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THE EUROPEAN UNION**

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NOTE

from: Presidency
to: Delegations
No. Cion prop.: 7999/13 TELECOM 60 COMPET 177 CODEC 686
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No prev. doc.: 17610/13 TELECOM 347 COMPET 918 CODEC 2910

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
- Presidency text with issues and EP amendments for further discussions and comments

1. The Commission submitted, on 27 March 2013, a 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* with art. 114 TFEU as legal basis.¹ In June and December 2013, the TTE Council took note of the progress made with the examination of the proposal.² At its meeting on 5 December, the Council confirmed its preference for changing the proposed legal instrument from a Regulation into a Directive.³ On 12 December, the LT Presidency presented the WP TELE with a technically/legally adjusted text concerning a proposal for a *Directive*, without, however, changing the substance of the various provisions.⁴

¹ Doc. 7999/13.

² Docs. 10088/13 and 17014/13.

³ Press release 17341/13.

⁴ Doc. 17610/13.

2. Further to its announcement at the WP TELE of 12 December, the EL Presidency has put together the attached Presidency text, which throughout the text makes reference to comments made by delegations as well as to the various amendments adopted by the European Parliament's industry (ITRE) committee on 28 November.

3. It should be noted that:

- in the course of the examination of the proposal under the IE and LT Presidencies, 15 delegations submitted written comments, mainly of a general nature with only some of them suggesting concrete textual changes. In case these comments are shared by several delegations, the Presidency has referred to them in footnotes to the attached text (i.e. indicated as [^{fn}]), which means that the Presidency believes further discussion is needed in order to decide whether or not to make textual changes.
- the progress report submitted to the TTE Council of 5 December identifies in detail where divergences in views and other concerns exist and where further discussion will be needed, i.e. basically on all parts of the proposal.
- the text refers to Parliament's amendments (indicated as **AM1**) only for the sake of easy reference so as to allow for a discussion on their possible acceptability at the appropriate point in time.
- both the comments from delegations as well as Parliament's amendments were formulated on the basis of a proposal for a *Regulation*, but their relevance and meaning might be different now that the decision has been taken to go for a *Directive*.

Taking the above mentioned into account, the Presidency would like to offer delegations a further opportunity to make more specific comments and textual suggestions, which will allow it to put together a compromise text in the course of January, which could serve as a basis to start exploratory talks with the European Parliament, subject to a mandate from the Coreper.

3. Based on the comments from the delegations as well as on the progress reports, it appears that the main issues for further discussion in the WP TELE would include the following generic points across the different clusters:

- public health and safety; critical infrastructure; confidentiality (Cluster 1 and 2; in particular for access to existing infrastructure and transparency)
- ownership rights (Cluster 1 and 3; both as regards access to existing infrastructure and in-building physical infrastructure)
- dispute settlement (Cluster 4)
- role of SIP (Cluster 4)
- transposition period

4. The Presidency intends to discuss the above mentioned issues and the attached text at the meetings of the WP TELE on 9, 16 and 23 January. Delegations are most welcome to submit written comments, in particular specific textual suggestions, prior to these meetings and in any case by Friday 3 January at the latest.

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

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Proposal for a

**DIRECTIVE ~~REGULATION~~⁵ 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 Committee⁶,

Having regard to the opinion of the Committee of the Regions⁷,

Acting in accordance with the ordinary legislative procedure,

Whereas:

⁵ AM1.

⁶ OJ C , , p. .

⁷ 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.

AM2⁸

AM3⁹

- (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"¹⁰ ("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.

AM4¹¹

⁸ **AM2:** (1)The digital economy [...] cohesion. Therefore, all citizens *as well as the private and public sectors* must have the opportunity to be part of the digital economy.

⁹ **AM3:** (1a)*Whereas Information and Communication technologies are at the core of the digital society and today account approximately 20% of Europe's annual growth in productivity, 4.5% of Europe's GDP and generate 25% of private investment in R&D, potentially constituting an extraordinary contributor to growth and employment.*

¹⁰ COM (2010)245; see also [see also the Digital Agenda review](#), COM (2012) 784 final.

