



**Groep Graafrechten**



**The NLconnect Groep Graafrechten (Dutch Rights of Way Association) is grateful for the opportunity to respond to the consultation of the BEREC Guidelines on the access to in-building infrastructure according to Article 5 of the Gigabit Infrastructure Act.**

The NLconnect Groep Graafrechten is the association of ten national fixed telecoms operators and is part of NLconnect, the Dutch broadband and telecoms trade association. Its members include companies that build, own, and operate fiber, cable, mobile, and wireless networks, as well as service providers and suppliers active across the broadband and telecoms value chain.

The association advocates for the policy and business interests of the Dutch broadband and telecoms industry and fosters collaboration among its members. NLconnect promotes innovation, knowledge exchange, and healthy competition in the sector.

NLconnect supports the ongoing development of robust and sustainable broadband infrastructure, enabling digital connectivity for all in the Netherlands.

#### **Relevant paragraphs of the draft guidelines**

9. Article 5(2) of the GIA imposes the following obligations on network operators and public sector bodies owning or controlling physical infrastructure, when performing or planning to perform directly or indirectly civil works, which are fully or partially financed by public means:

- They shall meet any reasonable written request to coordinate those civil works under transparent and non-discriminatory terms made by operators with a view to deploying elements of VHCNs or associated facilities.
- Such requests shall be met provided that certain cumulative conditions regarding additional costs, control over the coordination of the civil works and timing are met. In addition, Member States may specify detailed requirements relating to administrative aspects of the request.

38. In the case of civil works which are fully or partially financed by public means, public sector bodies owning or controlling physical infrastructure and network operators shall meet any



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reasonable written request to coordinate those civil works under transparent and non-discriminatory terms (Article 5(2)) of the GIA (...).

50. The GIA reinforces the obligation to meet reasonable requests for the coordination of civil works that have been fully or partially financed with public funds, by including both network operators and public sector bodies among the obligated parties.

### **Comments**

We read in Article 5.2 GIA that the obligation to comply with reasonable requests for coordination of civil works for network operators is limited to companies that are (going to) carry out civil works that are financed in whole or in part with government funds. In other words: for civil works that are not financed in whole or in part with government funds, there is no obligation to comply with reasonable requests for coordination. The transparency obligation for planned civil works applies in accordance with Article 6.1 to 'the coordination of civil works as referred to in Article 5', and thus also includes the right to negotiate on coordination of civil works as referred to in Article 5.1 that are not financed in whole or in part with government funds. The exemption options in Article 5.5 therefore only relate to civil works that are financed in whole or in part with government funds for network operators. For civil works of network operators for which this does not apply, the coordination obligation in Article 5.2 does not apply and exemptions are not an issue.

We recommend that this be further explained by BEREC in the draft guidelines in a separate chapter on the scope of the coordination obligation of Article 5. This will eliminate any potential misunderstanding by the regulators and the industry.

In the Netherlands, as far as we know no use is made of the regulation for coordination of civil works in the Telecommunications Act for the implementation of the BCRD. The dispute resolution procedure has never been applied in practice. For this reason, this response is limited to the scope of Article 5.