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## OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	5 December 2023
To:	Delegations
No. prev. doc.:	15664/23
No. Cion doc.:	6845/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act) - General approach (5 December 2023)

Delegations will find in Annex the Council general approach on the above proposal as approved by the Council (Transport, Telecommunications and Energy) at its 3991st meeting held on 5 December 2023.

The general approach establishes the Council's provisional position on this proposal, and forms the basis for the preparations for the negotiations with the European Parliament.

2023/0046 (COD)

Proposal for a

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

**on measures to reduce the cost of deploying gigabit electronic communications networks and  
repealing Directive 2014/61/EU (Gigabit Infrastructure Act)**

**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:

- (1) The digital economy has been changing the internal market profoundly over the last decade. The Union's vision is a digital economy that delivers sustainable economic and social benefits based on excellent and secure connectivity for everybody and everywhere in Europe. A high-quality digital infrastructure based on very high capacity networks (VHCN) underpins almost all sectors of a modern and innovative economy. It is of strategic importance to social and territorial cohesion and overall for the Union's competitiveness and digital leadership. Therefore, people as well as the private and public sectors should have the opportunity to be part of the digital economy.

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

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

- (2) The rapid evolution of technologies, the exponential growth in broadband traffic and the increasing demand for advanced very high-capacity connectivity have further accelerated during the COVID-19 pandemic. As a result, the targets laid down in the Digital Agenda in 2010<sup>3</sup> have mostly been met, but they have also become obsolete. The share of households having access to 30 Mbps internet speeds has increased from 58.1% in 2013 to 90% in 2022. Availability of only 30 Mbps is no longer future-proof and not aligned with the new objectives set in Directive (EU) 2018/1972 of the European Parliament and of the Council<sup>4</sup> for ensuring connectivity and widespread availability of very high capacity networks. Therefore, in the Decision (EU) 2022/2481 of the European Parliament and Council<sup>5</sup>, the EU set updated targets for 2030 that better correspond to the expected connectivity needs of the future where all European households should be covered by a gigabit network, with all populated areas covered by 5G.
- (3) To achieve those targets, there is a need for policies to speed up and lower the costs of the deployment of very high-capacity fixed and wireless networks across the Union, including proper planning, coordination and the reduction of administrative burdens.
- (4) *deleted*
- (5) The roll-out of very high capacity networks (as defined in Directive (EU) 2018/1972) across the Union requires substantial investment, a significant proportion of which is the cost of civil engineering works. Sharing physical infrastructure would limit the need for costly civil engineering works and make advanced broadband roll-out more effective.
- (6) A major part of the costs of deploying VHCN can be attributed to inefficiencies in the roll-out process related to: (i) the use of existing passive infrastructure (such as ducts, conduits, manholes, cabinets, poles, masts, antenna installations, towers and other supporting constructions); (ii) bottlenecks related to the coordination of civil works; (iii) burdensome administrative procedures to grant permits; and (iv) bottlenecks in in-building deployment of networks, which lead to high financial barriers, particularly in rural areas.

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<sup>3</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 19.05.2010, COM(2010)245.

<sup>4</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

<sup>5</sup> Decision (EU) 2022/2481 of the European Parliament and of the Council of 14 December 2022 establishing the Digital Decade Policy Programme 2030 (OJ L 323, 19.12.2022, p. 4).

- (7) Directive 2014/61/EU of the European Parliament and of the Council<sup>6</sup>, which was adopted in response to the need to lower the costs of broadband deployment, included measures on infrastructure sharing, civil works coordination and the reduction of administrative burdens. To further facilitate the roll-out of VHCN, including fibre and 5G, the European Council, in its Conclusions on Shaping Europe's Digital Future of 9 June 2020, called for a package of additional measures to support current and emerging network deployment needs, including by reviewing Directive 2014/61/EU.
- (8) The measures set out in Directive 2014/61/EU contributed to less costly deployments of high-speed electronic communications networks. However, these measures should be strengthened to further reduce costs and speed up network deployment.
- (9) Measures aiming to make using public and private existing infrastructures more efficient and reduce costs and obstacles in carrying out new civil engineering works should contribute substantially to ensuring a fast and extensive deployment of VHCN. These measures should maintain effective competition without harming the safety, security and smooth operation of the existing infrastructure.
- (10) Some Member States have adopted measures to reduce the costs of broadband roll-out, including by going beyond the provisions of Directive 2014/61/EU. However, those measures are still very different across Member States and have led to different results across the Union. Scaling up some of those measures across the Union and taking new reinforced measures could significantly contribute to the better functioning of the digital single market. Moreover, differences in regulatory requirements and inconsistent implementation of Union rules sometimes prevent cooperation across utility companies. The differences may also raise barriers to entry for new undertakings providing or authorised to provide public electronics communications networks or associated facilities, as defined in Directive (EU) 2018/1972 ('operators'). These differences may also close off new business opportunities, hindering the development of an internal market for the use and deployment of physical infrastructures for VHCN. Moreover, the measures notified in the national roadmaps and implementation reports adopted by Member States under Commission Recommendation (EU) 2020/1307<sup>7</sup> neither cover all the areas of Directive 2014/61/EU nor address all issues in a consistent and complete manner. This is despite how essential it is to take action across the whole roll-out process and across sectors to achieve a coherent and significant impact.

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<sup>6</sup> Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks (OJ L 155, 23.5.2014, p. 1).

<sup>7</sup> Commission Recommendation (EU) 2020/1307 of 18 September 2020 on a common Union toolbox for reducing the cost of deploying very high capacity networks and ensuring timely and investment-friendly access to 5G radio spectrum, to foster connectivity in support of economic recovery from the COVID-19 crisis in the Union (OJ L 305, 21.9.2020, p. 33).

