

BEREC Report on the outcome of the public consultation on the draft BEREC Guidelines on the coordination of civil works according to Article 5(6) of the Gigabit Infrastructure Act



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Executive Summary

BEREC published the draft BEREC Guidelines on the coordination of civil works according to Article 5(6) of the Gigabit Infrastructure Act (GIA) ('the draft guidelines') on 11 June 2025. At the same time, a public consultation was opened, running until 11 July 2025. The Body of European Regulators for Electronic Communications (BEREC) received from the following 17 stakeholders responses to the public consultation:

- EENA (European Emergency Number Association)
- NL Connect (Dutch Rights of Way Association)
- CETIN- Czech Republic
- ASOTEM (Spanish Electronic Communications Operator Association)
- Ecta (European Competitive Telecommunications Association)
- Open fiber- Italy
- BREKO (The German Broadband Association)
- Deutsche Telecom- Germany
- Liberty Global
- AIIP (Italian Association of Internet Providers)
- öGIG Fiber- Austria
- The Netherlands Association of Municipalities
- Deutsche Glasfaser- Germany
- FTTH Council Europe
- Connect Europe
- Stakeholder 1 and
- Stakeholder 2.

This report provides an overview of the responses BEREC received during the public consultation and the BEREC response to each topic raised by stakeholders in particular with regard to the need to adapt the draft Guidelines. It has a similar structure as that of the draft guidelines, as follows:

- **Chapter 1** General aspects, which sets out a selection of stakeholders' general views on BEREC's draft guidelines;
- **Chapter 2** Apportioning the costs associated with the coordination of civil works;
- **Chapter 3** The criteria that dispute settlement bodies (DSBs) should follow when settling disputes falling within the scope of Article 5 of the GIA;
- **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.

In addition, BEREC has published all non-confidential stakeholder responses received.¹

¹ <https://www.berec.europa.eu/en/public-consultations-calls-for-inputs/public-consultation-on-the-draft-berec-guidelines-on-the-coordination-of-civil-works-according-to-art-56-of-the-gigabit-infrastructure-act>



1. General aspects

Overall, BEREC observes broad support for its general objectives, key considerations and recommendations put forward in the draft Guidelines. Some stakeholders however identify some points that could be clarified and improved in their view. The most important points are described below in this document.

1.1 Scope of the Guidelines

1.1.1 Stakeholders views

According to AIIP, the Guidelines proposed under Article 5 **should not limit coordination obligations to works co-funded with public money**, since in several countries, many opportunities of coordination are linked to companies on a private status (even though some of them are closely linked to municipalities). On the contrary, NL Connect recommends that the fact that these obligations (and thus the exemptions associated with these obligations) only apply to publicly funded companies should be better reflected in the guidelines.

Stakeholder 1 suggests an addition to suggest what kind of **limitations to the obligations from Article 5 could be introduced by Member States according to Article 5(5)**, namely:

- 1) *civil works functional to the delivery of services vs. customers or to provide VHCN access for Next generation RAN;*
- 2) *civil works functional to maintenance intervention;*
- 3) *civil works functional to specific events/ or exhibition, or for seasonal reasons.“*

On the contrary, AIIP believes that the derogations are already too numerous in the guidelines, and as a result, AIIP recommends that a presumption of obligation to coordinate should be introduced. On that issue, the Netherlands Association of Municipalities recommends that reasonableness should also be assessed taking into account how long in advance the request for coordination is made and more broadly, how the party requesting coordination have engaged in municipalities' consultations and discussions.

Deutsche Glasfaser believes there is no point in telco-telco coordination because of the competitive drawbacks and that the guidelines should **focus on telco-non telco coordination**.

According to Ecta, draft BEREC Guidelines, **do not identify the strong points well enough as guidelines**, resulting in a document with no real opposable points.



1.1.2 BEREC response

Regarding the limitation of the obligation to offer coordination of civil works to publicly-funded companies, BEREC notes that Article 5 of GIA does limit this obligation to that context. However, some countries already extended this obligation to privately-financed operators. This remains possible according to Article 1(3) which states that *“This Regulation sets minimum requirements for achieving the aims set out in paragraph 1. Member States may maintain or introduce measures in conformity with Union law which are stricter or more detailed than those minimum requirements, where the measures serve to promote the joint use of existing physical infrastructure or enable a more efficient deployment of new physical infrastructure.”* The draft guidelines already took this possibility into account on paragraph 16: *“Provided that Member States chose to extend the obligations of GIA to fully privately funded civil works, DSBs and network operators should also consider applying the principles outlined in these guidelines to such projects.”*