¹¹ **AM4:** (2) Acknowledging *that high speed* broadband rollout *is crucial for* Member States *to meet their commitments regarding the* 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*²⁹('the Digital Agenda'. *This Communication stipulates that by 2020 all Europeans should have access to internet speeds of above 30 Mbps and 50% or more of European households should subscribe to internet connections above 100 Mbps. However, given the rapid evolution of technologies that lead to even faster internet connections, and the increasing demand on e-services, these targets must be considered an absolute minimum and that the Union must aim fore more ambitious broadband targets.*

AM5¹²

- (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.

AM6¹³

AM7¹⁴

- (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 infrastructure¹⁵, the Single Market Act II¹⁶ 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.

¹² **AM5: (2a) Whereas estimates are that 50 billion devices will be connected to the Internet by 2020 and global data traffic is expected to grow 15 times by the end of 2017; this exponential growth in broadband traffic will require ambitious policies at Union and Member States level to increase the capacity in both our fixed and mobile networks, if Europe is to achieve more growth, competitiveness and productivity.**

¹³ **AM6: (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, better regulation, reduction of administrative burdens, and the promotion of cross-sectoral, convergent use of synergies in existing communications infrastructure, including modern broadcasting technology infrastructure.**

¹⁴ **AM7: (3a) Whereas reducing the costs of deploying high-speed electronic communications networks would also contribute to achieving the digitalisation of the Public Sector allowing to, beyond the reduction of costs for public administrations and the more efficient services provided to citizens, a digital leverage effect to all sectors of the economy.**

¹⁵ Conclusions of the European Council of 13/14 December 2012, EUCO 205/12, item 17.

¹⁶ 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.

AM8¹⁷

- (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.

AM9¹⁸

- (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.

AM10¹⁹

¹⁷ **AM8:** (5) The rolling out [...] works. *The abandonment of (some) cost-intensive civil engineering work can contribute to effective broadband delivery.*

¹⁸ **AM9:** (6) A major part of these costs can be attributed to inefficiencies in the rollout process related to the use of existing passive infrastructure, bottlenecks related to co-ordination of civil works and concerning in-building deployment of networks, burdensome administrative permit granting procedures, *high financial barriers and lack of feasible business plans in respect of broadband deployment in rural areas.*

¹⁹ **AM10:** (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, *encourage the replacement of obsolete networks and the upgrade to 'next generation access' while maintaining effective competition, without negatively impacting the safety, security and smooth operations of the existing public infrastructures.*

- (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.

AM11²⁰

²⁰ **AM11**: (9) *While respecting the subsidiarity and proportionality principle, this Directive aims at [...] subsidiarity principle. Another aim is to promote openness and effective competition in the field of network services.*

- (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, 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)²¹, 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)²², 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)²³, 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)²⁴ and Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services²⁵).

²¹ OJ L 108, 24.4.2002, p. 33.

²² OJ L 108, 24.4.2002, p. 21.

²³ OJ L 108, 24.4.2002, p. 7.

²⁴ OJ L 108, 24.4.2002, p. 51.

²⁵ 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 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, heating and transport services.

AM12²⁶

²⁶ AM12: (11) It can be significantly more efficient for electronic communications network operators, in particular new entrants, to re-use *suitable* existing physical infrastructures, [...] 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, 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. 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.

AM13²⁷

²⁷ **AM13:** (12) In view of [...] delivering broadband access services *high-speed and ultra high-speed* in line with the technological neutrality principle, [...] electronic communications networks, *in the absence of any security concerns or future business interests of the owners 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 *including the integration of all available technologies*, 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 the security and integrity of the networks as well as to ensure that the main service provided by the network operator is not affected, 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.

