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to: Delegations

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No. Cion prop.: 7999/13 TELECOM 60 COMPET 177 CODEC 686  
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Subject: Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks  
- *Examination of a Presidency text*

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1. On 19 December, the Presidency distributed doc. 18049/13, which is the text of the above mentioned proposal, but re-drafted in the form of a *Directive* while making reference to the main thrust of the comments from delegations as well as to the various amendments adopted by the European Parliament's industry (ITRE) committee on 28 November. This text was discussed in the meetings of the WP TELE on 9 and 16 January.
2. On the basis of the discussions in the WP TELE and taking into account the written comments received from 18 delegations, the Presidency put together the attached Presidency compromise text. As far as the articles of the text are concerned, the following main changes have been introduced:

- Art.2 ("Definitions"): the definition of "physical infrastructure" has been substantially amended, the definitions of "major renovation works" and "permit" have been further clarified and a new definition of "concentration point" has been introduced.
- Art.3 ("Access to existing physical infrastructure"): paragraph 1 has been amended to underline the property rights of owners, two further reasons for refusal of access have been introduced in paragraph 2 and in paragraph 5 (and throughout the text), it has been made clear that any time frame commences from the moment of the submission of a complete request.
- Art.4 ("Transparency concerning physical infrastructure"): the set of minimum information in paragraph 1 has been simplified and further reasons to restrict access to such information have been introduced. A new paragraph 11 has been introduced on confidentiality and business secrets.
- Art.5 ("Coordination of civil works"): an amendment has been introduced in paragraph 2 to clarify the issue of costs associated with civil works and a further exemption of "critical national infrastructure" has been introduced in paragraph 5.
- Art.7 ("In-building *infrastructure*"): the title of this article (and the following article) has been changed, the situation with regard to single dwellings in paragraph 2 has been clarified and further exemption for categories of buildings have been introduced in paragraph 3.
- Art.8 ("Access to in-building *infrastructure*"): paragraph 3 has been amended *inter alia* in order to underline the property rights of owners, a new paragraph 4 has been introduced, which allows for a new kind of exemption and paragraph 5 has been amended to further clarify the relationship between network providers and owners.

- Art.9 ("Competent bodies"): paragraph 1 has been amended in order to allow for one or more dispute settlement bodies, paragraph 2 now allows for fees to be charged to cover costs, paragraph 3 specifies that the single information point could comprise one of more competent bodies and paragraph 4 has been amended and addresses the cooperation between the dispute settlement body and the single information point, including with regard to penalties.
- Articles 6, 10, 10a, 11 and 11a have not been amended but in regard of art.10a ("Transposition") and in view of the forthcoming talks with the European Parliament, the Presidency proposes a period of 1 year to comply with the Directive and 1 year to apply the measures. Further deadlines in the text, which have been put in brackets, are subject to further discussion.
- With regard to the European Parliament's amendments and in view of the discussions and written comments, it appears that the following amendments could be supported in principle: 28, 31, 32, 35, 38, 44, 46, 50, 52, 54, 55. In as far as possible, the Presidency has tried to accommodate the thrust of these amendments in the attached Presidency text. On the other hand, there seems to be little to no support for the following amendments: 24, 25, 33-37, 39, 40, 42, 43, 47, 48, 49, 51, 56, 60, 61, 62.

It should be noted that the changes introduced in the attached text concerns text, which has been deleted as compared to the Commission's initial proposal (i.e. text in ~~strike-through~~), or text, which has been added as compared to the Commission's initial proposal (i.e. **bold text**).

3. The Presidency intends to introduce the attached text at the meeting of the WP TELE on Thursday 23 January and to broadly explain the changes which have been introduced. At the meeting of the WP TELE on Friday 24 January, delegations will be invited to give their comments on the Presidency text in view of preparing a request for a Coreper mandate to start exploratory talks with the Parliament.

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Proposal for a

**DIRECTIVE ~~REGULATION~~ OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**on measures to reduce the cost of deploying high-speed electronic communications  
networks**

Article 1: **Subject matter and scope**

Article 2: **Definitions**

Article 3: **Access to existing physical infrastructure**

Article 4: **Transparency concerning physical infrastructure**

Article 5: **Coordination of civil works**

Article 6: **Permit granting**

Article 7: **In-building equipment**

Article 8: **Access to in-building equipment**

Article 9: **Competent bodies**

Article 10: **Review**

Article 11: **Entry into force**

**Proposal for a**

**DIRECTIVE REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL**

**on measures to reduce the cost of deploying high-speed electronic communications  
networks**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> OJ C, , p..

<sup>2</sup> OJ C, , p..

- (1) The digital economy is changing the Single Market profoundly. With its innovation, speed and reach across borders it has the potential to take Single Market integration to a new level. The Union's vision is a digital economy that delivers sustainable economic and social benefits based on modern online services and fast Internet connections. A high quality digital infrastructure underpins virtually all sectors of a modern and innovative economy and is of strategic importance to social and territorial cohesion. Therefore, all citizens and businesses must have the opportunity to be part of the digital economy.
- (2) Acknowledging the importance of high-speed broadband rollout, Member States have endorsed the ambitious broadband targets set out in Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "The Digital Agenda for Europe- Driving European growth digitally"<sup>3</sup> ("the Digital Agenda"): 100% broadband coverage by 2013 and increased speeds of 30MBps for all households, with at least 50% of the households subscribing to Internet connections above 100MBps by 2020.
- (3) The Digital Agenda has also identified the need for policies to lower the costs of broadband deployment in the entire territory of the Union, including proper planning and coordination and reducing administrative burdens.
- (4) Taking into account the need for action at the EU level to provide better broadband coverage, including by reducing the cost of high-speed broadband infrastructure<sup>4</sup>, the Single Market Act II<sup>5</sup> stresses the need for additional efforts in order to achieve quickly the objectives set in the Digital Agenda for Europe by *inter alia* addressing the high-speed network investment challenge.