- (11) This Regulation aims to strengthen and harmonise rights and obligations applicable across the Union to accelerate the roll-out of VHCN and cross-sector coordination, including backbone and 5G-ready-networks. This will help undertakings providing or authorised to provide electronic communications networks to achieve economies of scale. A lack of high quality connectivity in the Union can have a strong downstream effect on cross-border trade and services provision, since many services can only be provided where an adequately performant network is in place across the Union. While ensuring an improved level playing field, this Regulation does not prevent stricter or more detailed national rules in compliance with Union law that serve to promote the joint use of existing physical infrastructure or enable a more efficient deployment of new physical infrastructure by complementing or going beyond the rights and obligations laid down in this Regulation and provide solutions to better achieve its objectives. For example, Member States could go beyond provisions on civil works coordination by applying them also to privately funded projects or requiring that more information on physical infrastructure or planned civil works is provided to a single information point in electronic format or applying shorter deadlines, provided that they do not violate Union law including the provisions of this Regulation.
- (12) To ensure legal certainty, including regarding specific regulatory measures imposed under Directive (EU) 2018/1972, under Part II, Title II, Chapters II to IV and Directive 2002/77/EC<sup>8</sup>, the provisions of these directives should prevail over this Regulation. This Regulation is without prejudice to the possibility for national regulatory authorities to maintain or introduce measures falling outside the scope of this Regulation, such as access obligations for in-building wiring, in accordance with the Directive (EU) 2018/1972.
- (13) It can be significantly more efficient for operators, in particular new entrants, to reuse existing physical infrastructure, including that of other utilities, to roll out VHCN or associated facilities. This is the case, in particular, in areas where no suitable electronic communications network is available or where it may not be economically feasible to build new physical infrastructure. Moreover, synergies across sectors may significantly reduce the need for civil works relating to the deployment of very high capacity networks. This reuse can also reduce the social and environmental costs linked to these works, such as pollution, noise and traffic congestion. Therefore, this Regulation should apply not only to operators but also to owners or holders of rights to use extensive and ubiquitous physical infrastructure suitable to host electronic communications network elements, such as physical networks for the provision of electricity, gas, water and sewage and drainage systems, and heating and transport services. In the case of holders of rights, this does not change any property rights of third parties. When applicable, rights of tenants should also be taken into account for that purpose.

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<sup>8</sup> Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services ([OJ L 249, 17.9.2002, p. 21](#)).

- (14) To improve the deployment of VHCN in the internal market, this Regulation should lay down rights for undertakings providing public electronic communications networks or associated facilities (including undertakings of a public nature) to access physical infrastructure regardless of its location under fair and reasonable terms consistent with the normal exercise of property rights. The obligation to give access to the physical infrastructure should be without prejudice to the rights of the owner of the land or of the building in which the infrastructure is located.
- (15) In particular, taking into account the fast development of providers of wireless physical infrastructure such as ‘tower companies’, and their increasingly significant role as providers of access to physical infrastructure suitable to install elements of wireless electronic communications networks, such as 5G, the definition of ‘network operator’ should be extended beyond undertakings providing or authorised to provide electronic communications networks and operators of other types of networks, such as transport, gas or electricity, to include undertakings providing associated facilities, which thus become subject to all the obligations and benefits set out in the Regulation, except the provisions regarding in-building physical infrastructure and access.
- (15a) Member states can extend the obligations set out in this Regulation to bodies that do not fall in its scope, such as organisational units not endowed by law with legal personality, which do have legal capacity and can fully participate in economic transactions, or undertakings enjoying a concession from public bodies.
- (16) In view of their low degree of differentiation, the physical facilities of a network can often host a wide range of electronic communications network elements at the same time without affecting the main service provided and with minimum adaptation costs. These elements include those capable of delivering VHCN in line with the technological neutrality principle. Therefore, physical infrastructure, that is intended to only host other elements of a network without becoming an active network element itself, can in principle be used to accommodate electronic communications cables, equipment or any other element of electronic communications networks, regardless of its current use or its ownership, security concerns or future business interests of the infrastructure’s owner. The physical infrastructure of public electronic communications networks can in principle also be used to accommodate elements of other networks. Therefore, in appropriate cases, public electronic communications network operators may give access to their networks so that other networks can be deployed. Without prejudice to the pursuit of the specific general interest linked to the provision of the main service, synergies between network operators should at the same time be encouraged to contribute to achieving the digital targets set out in Decision (EU) 2022/2481.



- (17) In the absence of a justified exception, physical infrastructure elements owned or controlled by public sector bodies, even when they are not part of a network, can also host electronic communications network elements and in such cases should be made accessible to facilitate installing network elements of VHCN, in particular wireless networks. Examples of physical infrastructure elements are buildings, including their rooftops and part of their facades, entries to buildings, and any other asset, including street furniture, such as light poles, street signs, traffic lights, billboards, toll frames, bus and tramway stops and metro and railway stations. It is for Member States to identify specific categories of physical infrastructure owned or controlled by public sector bodies in their territories where access obligations cannot apply, for example, for reasons of architectural, historical, religious environmental value.
- (18) This Regulation should be without prejudice to any specific safeguard needed to ensure national security, safety and public health, the security and integrity of the networks, in particular critical infrastructure, as defined by national law, and to ensure that the main service provided by the network operator is not affected, in particular in networks used for the provision of water intended for human consumption. However, general rules in national legislation prohibiting network operators from negotiating access to physical infrastructures by undertakings providing or authorised to provide electronic communications networks or associated facilities could prevent creating a market for access to physical infrastructure. Such general rules should therefore be abolished. At the same time, the measures set out in this Regulation should not prevent Member States from incentivising utility operators to give access to infrastructure by excluding revenue generated from the access to their physical infrastructure when calculating end-user tariffs for their main activity or activities, in accordance with applicable Union law.
- (19) In order to ensure legal certainty and avoid disproportionate burdens on network operators resulting from the simultaneous application of two distinct access regimes to the same physical infrastructure, physical infrastructure subject to access obligations imposed by national regulatory authorities pursuant to Directive (EU) 2018/1972 or access obligations resulting from the application of Union State aid rules should not be subject to access obligations set out in this Regulation for as long as such access obligations remain in place. However, this Regulation should be applicable where a national regulatory authority has imposed an access obligation under Directive (EU) 2018/1972 that limits the use that can be made of the physical infrastructure concerned. For instance, this could occur when an operator planning to connect base stations requests access to existing physical infrastructure to which access obligations are imposed in the market for access to wholesale dedicated capacity<sup>9</sup>.

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<sup>9</sup> Commission Recommendation (EU) 2020/2245 of 18 December 2020 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive (EU) 2018/1972 of the European Parliament and of the Council establishing the European Electronic Communications Code, 18.12.2020, C(2020) 8750, OJ L 439, 29.12.2020, p. 23.