AM14²⁸

- (14) A network operator may refuse access to specific physical infrastructures due to objective reasons. In particular, a physical infrastructure may not be technically suitable in view of specific circumstances concerning infrastructures for which access has been requested, including lack of available space. Similarly, in specific circumstances, sharing the infrastructure may jeopardise network integrity and security 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**.

²⁸ **AM14**: (13) While this **Directive** should be also without prejudice to any specific safeguard needed to ensure the *safety*, [...] EU law.

- (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 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; any constraints stemming from national provisions aiming at protecting the environment, public health, public security or to meet town and country planning objectives.

AM15²⁹

²⁹ **AM15:** (15) When electronic [...] adaptation costs; any *impact on capacity and performance linked to the provision of the main service*; any preventive safeguards to be adopted to limit adverse impacts on network *safety*, security and integrity; [...] with Union law; *the ability to deliver or provide infrastructure capacity to meet or service 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. *The incremental costs that would arise when performing future civil works on a network, irrespective of who has initiated these works, and that are generated by the presence of elements of electronic communications networks, can be allocated to the undertakings to whom these elements of electronic communications networks belong.*

- (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 into account the economic viability of these investments based on any time schedule for the return on investment, any impact of access on downstream competition, 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 offered to the access seeker to co-deploy.

AM16³⁰

³⁰ **AM16:** (16) In the event of [...] investments made on the physical infrastructure, *the potential for leakage of State aid, the views of any relevant economic regulators for the infrastructure sectors concerned and all additional costs entailed in enabling the access.* In the specific case of [...] return on investment. *Dispute Resolution Bodies should also be mindful of any impact of access on capacity and performance in the provision of the main service,* any impact of access on downstream competition, any [...] 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 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)³¹) 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. 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 information³². 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.

³¹ OJ L 108, 25.4.2007, p. 1.

³² OJ L 345, 31.12.2003, p. 90.

- (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 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.

AM17³³

- (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 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.

³³ AM17: (20) Where [...], the *competent* single information point should [...] court.

(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 and the minimisation of changes to the original plans, should be met by the undertaking carrying out the civil works concerned under proportionate, non-discriminatory and transparent terms, without prejudice to applicable State aid rules. 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 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 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 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 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 or concentration point, by which the provider may access the in-building network. In practice, this would mean that 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 a concentration point.

AM18³⁴

AM19³⁵

³⁴ **AM18:** (26) Achieving [...], all new or majorly renovated buildings *may* 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 *may* be equipped with an access or concentration point, by [...] a concentration point.

³⁵ **AM19:** (26a) *A new Union Broadband-ready label should be introduced for buildings and apartments to help buyers and renters to identify buildings with access to a high-speed electronic communications networks. The Union Broadband-ready label should be a voluntary label promoting high-speed readiness of in-house infrastructures.*

- (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 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.
- (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, 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, 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 authorities better 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 designated by the Member State for dispute settlement, it should ensure impartiality and independence *vis-à-vis* the parties involved. Also, the designated authorities should have appropriate resources and sanctioning powers in the event of lack of compliance with the decisions adopted.

AM20³⁶

³⁶ AM20: (30) Whatever body [...] have appropriate *competences*, resources and sanctioning powers in the event of lack of compliance with the decisions adopted.

- (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 the 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 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: [³⁷]

- (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

³⁷ Several delegations comment that the definitions in this Directive, such as on "physical infrastructure", should be in line with those in the current regulatory framework for electronic communications and with the guidelines on public procurement, without indicating, however, where inconsistencies exist. Several delegations ask for the inclusion of additional definitions: "concentration point", "single information point", "national dispute settlement body", "in-site survey".

[³⁸] disposal or treatment of waste water and sewage; transport services, including railways, roads, ports and airports;

AM21³⁹

- (2) "physical infrastructure" means any element of a network which is not active such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles and their associated facilities; [⁴⁰]

AM22⁴¹

- (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.

AM23⁴²

- (4) "civil works" 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;

³⁸ Some delegations suggest the deletion of "water, including". See also AM22.