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<sup>3</sup> COM (2010) 245; see also the Digital Agenda review, COM (2012) 784 final.

<sup>4</sup> Conclusions of the European Council of 13/14 December 2012, EUCO 205/12, item 17.

<sup>5</sup> COM (2012) 573 final.

- (5) The rolling out of high-speed fixed and wireless electronic communications networks across the Union requires substantial investments a significant portion of which is represented by the cost of civil engineering works.
- (6) A major part of these costs can be attributed to inefficiencies in the rollout process related to the use of existing passive infrastructure (such as ducts, conduits, manholes, cabinets, poles, masts, antenna installations, towers and other supporting constructions), bottlenecks related to co-ordination of civil works, burdensome administrative permit granting procedures, and bottlenecks concerning in-building deployment of networks.
- (7) Measures aiming at increasing efficiency in the use of existing infrastructures and at reducing costs and obstacles in carrying out new civil engineering works should provide a substantial contribution to ensure a fast and extensive deployment of high-speed electronic communications networks while maintaining effective competition, **without negatively impacting the safety, security and smooth operations of the existing public infrastructure.**
- (8) Some Member States have adopted measures intended to reduce the costs of broadband rollout. Scaling up these best practices across the Union could significantly contribute to the establishment of a digital single market. However those practices remain scarce and scattered. Moreover differences in regulatory requirements sometimes prevent cooperation across utilities and may raise barriers to entry for new network operators and new business opportunities, hindering the development of a single market for use and deployment of physical infrastructures for high-speed electronic communications networks. Finally, the initiatives at Member State level do not always seem to be holistic, whereas it is essential to take action across the whole rollout process, and across sectors, in order to achieve a coherent and significant impact.

- (9) This **Directive Regulation** aims at providing some minimum rights and obligations applicable across the Union in order to facilitate the rollout of high-speed electronic communications networks and cross-sector coordination. While ensuring a minimum level playing field, this should be without prejudice to existing best practices and measures adopted at national and local level entailing more detailed provisions and conditions as well as additional measures complementing those rights and obligations, in accordance with the subsidiarity principle.
- (10) In light of the *lex specialis* principle, when more specific regulatory measures in conformity with EU law apply, these should prevail over the minimum rights and obligations provided for in this **Directive Regulation**. Therefore this **Directive Regulation** should be without prejudice to EU law and in particular to any specific regulatory measure, including the imposition of remedies on undertakings having significant market power **and symmetric obligations pursuant to Article 12 of the Framework Directive**, applied in accordance with the Union regulatory framework for electronic communications (Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>6</sup>, Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)<sup>7</sup>, Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)<sup>8</sup>, Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)<sup>9</sup> and Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services<sup>10</sup>).

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<sup>6</sup> OJ L 108, 24.4.2002, p. 33.

<sup>7</sup> OJ L 108, 24.4.2002, p. 21.

<sup>8</sup> OJ L 108, 24.4.2002, p. 7.

<sup>9</sup> OJ L 108, 24.4.2002, p. 51.

<sup>10</sup> OJ L 249, 17.9.2002, p. 21.



- (11) It can be significantly more efficient for electronic communications network operators, in particular new entrants, to re-use existing physical infrastructures, including those of other utilities, in order to roll-out electronic communications networks, in particular in areas where no suitable electronic communications network is available or where it may not be economically feasible to build-up a new physical infrastructure. Moreover, synergies across sectors may significantly reduce the need for civil works due to the deployment of electronic communications networks and therefore also the social and environmental costs linked to them, such as pollution, nuisances and traffic congestion. Therefore this ~~Directive~~ **Regulation** should be applicable not only to electronic communications network providers but to any owner or holder of rights to use, **in the latter case without prejudice to the property rights of any third party**, extensive and ubiquitous physical infrastructures suitable to host electronic communications network elements, such as physical networks for the provision of electricity, gas, water and sewage **and drainage systems**, heating and transport services.
- (12) In view of their low degree of differentiation, physical facilities of such networks can often host at the same time a wide range of electronic communications network elements, including those capable of delivering broadband access services at speeds of at least 30 Mbps in line with the technological neutrality principle, without affecting the main service conveyed and with minimum adaptation costs. Therefore a physical infrastructure that is intended to only host other elements of a network without becoming itself an active network element – such as in the case of dark fibre –, can be in principle used to accommodate electronic communications cables, equipment or any other element of electronic communications networks, regardless of its actual use or its ownership, **in the absence of any security concerns or prejudice to future business interests of the owner of the infrastructure**. Without prejudice to the pursuit of the specific general interest linked to the provision of the main service, synergies across network operators should be encouraged in order to contribute at the same time to achieving the targets of the Digital Agenda.

- (13) While this **Directive Regulation** should be also without prejudice to any specific safeguard needed to ensure **safety and public health**, the security and integrity of the networks, **including that of critical infrastructure**, as well as to ensure that the main service provided by the network operator is not affected, **in particular in drinking water networks**, general rules in national legislation prohibiting network operators to negotiate access to physical infrastructures by electronic communications network providers could prevent the establishment of a market for access to physical infrastructures and should therefore be abolished. At the same time, the measures provided in this **Directive Regulation** are without prejudice to the possibility of the Member States to render the provision of infrastructure access by utilities operators more attractive by excluding revenues stemming from this service from the basis for the calculation of end-users tariffs for their main activity or activities, in accordance with applicable EU law.