- (20) To ensure proportionality and preserve investment incentives, a network operator or public sector body should have the right to refuse access to specific physical infrastructure for objective and justified reasons. In particular, a physical infrastructure for which access has been requested could be technically unsuitable due to specific circumstances, or because of lack of currently available space or future needs for space that are sufficiently demonstrated, for instance, in publicly available investment plans. To avoid any potential distortion of competition or any possible abuse of the conditions to refuse access, any such refusal should be duly justified and based on objective and detailed reasons. For example such reasons would not be considered objective where an undertaking providing or authorised to provide electronic communications networks has deployed physical infrastructure thanks to civil works coordination with a network operator other than an electronic communications network operator and refuses to grant access based on an alleged lack of availability of space to host the elements of VHCN which results from decisions made by the undertaking under its control. In such case, a competition distortion could arise if there is no other VHCN in the area concerned by the access request. Similarly, in specific circumstances, sharing the infrastructure could jeopardise safety or public health, network integrity and security, including that of critical infrastructure, or could endanger the provision of services that are primarily provided over the same infrastructure. Moreover, where the network operator already provides a viable alternative means of passive wholesale physical access to electronic communications networks that would meet the needs of the access seeker, such as dark fibre or fibre unbundling, access to the underlying physical infrastructure could have an adverse economic impact on its business model, in particular that of wholesale-only operators, and incentives to invest. This Regulation does not prevent Member States from restricting the conditions for access refusal based on the existence of alternative offering of dark fibre or fibre unbundling where such products would not constitute in the relevant market a viable alternative means of passive wholesale physical access to electronic communication networks. It may also risk an inefficient duplication of physical infrastructure. The assessment of the fair and reasonable character of the terms and conditions for such alternative means of wholesale physical access should take into account, *inter alia*, the underlying business model of the undertaking providing or authorised to provide public electronic communications networks granting access and the need to avoid any reinforcement of the significant market power, if any, of either party; and whether the access provider ties or bundles access with services which are not absolutely necessary. To preserve investment incentives and avoid adverse and unintended economic impacts on the business model of the first mover operator in deploying FttP networks, especially in rural areas, Member States could provide that when an undertaking providing or authorised to provide electronic communications networks seeks access to the only fibre network present in its target coverage area, the access provider could refuse access to its physical infrastructure if it provides, at fair and reasonable terms and conditions, a viable alternative means of wholesale active access which is suitable for the provision of very high capacity networks.



- (21) To facilitate the reuse of existing physical infrastructure, where operators request access in a specified area, network operators and public sector bodies that own or control physical infrastructure should make an offer for the shared use of their facilities under fair and reasonable terms and conditions, including price, unless access is refused for objective and justified reasons. Public sector bodies should also be required to offer access under non-discriminatory terms and conditions. Depending on the circumstances, several factors could influence the conditions under which such access is granted. These conditions should ensure that the access providers has a fair opportunity to obtain a fair return on investment and recover the costs incurred in order to provide access, and may include: (i) any additional maintenance and adaptation costs; (ii) any preventive safeguards to be adopted to limit adverse effects on network safety, security and integrity; (iii) any specific liability arrangements in the event of damages; (iv) 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; (v) the ability to deliver or provide infrastructure capacity to meet public service obligations; and (vi) any constraints stemming from national provisions aiming to protect the environment, including minimising the visual impact on infrastructure to ensure public acceptance and sustainable deployment, public health, public security or to meet town and country planning objectives.
- (22) Investments in physical infrastructure of public electronic communications networks or associated facilities should directly contribute to the objectives set out in Decision (EU) 2022/2481 and avoid opportunistic behaviour. Therefore, any obligation of access to existing physical infrastructure or coordination of civil works should fully take into account a number of factors such as (i) the economic viability of those investments based on their risk profile; (ii) any time schedule for the return on investment; (iii) any impact that the access has on downstream competition and consequently on prices and return on investment; (iv) any depreciation of the network assets at the time of the access request; (v) any business case underpinning the investment, in particular in the physical infrastructure used for providing very high capacity network services; and (vi) any possibility previously offered to the access seeker to co-deploy. In the context of the determination of prices, terms and conditions by network operators and public sector bodies owning or controlling physical infrastructure, certain existing contracts and commercial terms and conditions agreed between access seekers and access providers could be used by either access providers or dispute settlement bodies as benchmarking factor to determine whether prices, terms and conditions are fair and reasonable, since they reflect market prices and conditions.
- (23) Public sector bodies that own or control physical infrastructure may lack sufficient resources, experience or the necessary technical knowledge to engage in negotiations with operators on access. To facilitate access to these public sector bodies' physical infrastructure, a body could be appointed to coordinate the access requests, provide legal and technical advice for negotiating access terms and conditions, and make relevant information on such physical infrastructure available via a single information point. The coordinating body could also support public sector bodies in preparing model contracts and monitor the outcome and the length of time of the access requests process. The body could also help if disputes arise on access to physical infrastructure that public sector bodies own or control.

- (24) Member States may provide guidance on applying the provisions on access to physical infrastructure, including but not only on the application of fair and reasonable conditions. Views of stakeholders should be duly taken into account in the preparation of the guidance. When the bodies appointed to issue the guidance are different from the national dispute settlement bodies, views of the latter should be duly taken into account.
- (25) Operators should have access upon request to minimum information on physical infrastructure and planned civil works in the area of deployment. This will enable them to effectively plan deploying VHCN and ensure the most effective use of existing physical infrastructure, suitable for rolling out such networks, and planned civil works. Such minimum information is a pre-requisite to assess the potential for using existing physical infrastructure or coordinating the planned civil works in a specific area, as well as to reduce damage to any existing physical infrastructures. In view of the number of stakeholders involved (covering publicly and privately financed civil works, as appropriate, as well as existing physical infrastructure) and to facilitate access to that information (across sectors and borders), the network operators and public sector bodies subject to transparency obligations should promptly, within the deadline, make available such up-to-date minimum information via a single information point. This will simplify managing requests to access such information and enable operators to express their interest in accessing physical infrastructure or coordinating civil works, for which timing is critical. The minimum information on planned civil works should be made available via a single information point as soon as the information is available to the network operator concerned and, in any event and where permits are required, no later than 3 months before the permit application is first submitted to the competent authorities.
- (26) The minimum information should be made available promptly via the single information point under proportionate, non-discriminatory and transparent terms so that operators can submit their requests for information. The single information point could consist of a repository of information in electronic format, where information can be accessed or made available and requests can be made online using digital tools, such as webpages, electronic addresses, digital applications, and digital platforms. The information made available may be limited to ensure network security and integrity, in particular that of critical infrastructure, national security, or to safeguard legitimate operating and business secrets. The single information point does not have to host the information as long as it ensures that it provides connections to other digital tools, such as web portals, digital platforms databases, or digital applications, where the information is stored. Accordingly, different models for a single information point can be envisaged. The single information point may provide additional functionalities, such as access to additional information or support to the process of requests for access to existing physical infrastructure or to coordinate civil works.