³⁹ **AM21**: (1) "network operator" [...] and sewage, *drainage systems and* transport services;

⁴⁰ It has been suggested to replace "not active" with "unused" and several delegations wish to exclude "dark fibre" from this Directive and one delegation wishes to exclude 'overground' infrastructure'.

⁴¹ **AM22**: (2) "physical infrastructure" means *the* element of a network [...] associated facilities, *with the exception of elements used for the carriage of drinking water intended for human consumption.*

⁴² **AM23**: (3) 'high-speed electronic communications network' means an electronic communication network which is capable of delivering broadband access services *of 100 Mbps and 1Gbps where possible and above.*

(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 and requiring a building permit;
- (10) "permit" means a formal or implied decision of a competent authority following any procedure under which a person is required to take steps in order to legally execute building or civil engineering works

AM24⁴³

⁴³ AM24: (3) 'high-speed electronic communications network' means an electronic communication network which is capable of delivering broadband access services *of 100 Mbps and 1Gbps where possible and above*.

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.

AM25⁴⁴

2. **Member States shall ensure that, u**Upon specific written request of an undertaking authorised to provide electronic communications networks, any network operator ~~shall have~~ the obligation to meet all reasonable requests for access to its physical infrastructure under fair terms and conditions, including price, in view of deploying elements of high-speed electronic communications networks. [⁴⁵]

AM26⁴⁶

⁴⁴ AM25: 1. Every network operator shall have the right to offer access to its physical infrastructure in view of deployment of elements of high-speed electronic communications networks, *while ensuring the safety and security of the network; reciprocally, electronic communications network operators shall have the right to offer access to its physical infrastructure in view of deployment of other networks, provided that the deployment has the approval of the owners and the authorities responsible.*

⁴⁵ Several delegations seek clarification on the terms "reasonable requests" and "fair terms and conditions".

⁴⁶ AM26: 2. Upon specific written request of an undertaking authorised to provide electronic communications networks, any network operator shall, *subject to the availability of network capacity*, have the obligation to meet all reasonable requests for access to its physical infrastructure under fair terms and conditions, including price, *on condition that no problems can arise in connection with the security and safety of the network and keeping in mind the principle of reciprocity*, in view of deploying elements of high-speed electronic communications networks. *The obligation of network operators to meet all reasonable access requests under fair terms and conditions should be without prejudice to their obligation to respect the Union rules on state aid in case of government funded or guarantee investment in infrastructure.*

The involved authorities should harmonise their principles of setting terms and conditions and hold consultations with the network operators or their associations by [Publications Office: please insert the exact date: entry into force of this Regulation + 12 months].

AM27⁴⁷

3. **Member States shall require that** ~~Every~~ refusal of access ~~is shall be~~ based on objective criteria, which may relate in particular to: [⁴⁸]

AM28⁴⁹

(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;

AM29⁵⁰

AM30⁵¹

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

AM31⁵²

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

AM32⁵³

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

AM33⁵⁴

⁴⁷ AM27: 2 a. *This provision is without prejudice to landowners and private property owners right to decide how to administer and manage assets.*

⁴⁸ A number of delegations seek the inclusion of additional grounds for refusal: "national and public safety and/or health", "environmental risks", "risk for the continuity of the network", "risk for national safety and/or public safety", protection of property rights", "public and national security", "town and country planning objectives".

⁴⁹ AM28: 3. Every refusal of access shall be based on objective criteria, *such as*:

⁵⁰ AM29: (aa) *safety and public health concerns*;

⁵¹ AM30: (ab) *the security of critical national infrastructure*;

⁵² AM31: (b) *current and future* availability of space to host the elements referred to in point (a);

⁵³ AM32: (c) integrity, *safety* and security of any network already deployed;

⁵⁴ AM33: (d) the risk of *clear* interferences [...] physical infrastructure;

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

AM34⁵⁵

AM35⁵⁶

AM36⁵⁷

AM37⁵⁸

AM38⁵⁹

AM39⁶⁰

AM40⁶¹

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

AM41⁶²

⁵⁵ AM34: (e) the availability *or planned availability under published deployment plans* of alternative [...] networks.

