

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

The Draft BEREC Guidelines on access to in-building infrastructure under Article 11(6) of the Gigabit Infrastructure Act (BoR (25) 84) aim to clarify how fair, reasonable, and non-discriminatory access to in-building physical infrastructure should be granted. This is essential to accelerate the rollout of Very High Capacity Networks (VHCNs) and to reduce deployment costs. BREKO welcomes BEREC's efforts to provide legal and procedural clarity and offers the following comments to ensure that the guidelines support effective competition, investment incentives, and practical implementation. While the guidelines provide a useful framework, BREKO sees a need for further refinement in several areas to ensure legal certainty, investment protection, and operational feasibility.

Cost Allocation

BEREC recommends access to inbuilding infrastructure should in principle be provided for free when the inbuilding infrastructure is owned by the building owner. On the other hand, when the in-building infrastructure is owned by an ECN operator, pricing should be evidence-based.

In principle, BREKO welcomes that BEREC intends to reduce barriers to entry for operators seeking access to existing infrastructure, we see some risks which should be further addressed in the Guidelines.

While BEREC assumes that in-building physical infrastructure could be provided without any costs, we assume that there is the possibility that costs for the use of the in-building infrastructure could still arise. Under recital 43 BEREC also discusses the case in which Member States may allow to owners/holders of infrastructure to recover their costs providing access to their infrastructure. It is correctly stated that providing access would eventually benefit the property owner respectively its residents, which is why it is important that additional costs which possibly arise will not fall back at the ECN operator without giving the possibility to compensate costs via a levy (f. ex. Fibre optic provision fee; "Glasfaserbereitstellungsentgelt").

Infrastructure duplication

BEREC states that any co-deployment using fibre wiring infrastructure could impact the investment made by the first mover. This is especially true for the case of duplication which can be strategically exploited by the SMP to undermine the business case of the first mover. From BREKO's perspective, this problematic is not sufficiently addressed in the current draft of the Guidelines. BREKO requests BEREC explicitly acknowledge that the duplication of in-building fibre wiring is, by default, economically inefficient and technically unnecessary. This presumption would help safeguard investment efficiency, reduce disruption, and support the overarching goal of infrastructure competition through shared use rather than redundant build-out.

Technical Documentation

Under recital 53 BEREC touches upon the topic of technical documentation of in-building physical infrastructure. While in general BREKO agrees that a proper technical documentation is key for further use, we'd like to point out that definition of technical standards is an issue already covered by Article 10 (4) GIA.

Dispute Resolution Timelines and Legal Safeguards

BEREC proposes a one-month deadline for dispute resolution. BREKO is of the opinion that this period probably does not correspond to the usual timeframe required by NRAs. A recent procedure has shown that the one-month deadline for dispute resolution was not sufficient and had to be extended to four months. Moreover, BEREC recommends that preclusion rules are defined by the DSB. From our point of view, the use of preclusion rules and provisional orders must be legally sound and clearly based on national administrative law. We don't see a sound legal base which is why we urge BEREC to clarify the legal basis for such mechanisms.

Contractual Templates and Individual Case Handling

While BEREC proposes a standard contract template provided by NRAs/DSBs for specification of terms and conditions as well as relevant SLAs and KPIs, BREKO emphasizes that individual cases vary significantly. Templates may help streamline processes but cannot replace tailored negotiations. Flexibility must be preserved to reflect technical, legal, and commercial realities.

Conclusion:

To ensure that the BEREC Guidelines are not only principled but also practicable, further clarification is needed in key areas such as cost allocation, legal safeguards, and the treatment of infrastructure duplication. BREKO encourages BEREC to refine its approach by explicitly addressing the operational realities faced by network operators and by aligning procedural mechanisms with national legal frameworks. A balanced and implementation-ready set of guidelines will be essential to foster both competition and investment in the rollout of fibre across Europe.

BREKO is registered in the lobby register (R002215) for the representation of interests vis-à-vis the German Bundestag and the Federal Government and in the European transparency register (028570718529-43) for the representation of interests vis-à-vis the EU institutions.