(14) A network operator may refuse access to specific physical infrastructures due to objective reasons. ~~In particular,~~ **The operator may be legally prevented, either by specific legislation or private contract, in line with EU law, from giving access to this infrastructure. Furthermore,** a physical infrastructure may not be technically suitable in view of specific circumstances concerning infrastructures for which access has been requested, including **current** lack of available space **or due to future need of space which is sufficiently demonstrated, for instance by public investment plans.** Similarly, in specific circumstances, sharing the infrastructure may jeopardise **safety or public health,** network integrity and security, **including that of critical infrastructure,** or may endanger the provision of services that are primarily provided over the same infrastructure. Moreover, when the network operator already provides wholesale physical network infrastructure access that would meet the needs of the access seeker, access to the underlying physical infrastructure may have an adverse economic impact on its business model and incentives to invest while possibly entailing an inefficient duplication of network elements. At the same time in the case of physical infrastructure access obligations imposed pursuant to the Union regulatory framework for electronic communications, such as those on undertakings having significant market power, this would be already covered by specific regulatory obligations that should not be affected by this **Directive Regulation.**

- (15) When electronic communications networks providers request access in a specified area, network operators should make available an offer for the shared use of their facilities under fair terms and conditions, including price, unless access is refused based on objective reasons. Depending on circumstances, several elements could influence the conditions under which such access is granted, such as: any additional maintenance and adaptation costs; any preventive safeguards to be adopted to limit adverse impacts on network **safety**, security and integrity; any specific liability arrangements in the event of damages; the use of any public subsidy granted for the construction of the infrastructure, including specific terms and conditions attached to the subsidy or provided under national law in compliance with Union law; **the ability to deliver or provide infrastructure capacity to meet public service obligations**; any constraints stemming from national provisions aiming at protecting the environment, public health, public security or to meet town and country planning objectives.
- (16) In the event of disagreement in commercial negotiation on technical and commercial terms and conditions each party should be able to call on a dispute resolution body at national level to impose a solution to the parties, in order to avoid unjustified refusals to deal or the imposition of unreasonable conditions. When determining prices for granting access, the dispute resolution body should take into account the investments made on the physical infrastructure. In the specific case of access to physical infrastructures of electronic communications network operators, the investments made in this infrastructure may directly contribute to the objectives of the Digital Agenda for Europe and downstream competition may be influenced by free-riding. Hence, any access obligation should take **fully** into account the economic viability of these investments based on **their risk profile**, any time schedule for the return on investment, any impact of access on downstream competition **and consequently on prices and return on investment**, any depreciation of the network assets at the time of the access request, any business case underpinning the investment done, in particular in recently built physical infrastructures used for the provision of high-speed electronic communications services, and any possibility **previously** offered to the access seeker to co-deploy.

- (17) In order to effectively plan the deployment of high-speed electronic communications networks and to ensure the most effective use of existing infrastructures suitable for rolling out electronic communications networks, undertakings authorised to provide electronic communications networks should be able to have access to minimum information concerning physical infrastructures available in the area of deployment. Such minimum information should allow for the assessment of the potential for using existing infrastructure in a specific area as well as to reduce damages to any existing physical infrastructures. In view of the number of stakeholders involved and in order to facilitate access to that information, also across sectors and borders, such minimum information should be made available via a single information point. That information point should allow access to minimum information already available in electronic form subject to limitations to ensure network security and integrity, **including that of critical infrastructure**, or to safeguard legitimate operating and business secrets.
- (18) While not imposing any new mapping obligation on Member States, this **Directive Regulation** provides that minimum information already collected by public sector bodies and available in electronic form pursuant to national initiatives as well as under Union law (such as Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)<sup>11</sup>) should be made available, e.g. via hyperlink, to a single information point with a view to allow a coordinated access to information on physical infrastructures for electronic communications network providers while at the same time ensuring the security and integrity of any such information, **in particular for national critical infrastructure**. Such provision of information should be without prejudice to the transparency requirements already applicable to the re-use of public sector information pursuant to Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information<sup>12</sup>. Where information available to the public sector does not ensure adequate knowledge of the existing physical infrastructures in a specific area or of a certain type, network operators should make the information available to the single information point upon request.

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<sup>11</sup> OJ L 108, 25.4.2007, p. 1.

- (19) Where minimum information is not available via a single information point, the possibility of electronic communications network operators to directly request such specific information from any network operator in the area concerned should be nevertheless ensured. In addition to that, if the request is reasonable, in particular if needed in view of the possibility to share existing physical infrastructures or to coordinate civil works, electronic communications network operators should be granted the possibility to make in-site surveys and to request information concerning planned civil works under transparent, proportionate and non-discriminatory conditions and without prejudice to the safeguards adopted to ensure network security and integrity as well as protecting **confidentiality, and** operating and business secrets. Advanced transparency of planned civil works by network operators themselves, or by proactive single information points empowered to request such information, should be incentivised, in particular for areas of greatest utility, by redirecting authorised operators to such information whenever available.
- (20) Where disputes concerning access to the information on the physical infrastructures in view of deploying high-speed electronic communications networks arise, the single information point should be able to solve such disputes by means of a binding decision, without prejudice to the possibility of any party to refer the case to a court.
- (21) Coordination of civil works concerning physical infrastructures may ensure significant savings and minimise inconvenience to the area affected by the deployment of new electronic communications networks. For this reason, regulatory constraints preventing as a general rule the negotiation among network operators with a view to coordinate such works in order to deploy also high-speed electronic communications networks should be prohibited. In the event of civil works not financed by public means, however, this **Directive** should be without prejudice for the stakeholders to conclude civil works coordination agreements according to their own investment and business plans and their preferred timing.

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<sup>12</sup> OJ L 345, 31.12.2003, p. 90.

(22) Civil works fully or partially financed by public means should aim at maximising the positive collective outcome, by exploiting the positive externalities of these works across sectors and ensuring equal opportunities to share the available and planned physical infrastructure in view of deploying electronic communications networks. While this should not negatively affect the main purpose of the civil works financed by public means, timely and reasonable requests to coordinate deployment of elements of high-speed electronic communications networks, ensuring for example the coverage of any additional costs, **including those caused by delays**, and the minimisation of changes to the original plans, should be met by the ~~undertaking~~ **network operator carrying out directly or indirectly, for example through a sub-contractor** the civil works concerned under proportionate, non-discriminatory and transparent terms, ~~without~~. **Without** prejudice to applicable State aid rules, **Member States may further provide rules on apportioning the costs associated with the coordinated deployment**. Specific settlement procedures should be available to ensure the rapid resolution of disputes concerning the negotiation of these coordination agreements under reasonable, proportionate, non-discriminatory and transparent terms. Such provisions should be without prejudice to the right of the Member States to reserve capacity for electronic communications networks even in the absence of specific requests, in view of meeting future demand for physical infrastructures to maximise the value of civil works, or to adopt measures entailing similar rights to coordinate civil works for operators of other types of networks, such as gas or electricity.