Since these guidelines need to remain in line with GIA, any extension of the scope cannot be imposed through these guidelines. However, to explain better the possibility offered by Article 1(3) and introduce more smoothly paragraph 16, BEREC will amend the guidelines by completing paragraph 16 as follows:

“BEREC notes that in several countries, the obligations related to Article 5 already also apply to privately-funded civil works, and that other Member States may choose to do so based on Article 1(3) In that situation when Member States chose to extend the obligations of GIA to fully privately funded civil works, DSBs and network operators should also consider applying the principles outlined in these guidelines to such projects.” (new text underlined)

Regarding the derogations to the obligation to offer coordination of civil works, BEREC notes that Article 5(5) does foresee the possibility for Member States to introduce that kind of derogations. This is in coherence with some of the feedback received to that public consultation fearing that this obligation may create unnecessary delays to some projects (see sections 1.3 and 1.4). BEREC believes that as a result, a presumption of obligation to coordinate cannot be introduced as such, even though it will remain up to the party denying coordination to prove this denial relies on a valid motive according to GIA and the national regulation derived from GIA. On the contrary, the feedback, both from the call for inputs in summer 2024 and from this public consultation on June 2025 is not representative enough to enable to make a strong recommendation. BEREC leaves it to Member States to analyse, depending on their own local situations, which derogations are adapted.

Regarding the proposal to focus only on telco – non-telco coordination situations, BEREC notes that GIA does also cover telco-telco situations, and as a result, the guidelines need to reflect this.

Finally, regarding the proposal to emphasize stronger recommendations in the report, BEREC notes that each section of the guidelines start with some highlights of the main points. BEREC



does not wish to reinforce the corresponding recommendations, since as stated in Article 5(6) these guidelines must “*take into account well-established principles and the specific situations of each Member State*”, which does not enable to impose stronger recommendations than already suggested in the draft guidelines.

1.2 Established procedures

1.2.1 Stakeholders views

Ecta, AIP, Open Fiber and FTTH Council Europe are of the view that several EU Member States have well-established national procedures for the coordination of civil works in place, and that **the guidelines should not disrupt these procedures**. Most of them mention the Italian regulation as a best practice and recommend mentioning it.

1.2.2 BEREC response

BEREC agrees with the respondents regarding the need to safeguard the existing established procedures when they already work, as stated in Article 5(6) which requires that the guidelines are written “*taking into account well-established principals*”. BEREC suggests to complement paragraph 15 with the following sentence “*In particular, Member States are encouraged to keep the already established procedures as long as they comply with GIA and stakeholders agree that they have proven efficient to stimulate coordination of civil works*”.

Regarding the proposal to explicitly recommend the case of Italy, BEREC notes that the obligation in place in Italy goes further than GIA and cannot be imposed through these guidelines to all Member States. Italy will, on the other hand, be able to rely on the sentence added above to maintain its existing legal framework.

1.3 Operational and Competitive Challenges of Civil Works Coordination

1.3.1 Stakeholders views

According to BREKO, while the coordination of civil works is a key objective of the GIA, it must be acknowledged that **such coordination is, in practice, often highly complex, time-consuming, and cost-intensive**, and this can create damaging delays to projects required to wait for other projects wanting to coordinate with them.



1.3.2 BEREC response

BEREC acknowledges the difficulties raised by the respondents. However, **the objective these guidelines cannot be to challenge obligations from GIA.**

1.4 Insufficient Consideration of SMP Risks in Telco-Telco Coordination

1.4.1 Stakeholders views

Deutsche Glasfaser and BREKO believe that the guidelines should address the risk that significant market power (SMP) operators use this ability to ask for civil work coordination either to artificially create delays in competitors' projects or to prevent them from getting any first mover's advantage and thus **keeping their SMP**. On the same issue, they believe that the obligation under Article 6 of the GIA to make information on planned civil works available up to six months in advance poses a serious risk in competitive markets. When an SMP operator is actively pursuing strategic overbuilds, early disclosure of project plans can lead to pre-emptive duplication and market foreclosure. This undermines the business case for smaller operators and distorts competition.

1.4.2 BEREC response

With regard to the risk of SMP using the opportunity of asking for coordination for anticompetitive goals, though BEREC takes note of this potential risk, BEREC remarks that no exception of this obligation is introduced in GIA in the situation when the party asking for coordination has SMP. As a result, these guidelines cannot restrict the right for SMP operators to request coordination. Anticompetitive behaviors can be handled through other regulatory tools.

Regarding the 6 months delay in Article 6, BEREC first notes that this Article is out of the scope of these guidelines and that in any case guidelines cannot challenge this 6-month period since it stems from the Act.