- (27) In addition, if the request is reasonable, in particular if needed to share existing physical infrastructures or coordinate civil works, operators should be granted the possibility to make on-site surveys and request information on planned civil works under transparent, proportionate and non-discriminatory conditions and without prejudice to the safeguards adopted to ensure network security and integrity, protection of confidentiality, as well as operating and business secrets.
- (28) Advanced transparency of planned civil works via single information points should be incentivised. This can be done by redirecting operators to such information whenever available. Transparency could also be enforced by making permit-granting applications subject to firstly make available information on planned civil works via a single information point.
- (29) The discretion that Member States retain to allocate the functions of the single information points to more than one competent body should not affect their ability to effectively fulfil those functions. Where more than one single information point is set up in a Member State, a single national digital entry point consisting of a common user interface should ensure seamless access to all single information points by electronic means. The single information point should be fully digitised and provide easy access to the relevant digital tools. This will enable network operators and public sector bodies exercise their rights and comply with the obligations set out in this Regulation. This includes fast access to the minimum information on existing physical infrastructure and planned civil works, general conditions of network operators for access to existing physical infrastructure, electronic administrative procedures for granting permits and rights of way, and the applicable conditions and procedures. As part of this minimum information, the single information point should give access to georeferenced information on the location of existing physical infrastructure and planned civil works. To facilitate this, Member States should provide automated digital tools for the submission of the georeferenced information and conversion tools to the supported data formats. These could be made available to network operators and public sector bodies responsible for providing this information via the single information point. Furthermore, where georeferenced location data are available via other digital tools, such as the INSPIRE Geoportal under Directive 2007/2/EC of the European Parliament and of the Council<sup>10</sup>, the single information point could provide user-friendly access to this information.

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<sup>10</sup> 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) (OJ L 108, 25.4.2007, p. 1).

- (30) To ensure proportionality and security, the requirement to make available information on existing physical infrastructure via the single information point need not apply for the same reasons as those justifying a refusal of an access request. In addition, making available information on existing physical infrastructure via the single information point could, in very specific cases, be burdensome or disproportionate for network operators and public sector bodies. This could arise, for example, where the mapping of relevant assets is not yet available and it would be very costly to map or where access requests are expected to be very low in certain areas of a Member State or in respect to certain specific physical infrastructure. Where it appears that providing information is disproportionate based on a cost-benefit analysis, network operators and public sector bodies should not be obliged to make available such information. Member States should conduct such cost-benefit analysis based on a consultation with stakeholders on demand for access to existing physical infrastructure, and the analysis should be updated regularly. The consultation process and its outcome should be made publicly available via a single information point.
- (31) To ensure consistency, the competent bodies performing the functions of the single information point, the national regulatory authorities fulfilling their tasks under Directive (EU) 2018/1972 or other competent authorities, such as national, regional or local authorities in charge of cadastre or the implementation of Directive 2007/2/EC (INSPIRE), as appropriate, should consult and cooperate with each other. The purpose of such cooperation should be to minimise the efforts in complying with transparency obligations on network operators and public sector bodies, including the undertakings designated with significant market power ('SMP' operators), to make information available about their physical infrastructure; Where a different data set on physical infrastructure of the SMP operator is required such cooperation should result in establishing useful interlinks and synergies between the SMP-related database and the single information point and proportionate common practices of data collection and data provision to deliver results that are easily comparable. Cooperation should also aim at facilitating access to information on physical infrastructure, in light of national circumstances. If regulatory obligations are modified or withdrawn, the parties affected should be able to agree on the best solutions to adapt the collection and provision of physical infrastructure data to the newly applicable regulatory requirements.
- (32) Member States may decide that the transparency obligation for the coordination of civil works do not apply to civil works for reasons of national security or in an emergency. This could be the case, for civil works performed if there is a risk of public danger as a result of degradation processes to civil engineering works and their associated installations, which are caused by destructive natural or human factors and are needed to ensure their safety or their demolition. For reasons of transparency, Member States should make available the types of civil works falling under those circumstances via a single information point.

- (33) To ensure significant savings and minimise inconveniences to the area affected by the deployment of new electronic communications networks, regulatory constraints preventing as a general rule the negotiation among network operators of agreements to coordinate civil works to deploy VHCN should be prohibited. If civil works are not financed by public means, this Regulation should be without prejudice to the possibility for network operators to conclude civil works coordination agreements according to their own investment and business plans and their preferred timing.
- (34) Member States should maximise the results of civil works fully or partially financed by public means, by exploiting the positive externalities of those works across sectors and ensuring equal opportunities to share the available and planned physical infrastructure to deploy VHCN. The main purpose of civil works financed by public means should not be adversely affected. However, timely and reasonable requests to coordinate the deployment of elements of VHCN should be met by the network operator carrying out the civil works concerned directly or indirectly (for example, through a sub-contractor) under proportionate, non-discriminatory and transparent terms. For example, the requesting operator should cover any additional costs, including those caused by delays and keep changes to the original plans to a minimum. Such provisions should not affect the right of Member States to reserve capacity for electronic communications networks even in the absence of specific requests. This will enable Member States to meet future demand for physical infrastructures to maximise the value of civil works or to adopt measures giving similar rights to operators of other types of networks, such as transport, gas or electricity, to coordinate civil works.
- (35) In some cases, in particular for deployments in rural, remote or scarcely populated areas, the obligation to coordinate civil works might put at risk the financial viability of such deployments and eventually disincentivize investments carried out under market terms. Therefore, a request to an undertaking providing or authorised to provide public electronic communications networks to coordinate civil works might be considered unreasonable under specific circumstances. This should be the case, in particular, if the requesting undertaking providing or authorised to provide electronic communications networks did not state its intention to deploy VHCN in that area (either as a new deployment, an upgrade or an extension of a network) and there had been a forecast or invitation to declare an intention to deploy VHCN in designated areas (pursuant to Article 22 of Directive (EU) 2018/1972) or a public consultation under Union State aid rules. If more than one of those forecasts, invitations and/or public consultations have occurred, only the lack of an expression of interest at the most recent occasion covering the period during which the request for coordination of civil works is made should be considered. To ensure the possibility to access the deployed infrastructure in the future, the undertaking providing or authorised to provide public electronic communications networks performing the civil works should guarantee that it will deploy physical infrastructure with sufficient capacity, taking into account the capacity requirements expressed by the undertaking requesting coordination of civil works and, when appropriate, the guidance provided by the Member States. This is without prejudice to the rules and conditions attached to the assignment of public funds and the application of State aid rules.