- (23) A number of different permits concerning the deployment of electronic communications networks or new network elements may be necessary, including building, town planning, environmental and other permits, in order to protect national and Union general interests. The number of permits required for the deployment of different types of electronic communications networks and the local character of the deployment may entail the application of a variety of procedures and conditions. While preserving the right of each competent authority to be involved and maintain its decision making prerogatives in accordance with the subsidiarity principle, the establishment of a single point providing information about ~~all the~~ procedures and general conditions applicable to civil works could reduce complexity and increase efficiency and transparency, in particular for new entrants or smaller operators not active in that area. Moreover undertakings deploying electronic communications networks should have the right to submit their permit request through a single contact point, entrusted with the responsibility of ~~coordinating~~ **facilitating** the different procedures and monitoring whether the decisions are adopted within the legal deadlines. Such a contact point should act as a one-stop-shop, without necessarily exercising decision-making powers unless so entrusted by national law
- (24) To ensure that permit granting procedures do not act as barriers to investment, and that they do not have an adverse effect on the single market, a decision on whether or not to grant permit requests **concerning the deployment of electronic communications networks or new network elements** should be in any case available at the latest within six months, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable to the permit granting procedure in accordance with national or Union law. Such decision may be tacit or explicit in character according to the applicable legal provisions. Moreover, any delay in deciding on permits granting should trigger the right of compensation to undertakings that have requested such permits if they can prove that they have suffered damages due to such a delay. Such a right should be exercised in accordance with the procedural and substantive safeguards provided in national laws.



(25) In order to ensure that such permits granting procedures are completed within reasonable deadlines, Member States may establish several safeguards, such as tacit approval, or take measures to simplify granting procedures by *inter alia* reducing the number of permits needed to deploy electronic communications networks or by exempting certain categories of small or standardised civil works from permit granting. Authorities, at national, regional or local level, should justify any refusal to grant such permits in their competence, on **the** basis of transparent, non-discriminatory, objective and proportionate criteria and conditions. This should be without prejudice to any measure adopted by the Member States, in view of exempting certain elements of electronic communications networks, whether passive or active, from permit granting.

(26) Achieving the targets of the Digital Agenda requires that the infrastructure rollout is brought close to the end-users location, while fully respecting the principle of proportionality as regards any limitation brought to the right of property in view of the general interest pursued. Existence of high-speed electronic communications networks up to the end-user should be facilitated while ensuring at the same time technological neutrality, in particular by high-speed-ready in-building physical infrastructure. In view of the fact that providing for mini-ducts during the construction of the building has only a limited incremental cost while retrofitting buildings with high-speed infrastructure may represent a significant part of the cost of high-speed network deployment, all new or majorly renovated buildings should be equipped with physical infrastructure, allowing the connection of end-users with high-speed networks. In order to roll-out high-speed electronic communications network, ~~moreover~~, new ~~multi-dwelling~~ buildings, as well as majorly renovated ~~multi-dwelling~~ buildings should be equipped with an access **point (in case of single dwellings)** or concentration point **(in case of multi-dwellings)**, by which the provider may access the in-building network. ~~In practice, this would mean that~~ **Moreover, in case of multi-dwellings**, building developers should foresee that empty ducts are provided from every dwelling to a concentration point, located in or outside the building. There may be cases such as new single dwellings or categories of major renovation works in isolated areas where the prospect of high-speed connection is considered, on objective grounds, too remote to justify ~~the additional costs of deploying in-house high-speed-ready physical infrastructures and/or~~ **an access or concentration point or where providing for this infrastructure would be disproportionate for other economic, urban heritage conservation or environmental reasons, such as for specific categories of monuments.**

- (27) When providers of public communications networks deploy high-speed networks in a specific area, there are significant economies of scale if they can terminate their network to the building concentration point, irrespective of ~~whether the owners, condominium or residents have~~ **a subscriber has** expressed explicit interest for the service at that moment in time, but provided that impact on private property is minimised, by using existing physical infrastructure and restoring the affected area. Once the network is terminated at the concentration point, the connection of an additional customer is possible at a significantly lower cost, in particular by means of access to a high-speed-ready vertical segment inside the building, where it already exists. **This objective is equally fulfilled when the building itself is actually already equipped with a high-speed electronic communications access network, while at the same time access to this in-building network is provided to any provider of a public communications network who has an active subscriber in the building on transparent, proportionate and non-discriminatory terms and conditions. This may in particular be the case in Member States who have taken measures on the basis of Article 12 of the Framework Directive.**
- (28) In view of the social benefits stemming from digital inclusion and taking into account the economics of deployment of high-speed electronic communications networks, where there is neither existing passive or active high-speed-ready infrastructure serving end-users premises nor alternatives to provide high-speed electronic communications networks to ~~end-users~~ **a subscriber**, any provider of public communications networks provider should have a right to terminate its network to a private premise at its own costs, ~~when it has obtained the agreement of the subscriber~~ **if the owner does not object within a reasonable deadline**, and provided that it minimises the impact on private property, for example, when possible, by reusing existing physical infrastructure available in the building or ensuring full restoration of the affected areas.