1.5. Other general remarks from BEREC

Throughout their answers on precise sections of the guidelines, several respondents raised the issue of finding the right balance between high-level and principle-based guidelines, or having more precise guidelines providing less flexibility but more homogeneity and predictability. Given the fact that the GIA will only be applied as of November 2025 and that for most topics of the guidelines, no precise proposals were made during the public consultation, BEREC considers that the guidelines should most of the time be high level and principle based.



Should practical problems arise in the application of the GIA at a later stage however, BEREC is ready to review or amend its Guidelines as appropriate.

BEREC notes that these guidelines will be published before GIA actually applies (November 12th 2025 according to Article 19(2) of the GIA). Of course, **these guidelines cannot apply before the act it is based on**. BEREC adds a clarification with respect to this point at the beginning of the Guidelines (paragraphs 1 and 7).

BEREC also includes in the guidelines some other changes aiming at clarifying some wordings or correcting some typos throughout the document.

2. Apportioning the costs associated with the coordination of civil works

2.1 General principles

2.1.1 Stakeholders feedback

2.1.1.1 Flexibility vs level of detail of the guidelines

Stakeholders (AIIP, FTTH Council) appreciate that transparent cost-sharing methodologies provide for fair and transparent conditions for the coordination of civil works. However, **the opinions on the preferable level of detail differ**: Whereas Ecta requests that BEREC guidelines should focus on high level principles only, other stakeholders (FTTH Council, AIIP) are in favour of more simple and direct applicable guidelines with less room for discretion.

2.1.1.2 Effect on business case

Several contributions (CETIN; BREKO, öGIG Fiber, Deutsche Telecom, FTTH Council Europe) mention competition issues that might arise due to the coordination of civil works. (Former) SMP operators might use this tool to prevent or at least delay investments of alternative operators (loss of first mover advantages, overbuild, reduction of addressable customer base etc.). Therefore, some operators argue (CETIN, öGIG Fiber), that **the effects on the individual business case in an electronic communication network (ECN)/ECN scenario should be considered by the apportioning of the costs**. öGIG Fiber requests compensation of foregone profits induced by a coordination of civil works as opportunity costs.



2.1.2 BEREC response

2.1.2.1 Flexibility vs level of detail of the guidelines

BEREC is of the opinion that the guideline is **well balanced between the objectives of providing detailed guidance on different cost sharing approaches and the necessary flexibility** for the DSB to choose a method appropriate for the individual case which can vary in very complex ways between states. It provides general rules and a limited number of relevant formulas to help DSBs deal with heterogeneous individual situations.

BEREC does not agree with Ecta that Annex 1 goes beyond what is suitable for inclusion in BEREC guidelines and that Annex 1 has to be deleted. Annex 1 provides examples existing in certain states to help the DSB to choose a suitable method based on the individual circumstances. BEREC believes it is necessary to help understand the content of the guidelines, while not creating any additional obligation.

2.1.2.2 Effect on business case

BEREC considers compensation of foregone profits might cement monopoly rents, prohibit the replication of end user products by the requesting party and thus hinder competition. The goal of GIA, as stated in Article 1(4), is 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.”*, meaning coordination should not be dependent on high and unpredictable costs.

Nevertheless, it is essential that there be a level playing field in the area concerned, which the DSB should consider in each case, using an appropriate method for allocating costs while taking into account the specificities of each particular case.

2.2 Categorisation of civil works costs

2.2.1 Stakeholders feedback

EENA is concerned that the current categorisation of civil works costs as either directly attributable or shared may lead to a misinterpretation that investments to improve safety and resilience will always be considered attributable. EENA argues that **investments to improve safety and resilience may be in the common interest of multiple parties** and if so should be shared and not attributed to one party. To address this, EENA proposes to add *“certain investments to improve physical resilience”* to the examples of shared or ‘common’ costs listed in Paragraph 27.



2.2.2 BEREC response

BEREC agrees that in certain circumstances investments to improve safety and resilience may be in the common interest of multiple parties and if so should be shared and not attributed to one party. To address this, BEREC follows the proposal made by EENA to add “certain investments to improve physical resilience” to the examples of shared’ or ‘common’ costs listed in Paragraph 27.

2.3 Transparency and Oversight in Shared Costs

2.3.1 Stakeholders feedback

ASOTEM, AIIP and FTTH Council Europe advocate for **transparency of cost data**, relevant cost components and pricing methodologies (throughout the entire project lifecycle) to ensure a fair coordination of civil works. ASOTEM proposes that all coordinated civil works projects be required to include a standardized "economic annex" in the technical project file. This annex should contain: (i) a complete and detailed list of budget items; (ii) the proposed cost-sharing formula, including its technical variables and quantitative justification; (iii) allocation coefficients for each operator; and (iv) comparative cost scenarios for individual vs. coordinated deployment. This documentation must be accessible throughout the entire project lifecycle to both participating operators and supervisory or DSBs, with the possibility of external audits.