⁵⁶ AM35: *ea) the proportional usage of the available space, so that a network operator that owns the physical infrastructure could reserve space for its own future investments.*

⁵⁷ AM36: *(eb) the high risk for the physical safety of workers accessing infrastructures other than those they were originally trained to operate with;*

⁵⁸ AM37: *(ec) the proportional usage of the available space, so that a network operator that owns the physical infrastructure could reserve space for its own future investments.*

⁵⁹ AM38: *(ed) the planned availability of alternative means of wholesale physical network infrastructure access, in the case national plans for the deployment of European Rail Traffic Management System exist.*

⁶⁰ AM39: *(ef) conditions whereby granting access to underground transport systems could result in disruption to long term investment and upgrades and/or result in travel disruption with a disproportionate economic impact.*

⁶¹ AM40: *(eg) exclusive contractual arrangements between network operators and their customers exist;*

⁶² AM41: The network [...] within *three months* 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, **to** issue a binding decision to resolve the dispute initiated pursuant to paragraph 4, including the determination of fair terms, conditions and prices where appropriate, within the shortest possible time frame [⁶³] and in any case within four months, 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.

AM42⁶⁴

AM43⁶⁵

⁶³ Some delegations wish for the time frame "to be determined by the Member State", others argue that the time frame should only start running "after all relevant material requested by the dispute resolution body is provided to it".

⁶⁴ AM42: 5. The national [...] paragraph 4, including *a recommendation on terms, [...] settlement body, state aid law, national infrastructure output statement, member state infrastructure funding agreement and PSO contract* shall take [...] electronic communications services. *The national dispute settlement body in its decisions shall also take into account the economic viability of these investments based on any time schedule for the return on investment, any impact of access on capacity and performance, any impact of access on downstream competition, any depreciation of the network assets at the time of the access request, and any possibility offered to the access seeker to co-deploy.*

⁶⁵ AM43: 5a. *If tasks have to be carried out which are connected with the shared use of the infrastructure, this may only be done by the network operator or by a party to whom the network operator has contracted the task out.*

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: [⁶⁶]

AM44⁶⁷

- (a) location, 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 a contact point.

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

AM44⁶⁸

⁶⁶ Delegations either wish to delete the "single information point" (SIP) or advocate that existing national/regional/local organisations assume the proposed functions or propose the creation of a single information "portal" where network operators can register if they have existing or are planning to work on or deploy new infrastructure in a specific area. Delegations also propose that SIPs could charge fees.

⁶⁷ AM44: 1. In order to [...] to access, upon *the justified* request *in view of developing better future telecommunication services*, via a single information point, the following set of minimum information concerning the existing physical infrastructure of any network operator *provided this does not affect the safety, integrity and security of the network*:

⁶⁸ AM44: The undertaking [...] communications networks *and the undertaking shall therefore gain access only to the data of that specific geographical area.*

Access to the minimum information for the specified area shall be granted forthwith 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 or operating and business secrets. [⁶⁹]

AM44⁷⁰

AM45⁷¹

~~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.

AM44⁷²

⁶⁹ Several delegations oppose that the SIP may limit access to information and some delegations believe that access to information could also be limited for "network continuity and national and/or public safety and/or health".