- (35b) Member States may decide not to apply the provisions of this Regulation on the coordination of civil works, including transparency, to civil works that are limited in scope, such as in terms of value, size or duration. This could be for example, to civil works lasting less than 48 hours, using microtrenching or of an emergency character.
- (36) Member States may provide guidance on applying the provisions on civil work coordination, including but not only on apportioning of costs. The views of stakeholders and national dispute settlement bodies should be duly taken into account in the preparation of the guidance.
- (37) Effective coordination can help reduce costs and delays as well as deployment disruption, which can be caused by problems on site. One example where coordination of civil works can provide clear benefits are cross-sector projects within but not limited to Trans-European Energy (TEN-E) and Trans-European Transport (TEN-T) networks, such as to deploy 5G corridors along transport paths, such as road, rail and in-land waterways. These projects can often also require design coordination or co-design based on early cooperation between the project participants. As part of the co-design, the parties concerned may agree in advance on physical infrastructure deployment paths and the technology and equipment to be used, before the coordination of civil works. Therefore, the request for coordination of civil works should be filed as soon as possible.
- (38) A number of different permits for deploying elements of electronic communications networks or associated facilities may be necessary in order to protect national and Union general interests. These can include digging, building, town planning, environmental and other permits as well as rights of way. The number of permits and rights of way required for deploying different types of electronic communications networks or associated facilities and the local character of the deployment could involve applying different procedures and conditions, which can cause difficulties in the network deployment. Therefore, to facilitate deployment, all rules on the conditions and procedures applicable to granting permits and rights of way should be streamlined and consistent at national level. While preserving the right of each competent authority to be involved and maintain its decision-making prerogatives in accordance with the subsidiarity principle, all information on the procedures and general conditions applicable to granting permits for civil works and rights of way should be available via single information points. This could reduce complexity and increase efficiency and transparency for all operators and particularly new entrants and smaller operators not active in that area. Moreover, operators should have the right to submit their requests for permits and rights of way in electronic format via a single information point. Each competent authority should keep informed applicants in electronic format on the actual status of the permit applications, which it is competent to handle, including whether the permit have been granted or refused, and ensure that such information is accessible to the applicant via a single information point.



- (39) Permit-granting procedures should not be barriers to investment or harm the internal market. Member States should therefore ensure that a decision on whether or not to grant permits on the deployment of elements of VHCN or associated facilities is made available within 4 months from the receipt of a complete permit request. Union law or national law providing other specific deadlines or obligations for the proper conduct of the procedure, such as a public consultation required in an administrative procedure to grant an environmental permit or appeal proceedings, that are applicable to the permit-granting procedure should prevail over the deadline set out in this Regulation. Competent authorities should not restrict, hinder or make the deployment of VHCN or associated facilities economically less attractive. Specifically, they should not prevent procedures for granting permits and rights of way from proceeding in parallel, where possible, or require, when not justified, operators to obtain one type of authorisation before they can apply for other types of authorisations. Competent authorities should justify any refusal to grant permits or rights of way under their competence, based on objective, transparent, non-discriminatory and proportionate conditions.
- (40) To avoid undue delays, competent authorities must determine the completeness of the permit request within 20 working days from its receipt. The permit request should be deemed complete unless the competent authority invites the applicant to provide any missing information within that period. Where, in addition to permits, rights of way are required for deploying elements of VHCN, competent authorities should, by way of derogation from Article 43 of Directive (EU) 2018/1972, grant such rights of way within 4 months from the receipt of the request, except in cases of expropriation. Other rights of way not needed in conjunction with permits for civil works should continue to be granted within 6 months in accordance with Article 43 of Directive (EU) 2018/1972.
- (41) Member States should, in accordance with national law, specify categories of infrastructure (such as masts, antennae, poles and underground ducts) that are not be subject to building permits, digging permits or other types of permits. Such could also be the case for technical upgrades of existing maintenance works or installations, and small-scale civil works, such as trenching, and renewals of permits.
- (42) In order to ensure that the procedures for granting such permits and rights of way are completed within reasonable deadlines, as appears from certain modernising and good administrative practices at national level, it is necessary to draw up principles for administrative simplification. This could include *inter alia* limiting the obligation of prior authorisation to cases in which it is essential.

- (43) To facilitate the deployment of elements of VHCN, any fee related to a permit, other than rights of way, should be limited to the administrative costs related to processing the permit request according to the principles established in Article 16 of Directive (EU) 2018/1972. In the case of rights of way, the provisions established in Articles 42 and 43 of Directive (EU) 2018/1972 apply. This does not include ancillary costs, unrelated to the processing of the permit request, for example for the depreciation, repair or replacement of public infrastructure resulting from; or measures to ensure public safety during, civil works levied by public sector bodies on the operator in line with national law.
- (44) Achieving the targets set out in Decision (EU) 2022/2481 requires that, by 2030, all end users at fixed locations are covered by a gigabit network up to a the network termination point and all populated areas are covered by next-generation wireless high-speed networks performance at least equivalent to that of 5G, in accordance with the principle of technological neutrality. Providing gigabit networks up to the end user should be facilitated by a modern and future proof fibre-based technology suitable, in particular to a modern and future proof in-building physical infrastructure, building access point and inbuilding wiring. Providing for mini-ducts during the construction of a building has only a limited incremental cost, while equipping buildings with gigabit infrastructure may represent a significant part of the cost of deploying a gigabit network. Therefore, all new buildings or buildings subject to a major renovation encompassing structural modifications of the entire in-building physical infrastructure or a significant part thereof, should be equipped with physical infrastructure, a building access point easily accessible to one or more undertakings providing or authorised to provide public electronic communications networks and in-building fibre wiring, enabling the connection of end users to gigabit speeds. Moreover, building developers should provide for empty ducts from every dwelling to the building access point, located inside or outside the multi-dwelling building, allowing connections up to the network termination points, or, in those Member State where it is allowed to place the network termination point outside the end user's particular location, up to the physical point where the end user connects to access the public network. Major renovations of existing buildings at the end user's location to enhance energy performance (pursuant to Directive 2010/31/EU of the European Parliament and of the Council<sup>11</sup>) provide a modernisation opportunity to also equip those buildings with fibre-ready in-building physical infrastructure, in-building fibre wiring and a building access point.
- (44a) The access point to the building should be easily accessible by multiple operators, that is, accessible without excessive effort, especially in cases when it is located inside the building, without creating or facilitating a monopoly in the building.

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<sup>11</sup> Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).

- (44b) The provisions regarding fiber-ready in-building physical infrastructure, fiber-ready building access point and wiring do not preclude the presence of other type of technology within the same in-building physical infrastructure. These provisions should not affect the right of building owners to equip the building with in-building wiring in addition to fibre, with additional in-building physical infrastructure capable of hosting wiring in addition to fibre or other elements of electronic communication networks.
- (45) The prospect of equipping a building with fibre-ready in-building physical infrastructure, a fiber-ready building access point or in-building fibre wiring may be considered disproportionate in terms of costs in specific cases, such as for some new single dwellings or buildings undergoing major renovation works. This may be based on objective grounds, such as tailor-made cost estimates, economic reasons linked to the location, or heritage conservation or environmental reasons (for example, for specific categories of monuments).
- (46) Prospective buyers and tenants would benefit from identifying buildings that are equipped with fibre-ready in-building physical infrastructure, a fiber-ready building access point and in-building fibre wiring and that therefore have considerable cost-saving potential. The fibre readiness of buildings should also be promoted. Member States may therefore develop a 'fibre-ready' label for buildings equipped with such infrastructure, a fiber-ready building access point and in-building fibre wiring in accordance with this Regulation.
- (47) Undertakings providing or authorised to provide public electronic communications networks deploying gigabit networks in a specific area could achieve significant economies of scale if they could terminate their network to the building's access point by using existing physical infrastructure and restoring the affected area. This should be possible irrespective of whether a subscriber has expressed explicit interest for the service at that moment in time and provided that the impact on private property is minimised. Once the network is terminated at the building access point, the connection of an additional customer is possible at a significantly lower cost, in particular by means of connections up to the network termination points, or, in those Member States where it is allowed to situate the network termination point outside the end user's particular location, up to the physical point where the end user connects to access the public network, in particular via an access to a fibre-ready vertical segment inside the building, where it already exists. That objective is also fulfilled when the building itself is already equipped with a gigabit network to which access is provided to any public communications network provider, which has an active subscriber in the building, under transparent, proportionate and non-discriminatory terms and conditions. That could in particular be the case in Member States that have taken measures under Article 44 of Directive (EU) 2018/1972. The undertakings providing or authorised to provide public electronic communications networks should, to the extent possible, remove the elements of its network (such as obsolete cables, equipment) and restore the affected area upon termination of the contract with the subscriber.