2.3.2 BEREC response

BEREC agrees that transparency on costs is essential to the coordination of civil works.

The inclusion of a standardized economic annex appears to be reasonable. A comprehensive list of cost items and cost parameters is necessary for planning but also the final settlement payments at the finalisation of the coordinated civil works project. Business secrets should be respected but only regarding those costs which are not shared (additional/incremental/direct attributable costs). If shared costs are affected by business secrets, such costs have at least to be made available to the DSB which decides on the apportioning of the costs. To be considered as a standardized economic annex, the annex should contain at least the following elements: (i) a complete and detailed list of budget items; (ii) the proposed cost-sharing formula, including its technical variables and quantitative justification; (iii) allocation coefficients for each operator; and (iv) comparative cost scenarios for individual vs. coordinated deployment.

A new paragraph is added to the guidelines (under “Other relevant considerations”).



2.4 Additional/incremental/direct attributable costs

2.4.1 Stakeholders feedback

Ecta acknowledge that costs should generally be apportioned based on principles of cost causation. With regards Additional/Incremental/Direct Attributable Costs stakeholders (Liberty Global and the FTTH Council) agree that costs directly caused by the coordination request (e.g., special planning, deeper trenches, delays) should be borne by the requesting party.

One stakeholder brought forward, that coordination of civil works could lead to **delays which could result in penalties** which are part of contracts e.g. with customers. The occurrence could not be communicated because it is seen as confidential commercial information, which makes any claim for compensation very complicated.

2.4.2 BEREC response

BEREC agrees that penalties caused by delays due to the coordination of civil works should be classified as additional/incremental/direct attributable costs. **This is already reflected in paragraph 24** (*“More precisely, these costs include administrative costs, costs resulting from delays triggered by coordination, building costs for deeper/larger/longer trenches (increase of the capacity) or different digging methods, re-routing of trenches, (increased) safety costs depending on the utility networks.”*), which does not seem to require any update.

Nevertheless, transparency is crucial if these costs should be borne by the requesting party. Therefore, regarding the confidentiality problem BEREC does not see any easy solution and the responses from the public consultation did not provide one either.

2.5 Shared/common costs/non-directly attributable costs

2.5.1 Stakeholders feedback

Some stakeholders (Ecta, Liberty Global, The Netherlands Association of Municipalities) expressed their preferences on certain (but different) approaches presented in the section on the apportioning of shared/common costs/non-directly attributable costs.

The Netherlands Association of Municipalities brings forward that local authorities may sometimes see a need to allocate fewer costs to private networks in order to save time and engineering costs on the whole project or to prevent future digging and requests that such considerations should not trigger state aid clauses. They also mention that the specific case of each municipality does not reflect Figure 3 and 4 presented in the Annex 1 which seems to be universal.



2.5.2 BEREC response

BEREC is of the opinion that the **different approaches to the apportioning of shared costs provide for the necessary flexibility** for the DSB to choose a method appropriate for the individual case. The various answers confirm this approach through the variety of preferences expressed.

Regarding state aid clauses, BEREC is not entitled to guarantee that compensation below costs requested by a municipal does not trigger state aid clauses.

2.6 Other relevant considerations

2.6.1 Stakeholders feedback

2.6.1.1 ECN-ECN vs ECN other Network

Ecta states that 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 requests the deletion of paragraphs 32 and 33, whereas two other stakeholders (CETIN and Deutsche Telekom) are of the view that BEREC should elaborate in more detail on the two scenarios ECN-ECN vs ECN-other network. CETIN points out that coordination of civil works in the ECN/ECN scenario may have significant effects on the business case for deployment. According to Deutsche Telekom, part “ECN-ECN vs ECN-other network) (paragraph 32 and 33) are a critically important part of the Guidelines. Deutsche Telekom is in of the view that BEREC is right in pointing out to the differences. Deutsche Telekom calls on BEREC to provide more guidance on how the differentiation should apply to the costing and pricing methods. The key differentiator is that the core-business of non-ECNs is not affected by the coordination, therefore, only directly attributable cost should be compensated by ECN-access seekers.

2.6.1.2 State aid

CETIN points out that state aid programs involving civil works may contain the obligation to coordinate and may contain detailed instructions on the apportioning of costs already. CETN understanding is that state aid cannot be passed on / distributed to any other coordinating party as this would be both uneconomical from the point of view of the provider of the state aid and potentially have market distorting effects outside of the approved (and notified, if applicable) state aid program. CETIN deems appropriate that the apportioning of costs in a coordinated deployment is based on the full cost of the civil works (before state aid) and state aid may be claimed only for the part of costs actually borne by the beneficiary.