⁷⁰ **AM44:** Access to the minimum information for the specified area shall be granted *promptly* in electronic form under proportionate, non-discriminatory and *fully* transparent terms *respecting the principle of confidentiality. Single information points shall inform the concerned network operator about the exchange of information.* 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 or operating and business secrets *and when considered necessary in view of protecting fundamental public and individual interests according to national law,*

⁷¹ **AM45:** *With a view to safeguarding national security and the security and the integrity of certain elements of, and or areas on a network, Member States may decide to exempt certain areas from the obligation to grant the set of minimum information in electronic form. In these cases the access to minimum information may be limited to an examination in the offices of the network operator. Any such measure shall be notified to the Commission.*

⁷² **AM44:** *If existing infrastructure is not considered technically suitable to deploy high-speed electronic communications networks, Member States may provide exemptions from obligations provided for in paragraph 1. Such measure shall be notified to the Commission and duly motivated with all interested parties given the opportunity to comment on the draft measure.*

2. **Member States shall require** 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**]. 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 month from the receipt.

AM46⁷³

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. 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.

AM47⁷⁴

⁷³ **AM46**: 2. Every public sector [...] received by the public sector body shall be made available, *respecting the principle of confidentiality*, to the single information point within one month from the receipt. *single information points shall inform the concerned network operator about the exchange of information.*

⁷⁴ **AM47**: 3. Where the minimum [...] available upon specific *written* request of the single information point *for an area concerned by a possible high-speed deployment by an undertaking authorised to provide electronic communications networks* the minimum information [...] provided within one year from the actual modification of the physical network which changes that minimum information. *The procedures for making available or updating the information shall ensure that the network operator does not bear the costs associated with these operations.*

AM48⁷⁵

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.

AM49⁷⁶

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. [⁷⁷]

AM50⁷⁸

⁷⁵ *AM48: 3a. Subject to limitations in view of the physical security of the networks or operating and business secrets, the single information point may offer private individuals access to the minimum information for a specified area upon request or via its website. While the single information point may give access with or without administrative fee to individuals, this information shall be free-of-change for a property or land owner of a location requested or property owners adjacent to the specified area.*

⁷⁶ *AM49: 4. Where minimum [...] to paragraph 1. The procedures for making the information available shall ensure that the network operator does not bear the costs associated with this operation.*

⁷⁷ Delegations inquire about the definition of "in-site surveys", who should bear the costs for them, whether they can be limited "pursuant to paragraph 1" (i.e. network security and integrity and operating and business secrets).

⁷⁸ *AM50: 5. Upon specific written [...] pursuant to paragraph 1. The party making the request shall bear all costs entailed in organising and carrying out the in-site survey.*

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:

AM51⁷⁹

- (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.

AM51⁸⁰

⁷⁹ AM51: 6. Upon specific written request [...] following *four* months: **(AM51)**

⁸⁰ AM51: *With the aim of protecting commercial secrets, the inventory of planned civil works shall not be integrated into the same database as that of the general infrastructure inventory.* The request of [...] networks. Within *one month* 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. *The undertaking authorised to provide electronic communications networks shall inform the network operator as soon as possible of its wish to deploy a high-speed electronic communications network in the area in question, and, in any case, within six weeks of receiving the information requested.*

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] [⁸¹], 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. 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.

AM52⁸²

AM53⁸³

⁸¹ Some delegations believe the time frame should "be determined by the Member State", others believe that the time should only start ticking "after all relevant material requested by the dispute resolution body is provided to it".

⁸² AM52: 10. Member States may provide for exemptions from the obligations provided for in paragraphs 1 to 6 *when the information relates to critical national infrastructure where making it available could easily highlight vulnerabilities or* in the case of physical [...] notified to the Commission.

⁸³ AM53: 10a. *In all the cases listed in paragraphs 1, 2, 3 4, 5 and 6, the undertaking requesting access to information should limit the number of persons having access to such data, guarantee the confidentiality of the data, and should not distribute it to any third-party.*

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.^[84]

AM54⁸⁵

2. **Member States shall ensure that** Every undertaking performing 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 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.

AM55⁸⁶

AM56⁸⁷

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.

⁸⁴ Some delegations wish to also refer here to the grounds for refusal in article 3(3).