- (48) In order to contribute to ensuring availability of gigabit networks to end users, new buildings and majorly renovated buildings should be equipped with fibre-ready in-building physical infrastructure, in-building fibre wiring and a building access point except in cases where it is disproportionate in relation to the total costs of the renovation works. Member States should have a degree of flexibility to achieve this. This Regulation, therefore, does not seek to harmonise rules on related costs, including the recovery of costs of equipping buildings with fibre-ready in-building physical infrastructure, in-building fibre wiring and building access point.
- (49) In line with the subsidiarity principle and to take national circumstances into account, Member States should adopt the standards or technical specifications necessary for the purpose of equipping newly constructed or majorly renovated buildings with fibre-ready in-building physical infrastructure and in-building fibre wiring; and new or majorly renovated multi-dwelling buildings with an access point. Those standards or technical specifications may set out at least: the building access point specifications; fibre interface specifications; cable specifications; socket specifications; specifications for pipes or micro-ducts; technical specifications needed to prevent interference with electrical cabling, and the minimum bend radius. Member States may make the issuance of building permits conditional on compliance of the relevant new building or major renovation works project requiring a building permit with the standards or technical specifications based on a certified test report or a similar procedure set up by Member States. In addition to the building permit, which are granted by the competent authorities after verification that the construction technical project complies with the relevant regulations, in some Member States a permit to use the building for its intended purpose after completion of its construction is also required. Member States may also set up certification schemes for the purpose of demonstrating compliance with the standards or technical specifications as well as for qualifying for the ‘fibre-ready’ label. Moreover, to avoid an increase in red tape related to the certification scheme set up under this Regulation, Member States could take into account the procedural requirements applied to certification schemes pursuant to Directive 2010/31/EU and also consider the possibility to enable the combined launch of both request procedures.
- (50) In view of the social benefits stemming from digital inclusion and taking into account the economics of deploying VHCN, where there is neither existing passive or active fibre-ready infrastructure serving end users’ premises nor alternatives to providing VHCN to a subscriber, any provider of public communications networks should have the right to terminate its network to a private premise at its own cost, provided that the impact on private property is minimised, for example, if possible, by reusing the existing physical infrastructure available in the building or ensuring full restoration of the affected areas.
- (51) Requests for access to the in-building physical infrastructure should fall under the scope of this Regulation, whereas a request for access to fibre wiring is to fall under the scope of Directive (EU) 2018/1972.

- (52) Member states may provide guidance on the applications of provisions on access to in-building physical infrastructure, including but not only on the terms and conditions thereof. The views of stakeholders and national dispute settlement bodies should be duly taken into account in the preparation of the guidance.
- (53) To foster the modernisation and agility of administrative procedures and reduce the cost of and time spent on the procedures for deploying VHCN, the services of single information points should be performed fully online. To that end, single information points should provide easy access to the necessary digital tools, such as web portals, electronic addresses, databases, digital platforms, and digital applications. The tools should give access in an efficient manner to the minimum information on existing physical infrastructure and planned civil works and the possibility to request information. Such digital tools should also give access to the electronic administrative procedures for granting permits and rights of way and related information on the applicable conditions and procedures. Where more than one single information point is set up in a Member State, all single information points should be easily and seamlessly accessible, by electronic means, via a single national digital entry point. This entry point should have a common user interface ensuring access to the online single information points. The single national digital entry point should facilitate interaction between operators and competent authorities performing the functions of the single information points.
- (54) Member States should be allowed to rely on, and where necessary improve, digital tools, such as web portals, electronic addresses, databases, digital platforms, and digital applications that might already be available at local, regional or national level to provide the functions of the single information point provided they comply with the obligations set out in this Regulation. This includes access through a single national digital entry point and the availability of all the functionalities set out in this Regulation. To comply with the ‘once-only’ data minimisation and accuracy principles, Member States should be allowed to integrate more digital platforms, databases, or applications supporting the single information points, as appropriate. For example, the digital platforms, databases or applications supporting the single information points on existing physical infrastructure could be interconnected or fully or partially integrated with the ones for planned civil works and granting permits.

- (55) To ensure the effectiveness of the single information points provided for under this Regulation, Member States should ensure adequate resources as well as readily available relevant information on a specific geographical area. The information should be presented with the right level of detail to maximise efficiency in view of the tasks assigned, including at the local cadastre. In that regard, Member States could consider the possible synergies and economies of scale with the points of single contact within the meaning of Article 6 of Directive 2006/123/EC of the European Parliament and of the Council<sup>12</sup> and other planned or existing e-government solutions with a view to building on existing structures and maximising the benefits for users. Similarly, the Single Digital Gateway provided for in Regulation (EU) 2018/1724 of the European Parliament and of the Council<sup>13</sup> should link to the single information points.
- (56) The costs for setting-up the single national digital entry point, the single information points and the digital tools needed to comply with the provisions of this Regulation could be fully or partly eligible for financial support under Union funds, such as the European Regional Development Fund - specific objective: a more competitive and smarter Europe by promoting innovative and smart economic transformation and regional ICT<sup>14</sup>; the Digital Europe Programme<sup>15</sup> - specific objective: deployment and best use of digital capacities and interoperability and the Recovery and Resilience Facility<sup>16</sup> - pillars on digital transformation and on smart, sustainable and inclusive growth, including economic cohesion, jobs, productivity, competitiveness, research, development and innovation, and a well-functioning internal market with strong SMEs, provided they comply with the objectives and eligibility criteria therein.

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<sup>12</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ([OJ L 376, 27.12.2006, p. 36](#)).

<sup>13</sup> Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 ([OJ L 295, 21.11.2018, p. 1](#)).

