

## **Safeguarding National Achievements under the GIA: AIIP Response to BEREC Draft Guidelines (BoR (25) 83 and 84)**

### **Introduction**

AIIP welcomes the opportunity to provide its contribution to the BEREC public consultation on the Draft Guidelines related to Articles 5 and 11 of the Gigabit Infrastructure Act (BoR (25) 83 and BoR (25) 84).

As the first and oldest association of independent Internet providers in Italy, AIIP has consistently supported infrastructure competition and network duplication as essential pillars of connectivity, innovation and resilience. Our members, who are all authorized operators, are responsible for a significant share of fiber deployment, especially in rural and semi-urban areas, and have built extensive infrastructure in competition with dominant national operators. They have achieved this, in part, through timely access to physical infrastructures owned by municipalities, local utilities and energy companies. The Italian regulatory framework, especially Legislative Decree No. 33/2016, has enabled such access in a non-discriminatory, efficient and open manner.

While we appreciate the aim behind the proposed Guidelines, we are concerned that, in their current form, they risk reversing years of regulatory progress in Member States like Italy, where open access to all infrastructures, not just those of former incumbents, has proven essential to meaningful competition and effective rollout of high-capacity networks.

### **AIIP and the Italian Regulatory Context**

Founded in 1995, AIIP (Italian Association of Internet Providers) represents over 60 independent operators delivering fiber, wireless, datacenter and cloud services across Italy. Most members are authorized electronic communications providers under the Italian regulatory framework and actively build and manage physical infrastructure.

The Italian broadband market is among the most competitive in Europe, thanks in large part to the early liberalization and the regulatory choices that accompanied it. A central pillar of this success has been the implementation of Directive 2014/61/EU through Legislative Decree No. 33/2016, which introduced broad and symmetrical obligations for infrastructure access and coordination.

Unlike many Member States that restricted access obligations to incumbent telecom operators, Italy extended these obligations to all owners of relevant civil infrastructure, including municipalities, energy distributors, water utilities, motorway operators and more. This structural choice has enabled hundreds of operators, including major players like Open Fiber and FiberCop (formerly TIM/Telecom Italia) as well as AIIP members, to reduce excavation costs and avoid duplication of civil works by reusing existing ducts and public lighting pipes.

Access to such infrastructures has been not only an economic enabler but also a precondition for the timely coverage of entire urban and rural areas. In many territories, the availability of public lightning ducts or municipal utility networks was the only viable means for deploying fiber, especially where new excavation was physically or economically unfeasible.

Italy has also developed a centralized database for infrastructure information (SIP - Single Information Point), managed by Infratel/AGCOM, which provides a digital interface for querying existing assets and submitting coordination requests. While not perfect, the Italian model is widely regarded as one of the most advanced in Europe, both in terms of legislative framework and practical implementation.

The Gigabit Infrastructure Act and the related BEREC Guidelines risk undermining this progress by introducing narrower scopes, greater fragmentation and optionality for Member States, potentially weakening the harmonization goal and empowering national retrenchment.

## **Section 1: Comments on BoR (25) 83 – Coordination of Civil Works**

The Guidelines proposed under Article 5 raise serious concerns regarding their ability to preserve and promote effective civil works coordination.

By limiting coordination obligations to works co-funded with public money, the Guidelines ignore the operational reality in countries like Italy, where most excavation work, especially those conducted by utilities, are formally carried out by private entities, but in fact reflect a strong public-interest mandate. Many such entities operate as in-house companies of municipalities or regional administrations, structured as joint-stock companies (SpA) with majority public ownership and direction. Although technically private, these companies are publicly controlled, funded and mission-driven. Their investments are often supported by public or structural funds, and their decisions are aligned with territorial planning goals. Ignoring these actors by restricting coordination only to generically 'publicly co-funded' works introduces a major blind spot and undermines the potential for synergy, cost efficiency and open deployment.