2.6.2 BEREC response

2.6.2.1 ECN-ECN vs ECN-other network

BEREC agrees that coordination of civil works in the ECN/ECN scenario may have significant effects on the business case for the deployment. **Therefore, considerations on a level playing field are crucial.** Based on such considerations the DSBs should carefully choose a proper method to apportion the cost of the coordinated civil works.

BEREC agrees that in a scenario of a coordination of an ECN operator with a other (Non-ECN) network the business case of the other network is not affected by the coordination of the civil work, as long as it gets at least the incremental costs compensated. If state aid is affected the DSB shall assess the situation on a case-by-case basis.

With this in mind BEREC amends paragraphs 32 and 33 on ECN-ECN vs ECN-other network.

2.6.2.2 State aid

BEREC is aware that state aid programs involving civil works may contain the obligation to coordinate and may contain detailed instructions on the apportioning of costs already. BEREC understands, that these obligations are binding.

CETIN raises that state aid may potentially have market distorting effects outside of the approved (and notified, if applicable) state aid program. Therefore it is important to distinguish between the scenarios where an ECN operator gets state aid (in a ECN-ECN scenario) or whether a Non-ECN operator gets state aid (in a ECN-other network scenario). In the ECN-ECN scenario only there might arise the problem of a market distortion because of different cost bases of competing ECN operators which lead to an imbalanced playing field. To achieve a level playing field the DSB could decide to share the lower remaining costs after the deduction of the state aid. Nevertheless, in such circumstances the DSB shall assess the situation on a case-by-case basis.

Therefore, a sentence is added to the paragraph 34 to highlight the task of the DSB.



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

3.1 Information to be provided by parties involved in the dispute for the decision

3.1.1 Stakeholders feedback

CETIN questions the assertion that the earlier information on planned civil works is available, the greater the facilitation of coordination and the reduction in litigation (paragraph 41). In its experience, the earlier civil works is planned, the less precise the actual scope and execution, which could even increase the number of disputes.

CETIN also considers **the provisions in paragraph 63 and 70, regarding when litigation proceedings may be initiated, to be contradictory**. While paragraph 70 aims to ensure that the party bringing a dispute provides all necessary information in advance, before the party "receives" it, paragraph 63 acknowledges that the one-month deadline may be extended if all information is not submitted at the start. CETIN is of the view, the dispute proceedings should not be initiated until the necessary information is collected from the party requesting coordination, in order to avoid speculative submissions and delays due to the dispute proceedings (which could lead to a potential claim for damages by the first deployer).

CETIN agrees that the claimant should provide specific evidence that the request is reasonable as stated in paragraph 73. Also, CETIN emphasizes that **the DSB should only request essential information for the decision**. For example, the amount of public funding used is often unknown to the first deployer at the time and should not be required (state aid may be refunded only after all expenses for the project are assessed).

3.1.2 BEREC response

BEREC welcomes the support received from several stakeholders on the main points raised in the guidelines (need for transparency, for managing delays, possibility to create a mediation process). Several points mentioned above are already included in the guidelines and will not be discussed below, BEREC notes that they are supported and will keep them in the text.

Regarding CETIN's point about providing information on planned civil works as early as possible, **BEREC notes that the effects of paragraph 41 are merely to highlight the need to comply with the timelines set out in GIA** (Articles 5(2)(c) and 6 of the GIA) and thus does not see a need for a change in that respect.



BEREC also does not agree with what CETIN considers to be a contradiction, since both paragraphs (63 and 70) refer to the fact that the lack of information provided by the operator who files a dispute could lead the DSB to extend the resolution period by one month, according to the exceptional causes established in recital 64 of the GIA.

Regarding CETIN's opinion that the DSB should only request essential information to resolve the dispute, BEREC notes that paragraph 65 only provides a list of "*potential information*" to be provided. Indeed, **DSBs should request the information they consider necessary for the effective resolution of the dispute** between operators, for which they will take into account all the circumstances that pertain it, which could be reflected by only in a subset of the list suggested, or may on the contrary require more information. In most cases, however, BEREC believes that the information listed in paragraph 65 indeed appears to be what is necessary, and that parties considering asking for dispute settlement should be prepared to provide this information. BEREC considers the current text finds a right balance to reflect this.