- (29) ~~Without prejudice to the tasks entrusted to national regulatory authorities provided under the Union regulatory framework for electronic communications, in the absence of specific designations by Member States, in order to ensure consistent dispute settlement decisions, such functions provided for in this Directive Regulation should be assigned to the authorities fulfilling the tasks provided in Article 20 of Directive 2002/21/EC, taking into account the expertise available and the guarantees of independence and impartiality. However, In~~ line with the principle of subsidiarity, this **Directive Regulation** should be without prejudice to the possibility of Member States to allocate the regulatory tasks provided herewith to ~~the~~ **authorities better best** suited to fulfil them in accordance with the domestic constitutional system of attribution of competences and powers and with the requirements set forth in this **Directive Regulation**.
- (30) Whatever body ~~be is~~ designated by the Member State for dispute settlement, it should ensure impartiality and independence *vis-à-vis* the parties involved. ~~Also, the designated authorities and~~ **should have appropriate competences and resources and sanctioning powers. Appropriate, effective, proportionate and dissuasive penalties should be provided by Member States** in the event of lack of compliance with the decisions adopted **by the competent authorities**.
- (31) In order to ensure effectiveness of the information points provided for in this **Directive Regulation**, Member States ~~deciding to appoint different bodies from the national regulatory authority fulfilling the tasks provided in Article 20 of Directive 2002/21/EC~~ should ensure adequate resources as well as that the relevant information concerning a specific area is made available at such information points at an optimal level of aggregation where valuable efficiencies may be ensured in view of the tasks assigned (~~such as~~ **including at the local** cadastre). In this regard, Member States may consider the possible synergies and economies of scope with the Points of Single Contact within the meaning of Article 6 of Directive 2006/123/EC of 12 December 2006 on services in the internal market (the Services Directive), with a view to build on existing structures and maximising the benefits for end-users.

- (32) Since the objectives of the proposed action aiming at facilitating the deployment of physical infrastructures suitable for high-speed electronic communications networks across the Union cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this **Directive Regulation** does not go beyond what is necessary in order to achieve those objectives.
- (33) This **Directive Regulation** respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably the right to privacy and the protection of business secrets, the freedom to conduct business, the right to property and the right to an effective remedy. This **Directive Regulation** has to be applied by the Member States in accordance with those rights and principles.

HAVE ADOPTED THIS **DIRECTIVE Regulation**:

## Article 1

### Subject matter and scope

1. This ~~Directive Regulation~~ aims to facilitate and incentivise the roll-out of high-speed electronic communications networks by promoting joint use of existing and enabling more efficient deployment of new physical infrastructure so that such networks can be rolled out at lower cost.
2. This ~~Regulation shall apply to all~~ **Directive approximates certain aspects of the laws, regulations and administrative provisions of the Member States concerning civil works and physical infrastructure, as defined in Article 2, by establishing minimum requirements related thereto.**
3. ~~This Regulation is without prejudice to the rights of Member States~~ **may** to maintain or introduce measures in conformity with Union law which contain more **stringent requirements** ~~detailed provisions~~ than those set out in this **Directive, such as those adopted pursuant to Article 12 of Directive 2002/19/CE (Framework Directive) or Articles 8-13a of Directive 2002/19/CE (Access Directive)** ~~Regulation.~~
4. This ~~Directive Regulation~~ is without prejudice to Directive 2002/21/EC, Directive 2002/20/EC, Directive 2002/19/EC, Directive 2002/22/EC and Directive 2002/77/EC.

## Article 2

### Definitions

For the purposes of this **Directive Regulation**, the definitions set out in Directives 2002/21/EC, 2002/20/EC, 2002/19/EC, 2002/22/EC and 2002/77/EC shall apply.

The following definitions shall also apply:

- (1) "network operator" means an electronic communications network provider as well as an undertaking providing a physical infrastructure intended to provide: a service of production, transport or distribution of gas, electricity, including public lighting, heating, water, including disposal or treatment of waste water and sewage, **drainage systems**; transport services, including railways, roads, ports and airports;
- (2) "physical infrastructure" means any element of a network which is ~~not active~~ **intended to host other elements of a network without becoming itself an active network element**, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles and their associated facilities; **cables, including dark fibre, as well as elements of networks actually used for the provision of drinking water intended for human consumption, as defined in Article 2 of Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption are not physical infrastructure in the meaning of this Directive**;
- (3) "high-speed electronic communications network" means an electronic communication network which is capable of delivering broadband access services at speeds of at least 30 Mbps.
- (4) "civil works" **means** every outcome of building or civil engineering works taken as a whole which is sufficient of itself to fulfil an economic or technical function ~~and entails one or more elements of a physical infrastructure~~;

- (5) "public sector body" means a State, regional or local authority, a body governed by public law or an association formed by one or several such authorities or one or several such bodies governed by public law;
- (6) "body governed by public law" means any body:
- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
  - (b) having legal personality;
  - (c) financed, in full or for the most part, by the State, or regional or local authorities, or other bodies governed by public law; or subject to management supervision by such authorities or bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other bodies governed by public law;
- (7) "in-building physical infrastructure" means physical infrastructure at the end-user's location, including elements under joint ownership, intended to host wired and/or wireless access networks, where such access networks are capable of delivering electronic communications services and connecting the building concentration point with the network termination point;
- (8) "high-speed-ready in-building physical infrastructure" means in-building physical infrastructure intended to host elements of high-speed electronic communications networks;
- (9) "major renovation works" means building or civil engineering works at the end user's location encompassing structural modifications of the in-building physical infrastructure **of the whole building** and requiring a building permit;
- (10) "permit" means ~~a formal~~ **an explicit** or ~~implied~~ **implicit** decision of a competent authority following any procedure under which ~~a person~~ **an undertaking** is required to take steps in order to legally execute building or civil engineering works;



- (11) “concentration point” means a physical point, located inside or outside the building, accessible to electronic communications network providers, whereby connection to the high-speed-ready in-building infrastructure is made available. It may host different network elements, including the network termination point in the case of single dwelling buildings (in this case referred to as "access point").

