

**ecta RESPONSE**

**TO THE PUBLIC CONSULTATION BY BEREC**

**ON THE**

**DRAFT BEREC GUIDELINES ON THE**

**COORDINATION OF CIVIL WORKS**

**ACCORDING TO ARTICLE 5(6) OF THE**

**GIGABIT INFRASTRUCTURE ACT**

**BoR (25) 83**

**11 July 2025**

## 1. Introduction

1. ecta, the [european competitive telecommunications association](#),<sup>1</sup> welcomes the opportunity to provide short-form comments on the draft BEREC Guidelines on the coordination of civil works according to Article 5(6) of the Gigabit Infrastructure Act (hereafter 'GIA') – BoR (25) 83.
2. ecta represents those alternative operators who, relying on the pro-competitive EU legal framework that has created a free market for electronic communications, have helped overcome national monopolies to give EU citizens, businesses and public administrations quality and choice at affordable prices. ecta represents at large those operators who are driving the development of an accessible Gigabit society, who represent significant investments in fixed, mobile and fixed wireless access networks that qualify as Very High Capacity Networks (hereafter 'VHCN') and who demonstrate unique innovation capabilities.

## 2. Key overarching comments

3. Several EU Member States have well-established national procedures for the coordination of civil works in place (be they entirely commercially agreed or steered by legislation or regulation (civil construction rules as recognised in footnote 7 and/or principles specific to the telecoms sector). These procedures have been functioning for many years (in some cases >25 years) without notable difficulties or disputes. **BEREC Guidelines should not disrupt procedures which are established and/or consensual and which function well. ecta requests that this is added explicitly as a first principle in the final BEREC guidelines.**
4. Document BoR (25) 83, as it stands, reads as a set of considerations and suggestions, rather than as a set of readily applicable guidelines. ecta urges BEREC to **ensure that the final guidelines are unambiguous, clearly structured, and concise**, and use a numbering system (e.g. 'Guideline X' followed by 'Criterion X'), or at least that specific titles and concluding text boxes are used to specifically make each item of formal guidance explicit. The format of the BEREC Wholesale Roaming Guidelines provides relevant framework for the drafting team.

## 3. Chapter 2: Apportioning the costs associated with the coordination of civil works

5. ecta agrees that the **BEREC guidelines should focus on high level principles** and leave the specific provisions to be set on a case-by-case basis (*para 15 and para 21*). **Annex 1 goes beyond high-level principles, goes beyond what is suitable for inclusion in BEREC guidelines, and ecta disagrees with some of its content** (see also paragraph 10 below). **Therefore, ecta requests the deletion of Annex 1.**
6. With regard to the suggestion of complementing the BEREC guidelines, if necessary, by national or local guidelines (*para 15*), ecta expresses its strong preference for

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<sup>1</sup> <https://www.ectaportal.com/about-ecta>

nation-wide guidelines, to avoid fragmentation within the territory of Member States, whilst recognizing that there are urban, sub-urban and rural cases, and special cases with potential differences among them (which nevertheless in most cases are apt for harmonisation).

7. **ecta** agrees that the **main principles for cost apportionment** (*para 17*) should be as indicated by BEREC's draft:
  - Directly attributable costs should be borne by the party causing these.
  - Shared costs should be analysed on a case-by-case basis, based on objective criteria.
  - For the shared costs, Dispute Settlement Bodies (DSBs) are recommended to use objective formulas reflecting either equity or proportionality principles.
8. BEREC's draft text states that: *"The DSB has the full right to apply any of the non-exhaustive methods described in the guidelines, without the need to make a conclusive comparison between such methods"* (*para 22*). This is presumably inspired by arguments invoked in some Member States. The principle put forward by BEREC, i.e. that the DSB is not required to proceed to a legal/economic assessment of methods, has **ecta's** full support.
9. **ecta** agrees that **costs should generally be apportioned based on principles of cost causation and benefit sharing** (*para 23*), with two main categories of costs distinguished:
  - Additional/incremental/direct attributable costs (*para 24-26*).
  - Shared/common costs/non-directly attributable costs (*para 27-30*).

This being stated, **ecta** requests the deletion of footnote 14, being unconvinced that this correctly reflects reality and could have detrimental implications.