<sup>14</sup> Article 3(1)(a) of Regulation (EU) 2021/1058 of the European Parliament and of the Council of 24 June 2021 on the European Regional Development Fund and on the Cohesion Fund ([OJ L 231, 30.6.2021, p. 60](#))

<sup>15</sup> Article 8 of Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the Digital Europe Programme and repealing Decision (EU) 2015/2240 ([OJ L 166, 11.5.2021, p. 1](#))

<sup>16</sup> Article 3 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility ([OJ L 57, 18.2.2021, p. 17](#))



- (57) In the event of a disagreement on technical and commercial terms and conditions during commercial negotiations on access to physical infrastructure or coordination of civil works, each party should be able to call on a national dispute settlement body to impose a solution on the parties to avoid unjustified refusals to meet the request or the imposition of unreasonable conditions. When determining prices for granting access to or cost-sharing for coordinated civil works, the dispute settlement body should ensure that the access provider and network operators planning civil works have a fair opportunity to recover their costs incurred in providing access to their physical infrastructure or coordinating their planned civil works. This should take into account any specific national conditions, any tariff structures put in place and any previous imposition of remedies by a national regulatory authority. The dispute settlement body should also take into account the impact of the requested access or coordination of planned civil works on the business plan of the access provider or network operators planning civil works, including their investments made or planned, in particular investments in the physical infrastructure to which the request refers.
- (58) To avoid delays in network deployments, the national dispute settlement body should settle the dispute in a timely manner and, in any event, at the latest within 4 months from receipt of the request to settle the dispute in the case of disputes on access to existing physical infrastructure and 2 months when it concerns transparency on physical infrastructure, coordination of planned civil works and transparency on planned civil works. Exceptional circumstances justifying a delay in the settlement of a dispute could be beyond the control of the dispute settlement bodies, such as insufficient information or documentation that is necessary to take a decision, including the views of other competent authorities that need to be consulted or the high complexity of the file.
- (59) Where disputes arise on access to the physical infrastructure, planned civil works or information thereof to deploy VHCN, the dispute settlement body should have the power to resolve such disputes by means of a binding decision. In any case, decisions of such a body should be without prejudice to the possibility of any party to refer the case to a court or to conduct a prior or parallel conciliation mechanism to the formal dispute settlement, which could take the form of mediation or an additional round of exchanges.
- (60) In accordance with the principle of subsidiarity, this Regulation should be without prejudice to the possibility of Member States to allocate regulatory tasks to the authorities best suited to fulfil them in accordance with the national constitutional system of attribution of competences and powers and the requirements set out in this Regulation. To reduce the administrative burden, Member States should be allowed to appoint an existing body or maintain the competent bodies already appointed pursuant to Directive (EU) 2014/61/EU. Information on the tasks allocated to the competent body or bodies should be published via a single information point and notified to the Commission, unless already done pursuant to Directive (EU) 2014/61/EU. The discretion that Member States retain to allocate the functions of the single information point to more than one competent body should not affect their ability to effectively fulfil those functions.

- (61) The designated national dispute settlement body and the competent body performing the functions of the single information point should ensure impartiality, independence and structural separation towards the parties involved, exercise their powers impartially, transparently and in a timely manner; and have the appropriate competencies and resources.
- (62) Member States should provide for appropriate, effective, proportionate and dissuasive penalties in the event of non-compliance with this Regulation or with a binding decision adopted by the competent bodies, including cases where a network operator or public sector body knowingly or grossly and negligently provides misleading, erroneous or incomplete information via a single information point.
- (63) Since the objectives of this Regulation aiming at facilitating the deployment of physical infrastructures suitable for VHCN across the Union in a way which promotes the internal market cannot be sufficiently achieved by the Member States because of persistent divergent approaches as well as the slow and ineffective transposition of Directive 2014/61/EU but can rather, by reason of the scale of the network deployments and investment required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (63b) This Regulation is without prejudice to the Member States' responsibility for safeguarding national security or their power to safeguard other essential State functions, in particular concerning public security, territorial integrity and the maintenance of law and order. In line with this, exceptions from this regulation, made with regard to such matters, should be considered duly justified and proportionate.
- (64) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular this Regulation seeks to ensure full respect for the right to private life and the protection of business secrets, the freedom to conduct business, the right to property and the right to an effective remedy. This Regulation has to be applied in accordance with those rights and principles.
- (65) This Regulation includes provisions covering all the substance areas covered by Directive 2014/61/EU, which should therefore be repealed.

- (66) A period of twenty four months between the entry into force and the application aims to give sufficient time to Member States to ensure their national legislation does not contain any obstacles to the uniform and effective application of this Regulation. In case of small municipalities of less than 3,500 inhabitants Member States may, under the conditions set out in this Regulation, provide that the deadline to provide information on requests to access physical infrastructure is extended by an additional period of 12 months. The period of twenty four months is without prejudice to the specific rules in this Regulation on the delayed application of specific provisions as specified therein. Member States are to withdraw national provisions overlapping with this Regulation or contradicting it by the time it starts to apply. As regards adopting new legislation during this period, it follows from Article 4(3) TEU that Member States have a duty of sincere cooperation not to take action that would conflict with prospective Union legal rules,

HAVE ADOPTED THIS REGULATION:

## *Article 1*

### **Subject matter and scope**

1. This Regulation aims to facilitate and stimulate the roll-out of very high capacity networks (VHCN) by promoting the joint use of existing physical infrastructure and by enabling a more efficient deployment of new physical infrastructure so that such networks can be rolled out faster and at a lower cost.
2. If any provision of this Regulation conflicts with a provision of Directive (EU) 2018/1972 or Directive 2002/77/EC, the relevant provision of those Directives shall prevail.
3. This Regulation sets minimum requirements for achieving the aims set out in paragraph 1. Member States may maintain or introduce rules in conformity with Union law which are stricter or more detailed than those minimum requirements, where they serve to promote the joint use of existing physical infrastructure or enable a more efficient deployment of new physical infrastructure.
4. By way of exception to paragraph 3, Member States shall not maintain or introduce rules which are stricter or more detailed than those laid down in Article 3(3) subparagraph points (a) to (e), and (6), Article 4(5) second subparagraph, Article 5(2) second subparagraph and (4), Article 6(2) and Article 8(7) and (8).
5. This Regulation is without prejudice to the Member States' responsibility for safeguarding national security and their power to safeguard other essential State functions, including ensuring the territorial integrity of the State and maintaining law and order.

## *Article 2*

### **Definitions**

For the purposes of this Regulation, the definitions in Directive (EU) 2018/1972 apply, in particular the definitions of ‘electronic communications network’, ‘very high capacity network’, ‘public electronic communications network’, ‘network termination point’, ‘associated facilities’, ‘end-user’, ‘security of networks and services’, ‘access’, and ‘operator’.