⁸⁵ AM54: 1. Every network operator [...] networks, *as well as, developing its own networks.*

⁸⁶ AM55: 2. Every [...] for permit granting. *Undertakings authorised to provide electronic communication networks shall adequately contribute towards covering the costs of the work. If additional costs arise, they too shall be borne by the undertaking which has made the request.*

⁸⁷ AM56: 2a. *Every attempt shall be made by undertakings performing civil works and undertakings authorised to provide electronic communications networks to coordinate civil works with those of energy distribution system operators in order to minimise the works needed and to install, maintain or upgrade ICT and energy infrastructures concurrently.*

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, 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 for civil works of insignificant value. 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. [⁸⁸]

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.

AM57⁸⁹

⁸⁸ Some delegations believe additional grounds for exemptions should be added (e.g. public health, safety, environment).

⁸⁹ AM57: 1. Every undertaking authorised to provide electronic communications networks shall have the right to access [~~by...request~~] any information concerning [...] 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 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. [⁹⁰]

AM58⁹¹

3. **Member States shall take the necessary measures in order to ensure that t**The competent authorities shall grant or refuse permits within [six months] from receiving a [⁹²] 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. Any refusal shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria.

AM59⁹³

⁹⁰ Delegations appear to have difficulties with the role of the SIP in this paragraph, some suggest to replace "coordinate" with "monitor", others point out that the SIP cannot be entrusted with decision-making powers in federal States. Yet others argue that the SIP should be allowed to charge fees for its services.

⁹¹ AM58: 2. Every undertaking authorised to provide electronic communications networks shall have the right to submit *applications via an* information point for permits required for civil works needed in view of deploying elements of high-speed electronic communications networks. *An* information point *designated by a Member State or local authority* shall facilitate and coordinate the permit granting process. In particular [...] paragraph 3.

⁹² Several delegations suggest to insert the term "complete" here.

⁹³ AM59: 3. The competent authorities shall grant or refuse permits within *a maximum of four* months from receiving a request *provided that all interested parties have been heard*, 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. 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 [⁹⁴]

1. **Member States shall ensure that** ~~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**].

AM60⁹⁵

⁹⁴ In regard of articles 7 and 8, several delegations raise concerns about the rights and obligations of property owners, some delegations seek further clarification which "buildings" the Directive actually covers, which categories of building are exempted, what "major renovation works" entail and whether "network termination point" should read "household".

⁹⁵ **AM60**: 1. All newly constructed **public** buildings at the end-user's location, including elements under joint ownership, for which applications for building permits have been submitted **six months** after [Publications Office: please insert the exact date of the entry into force of this Regulation], **should** be equipped with **technology neutral, after having been assessed as regards the cost effectiveness of equipping them with** high-speed-ready in-building physical infrastructure, up to the network termination points. **Those buildings or apartments shall then receive the Union 'Broadband-ready label'**. The same obligation applies in the event of major renovation works for which applications for building permits have been submitted **six months** after [Publications Office: please insert the exact date of the entry into force of this Regulation].

2. **Member States shall require that** ~~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. 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**].

AM61⁹⁶

3. Member States may provide for exemptions for categories of buildings [⁹⁷], 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 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.

AM62⁹⁸

⁹⁶ AM61: 2. All newly constructed **public** multi-dwelling buildings, **including social housing**, for which applications for building permits have been submitted after [Publications Office: please insert the exact date of the entry into force of this Regulation], **should** be equipped with a **technology neutral, after having been assessed as regards the cost effectiveness of equipping them with** concentration point, located [...] have been submitted after [Publications Office: please insert the exact date of the entry into force of this Regulation] **This also applies to all newly constructed buildings of public institutions containing significant collections of data such as libraries, archives, cultural institutions and institutions of higher education.**

⁹⁷ Delegations argue that "monuments", "vacation homes" or "buildings in remote areas" may be exempted from paragraph 3 and that other exemptions should be allowed for reasons of national security and on grounds of public interest such as public health and/or safety and environmental reasons.

⁹⁸ AM62: 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 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. **Member States may also provide for exemptions from paragraph 2 in respect of access lines to end users in properties where business models with open networks are used.**

Article 8

Access to in-building equipment [⁹⁹]

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.