### *Article 3*

#### **Access to existing physical infrastructure**

1. **Member States shall ensure that e**Every network operator shall have the right to offer **to undertakings authorised to provide electronic communications networks** access to its physical infrastructure in view of deployment of elements of high-speed electronic communications networks. **Where the network operator is not the owner of the physical infrastructure this is without prejudice to the property rights of the owner, including any constraints imposed on the network operator by contract in conformity with Union law.**
2. **Member States shall ensure that, u**Upon specific written request of an undertaking authorised to provide electronic communications networks, any network operator ~~shall~~ **has**ve the obligation to meet all reasonable requests for access to its physical infrastructure under fair **and reasonable** terms and conditions, including price, in view of deploying elements of high-speed electronic communications networks.
3. **Member States shall require that e**Every refusal of access ~~is shall be~~ based on objective criteria, ~~which may relate in particular to~~ **such as:**
  - (a) the technical suitability of the physical infrastructure to which access has been requested to host any of the elements of electronic communications networks referred to in paragraph 2;

(b) availability of space to host the elements referred to in point (a);

(c) **safety and public health concerns;**

(d) **security and integrity of critical national infrastructure;**

(e) integrity and security of any network already deployed;

(~~f~~) the risk of serious interferences of the planned electronic communications services with the provision of other services over the same physical infrastructure;

(~~g~~) the availability of **viable** alternative means of wholesale physical network infrastructure access provided by the network operator and suitable for the provision of high-speed electronic communications networks.

The network operator shall state the reasons for any refusal within one month from the written request for access.

- 4 Where access is refused or agreement on specific terms and conditions, including price, has not been reached within two months from the written request for access, **Member States shall ensure that** either party is entitled to refer the issue to the competent national dispute settlement body.
5. **Member States shall require t**~~he~~ national dispute settlement body referred to in paragraph 4 ~~shall~~, taking full account of the principle of proportionality **and of third parties' rights, to** issue a binding decision to resolve the dispute initiated pursuant to paragraph 4, including the determination of fair **and reasonable** terms, conditions and prices where appropriate, within the shortest possible time frame and in any case within four months **from the submission of a complete request [except in exceptional circumstances]**, without prejudice to the possibility of any party to refer the case to a court. Any price set by the dispute settlement body shall take into account the impact of the requested access on the business plan underpinning the investments made by the network operator to whom access is requested, in particular in case of recently built physical infrastructures used for the provision of high-speed electronic communications services.

## Article 4

### Transparency concerning physical infrastructure

1. In order to request access to physical infrastructure in accordance with Article 3, **Member States shall ensure that** every undertaking authorised to provide electronic communications networks ~~shall have~~ the right to access, upon request, via a single information point, the following set of minimum information concerning the existing physical infrastructure of any network operator:
  - (a) location, **and** ~~route and geo-reference coordinates;~~
  - (b) ~~size,~~ type and current use of the infrastructure;
  - ~~— (c) name of the owner or of the holder of rights to use physical infrastructure and~~
  - (c) a contact point.

The undertaking requesting access shall specify the area concerned in view of deploying elements of high-speed electronic communications networks.

Access to the minimum information for the specified area shall be granted ~~forthwith~~ **promptly** in electronic form under proportionate, non-discriminatory and transparent terms. Access to the minimum information may be limited by the single information point only when considered necessary in view of the security of the networks and their integrity, **national security, public health or safety, confidentiality** or operating and business secrets.

~~The single information point~~ **Member States** shall ensure that access to the minimum information pursuant to this paragraph is **made available by the single information point** by [*Publications Office: please insert the exact date: entry into force of this Regulation + 12 months* **to be further discussed in the light of Article 10a**] at the latest.

2. **Member States shall require** ~~E~~every public sector body holding in electronic format the minimum information referred to in paragraph 1 concerning the physical infrastructure of a network operator by reason of its tasks ~~shall~~ **to** make it available to the single information point by electronic means before [*Publications Office: please insert the exact date: entry into force of this Regulation + 12 months* **to be further discussed in the light of Article 10a**], **without prejudice to limitations pursuant to paragraph 1**. Any update to this information and any new minimum information referred to in paragraph 1 received by the public sector body shall be made available to the single information point within ~~one~~ **[two]** months from the receipt.
3. Where the minimum information referred to in paragraph 1 is not held by public sector bodies in accordance with paragraph 2, **Member States shall require** any network operator ~~to shall~~ make available upon specific request of the single information point the minimum information referred to in paragraph 1 on its physical infrastructure in electronic format within one month from the request **for the specified area, without prejudice to limitations pursuant to paragraph 1**. The network operator shall make available to the single information point any update of the minimum information provided within one month from the actual modification of the physical network which changes that minimum information.
4. Where minimum information referred to in paragraph 1 is not available via the single information point, **Member States shall require** network operators ~~shall~~ **to** provide access to such information upon specific written request of an undertaking authorised to provide electronic communications networks. The request shall specify the area concerned in view of deploying elements of high-speed electronic communications networks. Access to information shall be granted within one month from the written request under proportionate, non-discriminatory and transparent terms, without prejudice to limitations pursuant to paragraph 1.

5. Upon specific written request of an undertaking authorised to provide electronic communications networks, **Member States shall require** network operators ~~shall~~ to meet reasonable requests for in-site surveys of specific elements of their physical infrastructure. The request shall specify the elements of the network concerned in view of deploying elements of high-speed electronic communications networks. In-site surveys of the specified network elements shall be granted under proportionate, non-discriminatory and transparent terms within one month from the written request, without prejudice to limitations pursuant to paragraph 1.
  
6. Upon specific written request of an undertaking authorised to provide electronic communications networks, **Member States shall require** any network operator ~~shall~~ to make available the following set of minimum information concerning on-going or planned civil works related to its physical infrastructure for which a permit has been granted, a permit granting procedure is pending or first submission to the competent authorities for permit granting is envisaged in the following [six] months:
  - (a) the location and the type of works;
  - (b) the network elements involved;
  - (c) the estimated date for starting the works and their duration;
  - (d) a contact point.