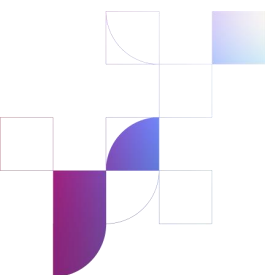
3.2 Procedure to be followed in the handling of disputes

3.2.1 Stakeholders feedback

According to Ecta, BEREC's final guidelines (paragraphs 67-70), need to ensure that **any optional informal mechanism and mediation process does not end-up resulting in long delays**. Ecta thus suggests that (under 'suspension or extension'), the text needs to be sharpened to prevent delaying tactics and regulatory gaming. 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 settlement at any time.

In Ecta's view, the right to be heard, ensuring that the confidentiality requirement does not delay the process, as well participation rights, are important for BEREC to underscore (paragraph 73).

FTTH Council Europe is of the view that dispute settlement process should be open and transparent and take account of parties relative market, should be proportionate to the issue/circumstance, must establish processes and procedures that ensure decision-making is clear and transparent and above all, taken quickly. They support the proposed one-month resolution deadline but recommend (1) an absolute **prioritization on efficiency**, decision should be based on an unbiased assessment of the facts, third parties including local authorities and municipalities should have no standing under this provision, decision should be grounded in the evidence presented, and be practical and implementable (2) guidelines should specify that incumbent operators or infrastructure owners bear the burden of justifying refusals or cost allocations, and that all parties must fully disclose relevant information, entrant operator owners that have newly built infrastructure should face a different burden of proof that better



reflects their business model and position in the market and (3) anonymised decisions and reasoning from DSBs should **be published systematically**.

BREKO questions the one-month deadline, indicating that experience shows that the DSB requires significantly more time.

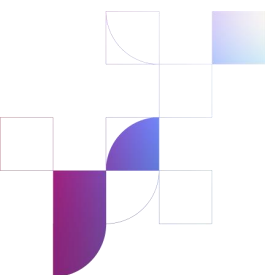
Stakeholder 2 considers that the possibility of **provisional** decisions is important, as an application can be rejected by the DSB but later accepted by a court. It adds that suspending the process or extending deadlines should be very limited, public hearings or consultations seem counterproductive, and the interest of third parties can generally be regarded as secondary. Finally, it points out that combining several similar cases should be considered.

Connect Europe welcomes the inclusion of an optional conciliation or mediation phase before formal dispute settlement and supports its potential benefits. However, they express key concerns to ensure the process is not misused: (i) **Timeliness**: optional steps must not delay the formal dispute process, especially given the urgency of VHCN deployment. Connect Europe proposes to include indicative time limits (7–10 working days); (ii) **Voluntary Nature**: participation in informal resolution must remain optional; parties should be free to proceed formally if needed; (iii) **Clear Boundaries**: the start and end of the optional phase must be well-documented, and time spent should not extend formal deadlines unless mutually agreed, and (iv) **Safeguards Against Misuse**: measures should prevent parties from using informal dialogue as a tactic to delay resolution. If the informal route proves ineffective or one party shows reluctance to cooperate, Connect Europe recommends including a fast-track approach to formal dispute resolution.

ASOTEM emphasizes that the proper functioning of DSBs is essential to the success of the civil works coordination model outlined in Article 5 of the GIA. These bodies must be impartial, efficient, and technically capable to prevent disputes from becoming operational bottlenecks or tools for market dominance. ASOTEM calls for EU-wide principles and minimum standards to ensure equal treatment of all parties, including procedural safeguards for smaller operators. It also stresses the importance of resolving disputes within one month, as required by the GIA, and recommends that decisions be public, well-reasoned, and accessible in official languages via centralized platforms.

Stakeholder 2 **supports strict timeframes and opposes public hearings in coordination procedures**, arguing they cause unnecessary delays. They propose that authorities should be able to merge similar cases independently to streamline processes.

The FTTH Council reinforces the need for fast, fair, and fact-based dispute settlement to maintain deployment momentum and ensure a level playing field. It advocates for clear reasoning in decisions, consistent alignment with existing rules, and practical outcomes. It also calls for a differentiated burden of proof, placing more responsibility on incumbent operators to justify refusals or cost allocations.



3.2.2 BEREC response

Regarding the risk of delaying tactics in case of a mediation, BEREC agrees with the need to avoid such strategies. In this regard, BEREC would like to point out that any party would be able to leave mediation and initiate a dispute resolution at any point of the procedure. In this sense, paragraphs 67 and 68 indicate that the optional mediation can take place prior to or in parallel with the formal dispute settlement process, but there are no steps that would cause an undue delay. This optional process is, as indicated in the title 3.4.1 of the guidelines, optional, and as such can be terminated at any time by any party; however, BEREC does not see the need for clearly documenting the start and end of this optional phase, as it is and remains informal by its nature, and does not in any case substitute the formal proceeding if the dispute is formally initiated. The purpose of the informal process is to potentially avoid the dispute and, even if not, to help in shortening its duration and help in providing information and a communication channel between the parties and the DSB.

