

#### 89. Principles of concluding the Access Agreement

- The Access Agreement should be concluded by the Parties within one month from the date of submission of the Request with the Diagram, which has passed positive formal verification.
- Immediately after the positive verification of the Request with the Diagram, the HRI shall send to the ECNP an Access Agreement specific to its request access.



## Annex 2: Abbreviations

BCRD	Broadband Cost Reduction Directive
BEREC	Body of European Regulators for Electronic Communications
DSB	Dispute Settlement Body
ECN	Electronic Communication Network
EECC	European Electronic Communications Code
GIA	Gigabit Infrastructure Act
NRA	National Regulatory Authority
VHCN	Very High Capacity Network