10. An important point to note in this specific context, and indeed for the draft BEREC guidelines in their entirety (*especially para 32-33*), is that, in **ecta's** members' experience, coordination of civil works occurs primarily between telecommunications network operators, whilst cases involving non-telecom utilities are rare, due to the objectively different characteristics of networks (size and depth of trench, type and number of connections, pace and scale of roll-out, timing of connections to customers, etc.). **ecta** therefore **urges BEREC to avoid taking coordination with non-telecom utilities as a given, or as a main scenario. Based on this observation, ecta requests the deletion of paragraphs 32 and 33, as especially para 33 hints at overcompensation of non-telecom utilities. Annex 1 takes a non-telecom utility scenario as a starting point, which is among the reasons for ecta requesting the deletion of this Annex.**

#### 4. Chapter 3: The criteria that dispute settlement bodies should follow when settling disputes falling within the scope of Article 5 of the GIA

11. ecta welcomes the substance and proposals made in this chapter, with the nuances provided hereafter.
12. The bullet points on possible causes for refusal of requests for coordination of civil works (*para 54*) trigger ecta to respectfully point out the following for BEREC's in-depth consideration:
  - Bullet 1: There might be circumstances in which there is no business case for one operator deploying civil engineering infrastructure, but there could be a business if operators deploy together, using coordination of civil works
  - Bullet 2: Great care is needed to ensure that wide scale invocation of security grounds is not misused by operators designated as holding Significant Market Power, on strategic grounds to prevent competition. The European Commission's Call for Evidence on the Digital Networks Act suggests prioritisation of symmetric regulation (particularly the GIA) over SMP regulation. If security grounds are widely invoked by SMP operators (which is a real possibility), the GIA will not constitute a viable first principle of regulation. ecta is on record in stating that the GIA (and the Broadband Cost Reduction Directive (BCRD) before it) was intended solely as a cost-reduction instrument and cannot now be construed as a market regulation instrument.

ecta invites BEREC to insert these considerations in the relevant bullet points.

13. It is well understood that the 1-month timeframe for dispute resolution contained in the GIA requires tight procedural framing and accompanying measures. This being stated, BEREC's final guidelines (*para 67-70*), need to ensure that any optional informal mechanism and mediation process does not end-up resulting in long delays which are not consistent with the stated aims of the GIA. ecta therefore suggests that **(under 'suspension or extension'), the text needs to be sharpened to prevent delaying tactics and regulatory gaming (e.g. failure to respond to additional information requests from the DSB). The DSB should indeed have the power to proceed to a provisional order, and parties should have the explicit right to move to actual time-bound dispute resolution at any time during any optional process.**
14. The right to be heard, ensuring that the confidentiality requirement does not delay the process, as well participation rights, are rightly important for BEREC to underscore (*para 73*). ecta urges BEREC to resist other stakeholders' potential pushback on these points.

#### 5. Chapter 4: The criteria for ensuring sufficient capacity to accommodate foreseeable future reasonable needs if coordination of civil works is refused pursuant to Article 5(4) of the GIA

15. **ecta** highlights that operators - particularly operators specialising in serving non-consumer customers (Business-to-Business (B2B), Business-to-Government (B2G), as well as those providing data centre connectivity (DC)) have stringent security, uptime and rapid repair imperatives, reflecting their customers' demand. These imperatives justify the provisioning of dedicated ducts.
16. Especially with regard to **B2B, B2G and DC, the text of Chapter 4 should be formulated more sharply**. A fact-based indication of the costs of deploying additional ducts would be most welcome (*para 87*). Sharper formulation is also needed in order to explicitly address (*para 89-91*): (i) overlap percentage, (ii) existing as well as foreseeable potential demand, (iii) including for dedicated ducts. It is important to be explicit on the requirement for, fit-for-purpose ducts/subducts/manholes/chambers, etc. to deliver Fibre-to-the-Office (FttO) connectivity, and secure networks for specific use cases at business parks, base stations, edge nodes, (AI) data centres, etc. This included areas (and on roads to areas) earmarked by the authorities for future development of such locations.
17. In addition, **ecta** considers that it is essential to understand, and for the BEREC guidelines to indicate (*para 95, and especially para 98-104*), that specific B2B, B2G and DC customers demand, for security and resilience reasons, to be served by means of dedicated ducts (and that their network is not accessible via street cabinets). Therefore, it is **out of the question for these customers to have operators place cables in the same duct** as that of an operator providing FttH to residential customers, **for the fibre to be accessible from an FttH street cabinet, etc.**, not to mention to be forced to use ducts in active use by a non-telecom utility.
18. On the basis of what is stated above, **ecta asks BEREC to revise the text and ensure that no suggestion is made or implied to the effect that larger (common) ducts, or sub-ducts within a common duct, would be an appropriate way forward for serving B2B, B2G and DC customers**. The reference to the CEPT ECC Report 354 "*Defining and Calculating Availability of Space in Cable Duct*" contained in *para 103* should be removed, given that it does not adequately reflect the requirements for dedicated ducts as outlined hereabove.
19. In light of these crucial comments, **ecta** also considers that **Annex 2 goes beyond high-level principles, goes beyond what is suitable for inclusion in BEREC guidelines, and ecta disagrees with some of its content, and therefore requests its deletion**.

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In case of questions or requests for clarification regarding this contribution, BEREC and NRAs are welcome to contact Mr Luc Hindryckx, Director General of **ecta** or Ms Pinar Serdengeçti, **ecta** Regulation and Competition Affairs Director.