Regarding timelines of the procedure, BEREC acknowledges BREKO's fear that a one-month delay may in practice be very hard to manage. This is why these guidelines offer several mechanisms to limit delays (possibility for a preliminary discussion before dispute settlement, indicative list of information required for the dispute, etc.). BEREC agrees, as stated in the guidelines, that DSBs should in any case try to minimize such delays.

Regarding transparency of the procedure, BEREC does not share Ecta's view that third parties, including local authorities and municipalities, should not have standing in disputes over the coordination of civil works, as their legitimate interests may be affected. It should be noted that local authorities not only authorize occupation permits for the construction of physical infrastructure in their public domain but may also grant operators public funds for the deployment of their fibre networks in their municipality, as well as for the construction of the physical infrastructure that houses these networks.

Regarding provisional orders, as already indicated in the guidelines (see section 3.4.2 - paragraphs 71 to 73), undertakings who are party to a dispute regarding the coordination of civil works will be guaranteed - among other rights that Ecta mentions in its response - the right to request provisional measures, to be heard throughout the procedure in order to guarantee their defence, to request the confidentiality of the data provided and that these be protected by the DSB, where appropriate, to have said data anonymized in the DSB's published decisions, and to appeal such decisions before the courts.



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.

4.1 Dedicated ducts for operators specialising in business customers

4.1.1 Stakeholders feedback

Ecta considers that **the needs of operators specialising in serving Business-to-Business and Business-to-Government customers, as well as data centre connectivity are not appropriately addressed in the draft Guidelines**. Ecta argues that the approach taken underestimates the specific infrastructure needs of these use cases where there are stringent security, uptime and rapid repair requirements, reflecting customers' demand and these requirements justify the provisioning of dedicated ducts. Ecta is of the view that there should be no suggestion in the Guidelines that such customer demand can be met by the use of larger common ducts or sub-ducts and that there should be sharper focus with respect to (i) overlap percentage, (ii) existing as well as foreseeable potential demand and (iii) provision of dedicated ducts. In this context, Ecta objects to the reference to CEPT ECC Report 354 in paragraph 103, stating that it fails to capture the unique requirements of dedicated ducts for business-critical services. Additionally, Ecta calls for the removal of Annex 2, asserting that it includes content that exceeds the scope of BEREC's high-level guidance and that it disagrees with some of its content, and should therefore be excluded.

4.1.2 BEREC response

BEREC agrees with Ecta on the fact that the estimation of future foreseeable reasonable needs should take into account the specificities of the business clients market. This is why the current version of the guidelines invites DSBs to take into account "the number of residential or business premises (taking into account that business premises sometimes require more capacity for one premises)".

Regarding the particular situation of a need of dedicated ducts, BEREC acknowledges the point raised by Ecta and agrees that, in specific circumstances, the deployment of dedicated ducts may be appropriate, but this cannot be provided as the default rule as BEREC would not consider such a general requirement to be proportionate. However, Member States may, if required in their national markets, consider using the possibility from Article 1(3) to "maintain or introduce measures in conformity with Union law which are stricter or more detailed than



those minimum requirements, where the measures serve to promote the joint use of existing physical infrastructure or enable a more efficient deployment of new physical infrastructure”

BEREC disagrees with Ecta with regards to reference to the ECC report on Defining and Calculating Availability of Space in Cable Ducts and the contents of Annex 2 of the Guidelines. BEREC considers that these are useful resources and have maintained their inclusion in the Guidelines. They are, anyway, only provided as an example of relevant material, the DSBs will take into account each case’s circumstances to decide to use them or not.

4.2 Capacity to be deployed

4.2.1 Stakeholders feedback

Stakeholder 2, while supporting the capacity requirement, emphasises the importance of **ensuring** cost-effective and practical implementation. They propose leveraging good practices from national broadband funding frameworks, such as Broadband Austria 2030 (BBA 2030),² which mandates non-discriminatory Layer 1 access for at least three operators.

To further reduce costs, **Stakeholder 2 recommends developing a “civil works atlas”**—a digital tool that maps planned construction projects across sectors. Such a tool would enable early coordination among telecom providers, municipalities, and utility companies, helping to avoid redundant digging and lowering deployment expenses.

Asotem is of the view that the draft BEREC Guidelines do not adequately address the requirements of ensuring sufficient capacity to accommodate foreseeable future reasonable needs if coordination of civil works is refused. In particular, Asotem considers that the draft Guidelines **fail to develop the operational criteria** required to comply with Article 5(6) of the GIA. For Asotem, this is particularly the case for (i) mandatory technical provision for additional capacity such as additional ducts, spare conduits, or oversized manholes, (ii) registration and traceability of reserved capacity, (iii) future access under objective and verifiable conditions and (iv) prevention of strategic use of coordination exceptions.