The Guidelines also appear to allow for a broad use of derogations based on urgency, limited scale, or location. Such loopholes risk becoming systemic exemptions, effectively hollowing out the coordination principle. In our experience, the lack of advance information and coordination has led to multiple missed opportunities for shared civil works, with direct consequences on costs, duplication and network coverage.

AIIP calls for a presumption of coordination, with clear obligations for those initiating civil works to notify and consult other stakeholders in advance. Coordination must not depend on the nature of the project promoter or its funding source. Only a universal obligation, backed by enforceable rules and effective dispute resolution, can unlock the cost savings and efficiency gains envisaged by the GIA.

Furthermore, the financial conditions under which coordination is offered must be fair and transparent. Cost-sharing mechanisms should be based on clear cost models and avoid placing excessive burden on the requesting operator. Without such safeguards, coordination risks becoming a tool of exclusion rather than collaboration.

## **Section 2: Comments on BoR (25) 84 – Access to Physical Infrastructure**

While the Guidelines correctly state that prices for access should be cost-oriented, we are concerned about the lack of concrete mechanisms to ensure this principle is respected in practice. The absence of harmonized criteria, ex-ante transparency obligations, or reference benchmarks leaves too much discretion in the hands of infrastructure owners. In competitive and fragmented markets like Italy, this can result in excessive, discriminatory or opaque pricing practices. We urge BEREC to promote the adoption of clearer cost models, sectoral benchmarks, and mandatory disclosure of pricing methodologies upon request, to ensure effective and fair access.

In the Italian context, and likely in many other Member States, a large portion of the so-called legacy civil infrastructure attributed to the historical incumbent operator (formerly SIP, then Telecom Italia, now FiberCop) was in fact not built by the operator itself. Since at least the mid-1990s, it has been standard practice that in new urban developments, real estate developers (“lottizzanti”) were required to construct the full civil infrastructure network, including ducts, manholes and utility corridors, for power, water, and telecommunications, in compliance with (generic) technical guidelines provided by utility companies, including the incumbent telco.

These civil works were entirely funded by private citizens through the cost of housing developments, and no ownership title was ever transferred to the telco operator. In many such cases, the only asset actually installed by the operator was the copper twisted pair cable for voice service. Despite this, operators like Telecom Italia or FiberCop continue to claim full

ownership over the ducts and manholes, without possessing any cadastral registration, building permit, deed of transfer or administrative record establishing legal title.

This phenomenon concerns hundreds of thousands of kilometers of ducts and chambers which are erroneously considered proprietary infrastructure by former incumbents. Allowing these operators to charge access fees or deny access to such infrastructure is legally and morally unjustified, and runs contrary to the principle of fair and non-discriminatory access enshrined in the Gigabit Infrastructure Act.

For this reason, we urge BEREC to clarify that access to physical infrastructure under Article 11 should not be conditioned on ownership claims unsupported by legal title. In absence of valid registration or transfer deeds, the incumbent should not be entitled to claim exclusive rights or charge fees to alternative operators. Such cases should be treated as publicly or collectively developed infrastructure, open by default to third-party use.

## **Final Remarks**

AIIP reiterates that any European harmonization effort must respect and preserve more advanced and functional national frameworks. The Italian model, based on broad access obligations, symmetrical transparency rules and pragmatic coordination practices, has enabled real competition and successful infrastructure deployment in challenging contexts.

We strongly oppose any regression that would force Italy to conform to a lower common denominator. BEREC should not impose limitations or weaken national achievements in the name of formal alignment. Instead, it should promote upward convergence and allow countries like Italy to maintain and improve upon their successful legal and regulatory choices.

In this regard, we express our appreciation for the ongoing work of AGCOM and the Italian authorities, who have contributed decisively to the development of a mature and inclusive regulatory environment. It is precisely this environment that BEREC should draw inspiration from, rather than constrain.

AIIP remains available for any technical clarification or follow-up discussion that may contribute to improving the proposed Guidelines in the spirit of true pan-European collaboration and infrastructure competition.