The request of an undertaking authorised to provide electronic communications networks shall specify the area concerned in view of deploying elements of high-speed electronic communications networks. Within two weeks from the written request, network operators shall provide the requested information under proportionate, non-discriminatory and transparent terms, without prejudice to limitations pursuant to paragraph 1.

7. **Member States shall take the necessary measures in order to ensure that t**The network operator may refuse the request pursuant to paragraph 6 if:
- it has made the requested information publicly available in electronic format or
  - access to such information is ensured via a single information point.
8. Upon specific request any network operator shall make available to a single information point the set of minimum information referred to in paragraph 6.
9. **Member States shall ensure that, i**n the event of a dispute arising in connection with the rights and obligations provided for in paragraphs 4 to 7, either party ~~is shall be~~ entitled to refer it to a national dispute settlement body. The body in charge of dispute settlement shall, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within [two months], without prejudice to the possibility of any party to refer the case to a court.
10. Member States may provide for exemptions from the obligations provided for in paragraphs 1 to 5 in the case of existing physical infrastructures considered not technically suitable to deploy high-speed electronic communications networks **or in case of critical national infrastructure**. Such measures shall be duly motivated in this regard. The interested parties shall be given the opportunity to comment on the draft measures within a reasonable period. Any such measure shall be notified to the Commission.
11. **Member States shall ensure that the undertakings authorised to provide electronic communications networks gaining access to information pursuant to this Article shall take appropriate measures to ensure respect of confidentiality and business secrets.**

## Article 5

### Coordination of civil works

1. **Member States shall ensure that** ~~Every~~ network operator ~~shall~~ have the right to negotiate agreements concerning coordination of civil works with undertakings authorised to provide electronic communications networks in view of deploying elements of high-speed electronic communications networks.
2. **Member States shall ensure that** ~~Every undertaking~~ **network operator** performing **directly or indirectly** civil works fully or partially financed by public means ~~shall~~ meets any reasonable request from undertakings authorised to provide electronic communications networks in view of deploying elements of high-speed electronic communications networks for civil works coordination agreement on transparent and non-discriminatory terms, provided that this does not entail any additional costs **including because of additional delays**, for the initially envisaged civil works and that the request to coordinate is filed as soon as possible and in any case at least one month before the submission of the final project to the competent authorities for permit granting. **Member States may provide rules on apportioning the costs associated with the coordination of civil works.**
3. Where agreement on coordination of civil works pursuant to paragraph 2 is not achieved within one month from the formal request to negotiate, **Member States shall ensure that** any party is entitled to refer the issue to the competent national dispute settlement body.
4. **Member States shall ensure that** ~~the~~ national dispute settlement body referred to in paragraph 3 ~~shall~~, taking full account of the principle of proportionality, issues a binding decision to resolve the dispute initiated pursuant to paragraph 3, including the determination of fair and non-discriminatory terms, conditions and charges where appropriate, within the shortest possible time frame and in any case within two months, **from the submission of a complete request**, without prejudice to the possibility of any party to refer the case to a court.

5. Member States may provide for exemptions from the obligations provided for in this Article and Article 4(6) for civil works of insignificant value **or in case of critical national infrastructure**. Such measures shall be duly motivated in this regard. The interested parties shall be given the opportunity to comment on the draft measures within a reasonable period. Any such measure shall be notified to the Commission.

#### *Article 6*

#### **Permit granting**

1. **Member States shall ensure that** ~~Every~~ undertaking authorised to provide electronic communications networks ~~shall have~~ the right to access by electronic means via a single information point, upon request, ~~any~~ information concerning the conditions and procedures applicable for granting permits for civil works needed in view of deploying elements of high-speed electronic communications networks, including any exemptions applicable to such elements as regards some or all permits required under national law.
2. **Member States shall ensure that** ~~Every~~ undertaking authorised to provide electronic communications networks ~~shall have~~ the right to submit, by electronic means via the single information point, applications for permits required for civil works needed in view of deploying elements of high-speed electronic communications networks. The single information point shall facilitate and ~~coordinate~~ **monitor** the permit granting process. In particular it shall ensure that the applications are forwarded to any competent authorities involved in granting the permits applicable to the civil works at stake as well as monitor compliance with the deadlines applicable in accordance with paragraph 3.
3. **Member States shall take the necessary measures in order to ensure that t**~~he~~ competent authorities ~~shall~~ grant or refuse permits within [six months] from receiving a **complete** request, without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure which are applicable to the permit granting procedure in accordance with national or Union law **or of any appeal proceeding**. Any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria.



4. **Member States shall ensure that** ~~Every~~ undertaking authorised to provide electronic communications networks which has suffered damage as a result of non-compliance with the deadlines applicable under paragraph 3 ~~shall have~~ the right to receive compensation ~~from the competent authority~~ for the damage suffered, in accordance with national law.

#### Article 7

##### **In-building equipment ~~infrastructure~~**

1. **Member States shall ensure that** ~~A~~all newly constructed buildings at the end-user's location, including elements under joint ownership, for which applications for building permits have been submitted after [*Publications Office: please insert the exact date: ~~entry into force of this Regulation + 12 months~~* **to be further discussed in the light of Article 10a**], ~~shall be~~ **are** equipped with a high-speed-ready in-building physical infrastructure, up to the network termination points. The same obligation applies in the event of major renovation works for which applications for building permits have been submitted after [*Publications Office: please insert the exact date: ~~entry into force of this Regulation + 12 months~~* **to be further discussed in the light of Article 10a**].
2. **Member States shall require that** ~~A~~all newly constructed multi-dwelling buildings, for which applications for building permits have been submitted after [*Publications Office: please insert the exact date: ~~entry into force of this Regulation + 12 months~~* **to be further discussed in the light of Article 10a**], ~~shall be~~ **are** equipped with a concentration point, located inside or outside the building, and accessible to electronic communications networks providers, whereby connection to the high-speed-ready in-building infrastructure is made available. **In the case of single dwelling buildings the concentration point may include the network termination point (access point).** The same obligation applies in the event of major renovation works concerning multi-dwelling buildings for which applications for building permits have been submitted after [*Publications Office: please insert the exact date: ~~entry into force of this Regulation + 12 months~~* **to be further discussed in the light of Article 10a**].