FTTH Council Europe considers that BEREC should consider a means to eliminate delays that in its view can arise when there is coordination of civil works. **FTTH Council Europe suggests allowing the party deploying the civil infrastructure to volunteer additional capacity as an alternative to coordination.** Open fibre also argues for the option of deploying additional

² Breitband Austria 2030: OpenNet, Sonderrichtlinie zur Umsetzung von Maßnahmen im Rahmen der Breitbandstrategie, GZ 2023-0.768.129 (BMF/BBA2030) 2030, available at <https://data.breitbandbuero.gv.at/BBA2030-SRL-ON-03.pdf>



infrastructure on a voluntary basis as an alternative to coordination of civil works can improve investment efficiency and help avoid market distortions in infrastructure rollout.

The FTTH Council encourages BEREC to **adopt ambitious capacity benchmarks** that are based on reasonable estimates for future demand, including the needs of multiple operators and evolving technology standards. In addition, the FTTH Council is of the view that where public funding is involved, capacity and access obligations must be fully consistent with EU state aid rules.

4.2.2 BEREC response

With respect to Ecta's view that the Guidelines should take into account existing as well as foreseeable potential demand, BEREC considers that the Guidelines appropriately takes this into account with respect to the factors that may be taken account of when determining what additional capacity needs to be deployed, such as in paragraph 90 of the Guidelines.

As noted above, in line with the broadband funding frameworks, such as Broadband Austria 2030, Stakeholder 2 considers that there is a need for a requirement that access is provided for at least three operators as a consistent practice. BEREC does not consider it appropriate to be prescriptive on the actual number of operators to be catered for in the capacity to be deployed and considers that the Guidelines provide an appropriate balance on taking account of existing as well as foreseeable potential demand while respecting that the actual means of applying the principles set out in the Guidelines should be with regard to taking national circumstances into account and in accordance with the requirements of the GIA. BEREC also notes that an NRA or DSB may determine the means by which available space in ducts should be determined.

BEREC notes the point raised by FTTH Council Europe with respect to evolving technology standards and has amended the Guidelines to take this into account in the factors to be considered when determining what additional capacity is to be deployed. BEREC considers that the other points raised by FTTH Council Europe with respect to determining the capacity to be deployed are already appropriately addressed in the Guidelines.

BEREC disagrees with the view of Asotem that the Guidelines inadequately address the requirement for additional capacity to be installed and does not believe that Asotem has substantiated its views with respect to this matter.

BEREC notes that as per paragraph 90 of the Guidelines a factor that may influence capacity to be deployed is the number of performant existing or credibly planned networks in a given area, including based on the information gathered under the circumstances referred to in Article 5(4)(a) of the GIA. BEREC considers that this is an appropriate level of guidance and does not



consider it to be appropriate to be prescriptive on the matter of overlap percentage, as raised by Ecta, in the Guidelines.

4.2.3 BEREC response- Transparency on physical infrastructure

Both Stakeholder 2 and Asotem raised the matter of transparency on physical infrastructure. BEREC considers that requirements with respect to transparency on physical infrastructure are already appropriately addressed under Articles 4, 6 and 12 of the GIA.

4.2.4 BEREC response- Access to physical infrastructure

BEREC considers that Asotem's concerns with respect to requirements regarding future access under objective and verifiable conditions access to physical infrastructure are already appropriately addressed under Article 3 of the GIA and the associated Commission guidance on that Article.

4.2.5 BEREC response- Voluntary deployment of additional capacity as an alternative to coordination

While BEREC welcomes voluntary deployment of additional capacity by operators, such voluntary measures do not relieve such operators of their obligations with respect to coordination of civil works under Article 5 of the GIA (GIA does not include any such exemption) and BEREC does not therefore agree with FTTH Council Europe's and Open fibre's suggestion in this regard. Good practices can however be kept as long as they comply with GIA (see addition in paragraph 15 of the guidelines).

4.2.6 BEREC response- Alignment with State aid rules

BEREC agrees with FTTH Council Europe with respect to alignment on State aid rules, and notes as per paragraphs 97 and 98 of the Guidelines, that in this context where public funding is involved, capacity and access obligations must be fully consistent with EU State aid rules.



Annex 1 List of Abbreviations

BEREC	Body of European Regulators for Electronic Communications
DSB	Dispute Settlement Body
ECN	Electronic Communication Network
GIA	Gigabit Infrastructure Act
SMP	Significant Market Power
VHCN	Very High Capacity Network