AM63¹⁰⁰

AM64¹⁰¹

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 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.

AM65¹⁰²

3. 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.

⁹⁹ In particular in regard of article 8, several delegations question how the proposed provisions relate to the protection of property rights, in particular with regard to whether or not the owner of the building and infrastructure shall have the right to decide who gets access to it. Other questions include whether "equipment" refers to the "concentration point" or also to other network elements, and whether the requirements of this article could be fulfilled by not restricting high-speed *wireless* distribution.

¹⁰⁰ AM63: 1. **Prior to consent from the land or property owner and, if applicable, financial compensation**, every provider of [...] infrastructure.

¹⁰¹ AM64: 1. Every provider of public communications networks **in buildings without open networks with service competition** shall have the right [...] in-building physical infrastructure.

¹⁰² AM65: 2. Every provider of public communications networks shall have the right, **in buildings which do not have open networks with competition to provide services**, to access any [...] and conditions.

4. In the absence of available high-speed-ready in-building infrastructure, **Member States shall ensure that** every 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, provided that it minimises the impact on the private property and at its own costs.

AM66¹⁰³

AM67¹⁰⁴

Article 9

Competent bodies [¹⁰⁵]

1. ~~The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC shall~~ **Member States shall appoint a competent body** to perform the function of the national dispute settlement body referred to in Article 3 (4), Article 4 (9), Article 5 (4) and Article 8(3). **Member States may attribute the function of this body to t**~~The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC; unless the Member State appoints other competent bodies.~~

AM68¹⁰⁶

¹⁰³ AM66: 4. In the absence of [...] at its own costs. *If an agreement to terminate such network equipment is not reached the subscriber or the public communication network provider can refer the dispute to the competent dispute settlement body.*

¹⁰⁴ AM67: 4a. *Member States may grant exemptions from paragraphs 1 and 2 for access to retail customers in properties where open-network business models are applied.*

¹⁰⁵ Several delegations point out that an assessment of the compliance with the various requirements in this Directive should be assessed by authorities/a dispute settlement body having relevant competence and experience in this field, which goes beyond electronic communications, such as regards civil engineering. Some delegations therefore propose that Member States should be allowed to appoint several authorities to perform various functions of the national dispute settlement body. Also with regard to the SIP, Member States appear to wish greater flexibility in deciding which (network of) public authority/authorities or private undertaking/s could perform the function of the SIP.

¹⁰⁶ AM68: 1. The national regulatory authority [...] other competent bodies *which are legally distinct and functionally independent of all network operators especially in the field of water. If the Member States decides to appoint the national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC as the national dispute settlement body, this shall be obliged to seek the opinion of the sector regulators before adopting any binding decision concerning the determination of fair terms, conditions or prices.*

2. ~~The 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 shall ensure that the national dispute settlement body, other than the national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC, shall have** the power to 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.

AM69¹⁰⁷

3. ~~The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC shall~~ **Member States shall appoint a competent body to** perform the functions of the single information point referred to in Article 4 and Article 6. **Member States may attribute the functions of this body to** ~~t~~The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC, ~~unless the Member State appoints other competent bodies.~~

AM70¹⁰⁸

¹⁰⁷ **AM69:** 2. Any other national dispute settlement body appointed by Member States pursuant to paragraph 1 [~~shall...it~~] shall have the power to impose [...] the dispute.

¹⁰⁸ **AM70:** 3. The national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC shall perform the functions of the single information point referred to in Article 4 and Article 6, unless the Member State appoints *another* competent *and functionally independent body in particular a body of the public sector at a national or local level.*

4. **Member States shall take the necessary measures in order to ensure that a**~~Any other~~ single information point, **other than the national regulatory authority which fulfils the tasks provided in Article 20 of Directive 2002/21/EC**, appointed by Member States pursuant to paragraph 3 shall have the power to impose on network operators 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