3. Member States may provide for exemptions for categories of buildings, in particular single dwellings, or major renovation works, from the obligations provided for paragraph 1 and 2, when ~~the cost of fulfilling those obligations is disproportionate,~~ **such as for specific categories of monuments, holiday homes or buildings in remote areas**. Such measures shall be duly motivated. The interested parties shall be given the opportunity to comment on the draft measures within a reasonable period. Any such measure shall be notified to the Commission.

#### *Article 8*

##### **Access to in-building ~~equipment~~ infrastructure**

1. **Member States shall ensure that e**Every provider of public communications networks ~~shall have~~ the right to terminate its network at the concentration point, provided that it minimise the impact on the private property and at its own costs, in view of accessing the high-speed-ready in-building physical infrastructure.
2. **Member States shall ensure that e**Every provider of public communications networks ~~shall have~~ the right to access any existing ~~high-speed-ready~~ in-building physical infrastructure **in view of deploying a high-speed electronic communications network on reasonable terms** if duplication is technically impossible or economically inefficient. ~~The holder of a right to use the in-building physical infrastructure shall grant access under non-discriminatory terms and conditions.~~

3. **Any holder of a right to use the concentration point and the in-building physical infrastructure shall meet all reasonable requests for access under fair and non-discriminatory terms and conditions. In case the holder of a right to use the concentration point or the in-building physical infrastructure is not the owner of that infrastructure this is without prejudice to the property rights of the owner.** Where agreement on access pursuant to paragraph 1 or 2 is not achieved within two months from the formal request of access, **Member States shall ensure that** each party ~~shall have~~ the right to refer the issue to the competent national dispute settlement body in order to assess the compliance with the requirements provided for in those paragraphs. This national dispute settlement body shall, taking full account of the principle of proportionality, issue a binding decision to resolve the dispute within the shortest possible time frame and in any case within [two months], without prejudice to the possibility of any party to refer the case to a court.
4. **Member States may grant exemptions from paragraphs 1 to 3 for buildings where access to existing network termination points at the end-users' location suitable for the provision of high-speed electronic communications services is ensured on transparent, proportionate and non-discriminatory terms and conditions.**
5. In the absence of available high-speed-ready in-building infrastructure, **Member States shall ensure that** every provider of public communications networks **intending to deploy a high-speed electronic communications network at the premise of a subscriber to a high-speed electronic communications service may publicly notify the owners of the relevant parts of the building concerned of its intention. In the absence of explicit opposition within one month, the provider of public communications networks** shall have the right to terminate its network equipment at the premise of a ~~subscriber to a high-speed electronic communications service, subject to its agreement~~ **the subscriber**, provided that it minimises the impact on the private property of **third parties** and at its own costs. **In case of explicit opposition, the parties shall negotiate the terms of an agreement for access. Owners shall meet all reasonable requests for access under non-discriminatory terms and conditions.**

## Article 9

### Competent bodies

1. ~~The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC shall perform the function of~~ **Member States shall ensure that each of the tasks assigned to the national dispute settlement body is undertaken by one or more** referred to in Article 3 (4), Article 4 (9), Article 5 (4) and Article 8(3), unless the Member State appoints other competent bodies.
2. Any ~~other~~ national dispute settlement body appointed by Member States pursuant to paragraph 1 shall be legally distinct and functionally independent of all network operators. **Member States may provide that the national dispute settlement body** ~~It~~ shall have the power to **charge fees to cover the costs of carrying out the tasks assigned to it** ~~impose on network operators appropriate, effective, proportionate and dissuasive sanctions in the event of breach of the obligations stemming from the decisions adopted when deciding the dispute.~~
3. ~~The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC shall~~ **Member States shall appoint one or more competent bodies at national, regional or local level to perform the functions of the single information point referred to in Article 4 and Article 6. unless the Member States may provide that the Single Information Point has the power to charge fees to cover the costs of carrying out the tasks assigned to it** ~~appoints other competent bodies.~~
4. **Member States shall require that all parties cooperate fully with the national dispute settlement body and the single information point. They shall lay down rules on penalties applicable to infringements of national measures adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided** ~~Any other single information point appointed by Member States pursuant to paragraph 3 shall have the power to impose on network operators~~ **shall be** appropriate, effective, proportionate and dissuasive ~~sanctions in the event of breach of the obligations stemming from Article 4 (3) and (8).~~

5. Member States shall notify to the Commission the identity of each competent body ~~designated~~ in accordance with this Article for carrying out a **function task** under this ~~Directive Regulation~~ by [*Publications Office: please insert the exact date: ~~entry into force of this Regulation~~ + 12 months* **to be further discussed in the light of Article 10a**] and any modification thereof, before such designation or modification enters into force.
6. Any decisions taken by any of the competent bodies referred to in this Article shall be subject to an appeal before a court in accordance with national law.

#### *Article 10*

##### **Review**

The Commission shall present a report to the European Parliament and the Council by [*Publications Office: please insert the exact date: ~~entry into force of this Regulation~~ + 12 months* **to be further discussed in the light of Article 10a**] at the latest on the implementation of this ~~Directive Regulation~~. The report shall include a summary of the impact of the measures provided by this ~~Directive Regulation~~ and an assessment of the progress towards achieving its objectives.

#### *Article 10a*

##### **Transposition**

**Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by [...date...]. They shall inform the Commission thereof.**

**They shall apply those measures from [...date...].**

**When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.**

*Article 11*

**Entry into force**

This **Directive** ~~Regulation~~ shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

*Article 11a*

**Addressees**

**This Directive is addressed to the Member States.**

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

\_\_\_\_\_