The following definitions also apply:

(1) ‘network operator’ means:

(a) an operator as defined in Article 2, point (29), of Directive (EU) 2018/1972;

(b) an undertaking providing a physical infrastructure intended to provide:

(i) a service of production, transport or distribution of:

- gas;
- electricity, including public lighting;
- heating;
- water, including disposal or treatment of wastewater and sewage, and drainage systems;

(ii) transport services, including railways, roads, including urban roads, ports and airports;

(2) ‘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;

(3) ‘bodies governed by public law’ means bodies that have all of the following characteristics:

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality;
- (c) they are financed, in full or for the most part, by state, regional or local authorities or by other bodies governed by public law; or are subject to management supervision by those authorities or bodies; or have an administrative, managerial or supervisory board, more than half of whose members are appointed by state, regional or local authorities or by other bodies governed by public law;

(4) ‘physical infrastructure’ means:

- (a) any element of a network that is intended to host other elements of a network without becoming an active element of the network itself, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, antenna installations, towers and poles, as well as buildings including their rooftops and parts of their facades or entries to buildings, and any other asset that could be suitable to host elements of a networks, including street furniture, such as light poles, street signs, traffic lights, billboards, tolls frames, bus and tramway stops and metro and railway stations;
- (b) where they are not part of a network and are owned or controlled by public sector bodies: buildings including their rooftops and parts of their facades or entries to buildings, and any other asset that could be suitable to host elements of a network, including street furniture, such as light poles, street signs, traffic lights, billboards, tolls frames, bus and tramway stops and metro and railway stations.



Cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption as defined in Article 2, point 1, of Council (EU) 2020/2184 of the European Parliament and of the Council<sup>17</sup> are not physical infrastructure within the meaning of this Regulation;

(5) ‘civil works’ means every outcome of building or civil engineering works taken as a whole that is sufficient in itself to fulfil an economic or technical function and entails one or more elements of a physical infrastructure;

(6) ‘in-building physical infrastructure’ means physical infrastructure or installations 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 access point with the network termination point or, in those Member States where it is allowed to place the network termination point outside the end user’s particular location, up to the physical point where the end user connects to access the public network.

(7) ‘in-building fibre wiring’ means optical fibre cables at the end-user’s location, including elements under joint ownership, intended to deliver electronic communications services and connecting the building access point with the network termination point, or, in those Member States, where it is allowed to place the network termination point outside the end user’s particular location, up to the physical point where the end user connects to be able to access the public network.

(8) ‘fibre-ready in-building physical infrastructure’ means in-building physical infrastructure intended to host optical fibre elements;

(9) ‘major renovation works’ means civil works at the end user’s location encompassing structural modifications of the entire in-building physical infrastructure or a significant part thereof and that require, in accordance with national law, a building permit;

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<sup>17</sup> Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (OJ L 435, 23.12.2020, p. 1).

(10) ‘permit’ means an explicit or implicit decision or set of decisions taken simultaneously or successively by one or several competent authorities that are required under national law for an undertaking to carry out building or civil engineering works necessary for the deployment of elements of VHCN;

(11) ‘building access point’ means a physical point, located inside or outside the building, easily accessible to multiple undertakings providing or authorised to provide public electronic communications networks, where connection to the fibre-ready in-building physical infrastructure is made available.

(12) ‘rights of way’ means rights referred to in Article 43(1) of the Directive (EU) 2018/1972, granted to an operator to install facilities on, over or under public or private property to deploy VHCN and associated facilities.

### *Article 3*

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

1. Without prejudice to paragraph 3, all public sector bodies owning or controlling physical infrastructure and all network operators, shall meet, upon written request of an operator, all reasonable requests for access to that physical infrastructure under fair and reasonable terms and conditions, including price, with a view to deploying elements of VHCN or associated facilities. Public sector bodies owning or controlling physical infrastructure shall meet all reasonable requests for access also under non-discriminatory terms and conditions. Such written requests shall specify the elements of the physical infrastructure for which the access is requested, including a specific time frame. Member States may specify detailed requirements for these requests.

2. When determining fair, and reasonable terms and conditions, including prices, for granting access, network operators and public sector bodies owning or controlling physical infrastructure shall, where relevant, take into account at least the following:

- (a) existing contracts and commercial terms and conditions agreed between operators seeking access and network operators or public bodies granting access to physical infrastructures.
- (b) the need to ensure that the access provider, including the providers of associated facilities, has a fair opportunity to recover the costs it incurs in order to provide access to its physical infrastructure, taking into account specific national conditions, business models, and any tariff structures put in place to provide a fair opportunity for cost recovery; in the case of electronic communications networks, any remedies imposed by a national regulatory authority shall also be taken into account.
- (c) the impact of the requested access on the access provider's business plan, including investments in the physical infrastructure to which the access has been requested, as well as the need to ensure that the access provider receives a fair return on its investment, which reflects the relevant market conditions and, in particular in the case of the undertakings that primarily provide tower infrastructure and offers physical access to more than one undertaking that provides or that is authorised to provide public electronic networks, their different business models;

In the specific case of access to physical infrastructure of operators, dispute settlement bodies, taking into account when relevant the guidance established in accordance with paragraph 9, may consider when determining the fair and reasonable terms and conditions, including the prices, for granting the access:

- the economic viability of those 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 at the time it was made, in particular in the physical infrastructures used for the provision of connectivity, and
- any possibility previously offered to the access seeker to co-invest in the deployment of the physical infrastructure, notably pursuant to Article 76 of Directive (EU) 2018/1972, or to co-deploy alongside it.

3. Network operators and public sector bodies owning or controlling physical infrastructure may refuse access to specific physical infrastructure based on one or more of the following conditions:

- (a) there is a lack of technical suitability of the physical infrastructure to which access has been requested to host any of the elements of VHCN referred to in paragraph 1;
- (b) there is a lack of availability of space to host the elements of VHCN or associated facilities referred to in paragraph 1, including after having taken into account the future need for space of the access provider that is sufficiently demonstrated, such as in the publicly available investments plans or by a threshold for allowed capacity as a percentage of the entire capacity;
- (c) the existence of justified reasons regarding safety, national security and public health;
- (d) the existence of duly justified reasons regarding the integrity and security of any network, in particular critical national infrastructure;
- (e) the existence of duly justified risk of serious interferences of the planned electronic communications services with the provision of other services over the same physical infrastructure; or
- (f) the availability of viable alternative means of passive wholesale physical access to electronic communications networks, including access to dark fibre or fibre unbundling, provided by the same network operator and suitable for the provision of VHCN, provided that such access is offered under fair and reasonable terms and conditions.

Member States may provide that the network operators and public sector bodies owning or controlling physical infrastructure may refuse access to specific physical infrastructure where the availability of viable alternative means of non-discriminatory open wholesale access to very high capacity communications networks provided by the same network operator or by the same public body, provided that:

- i. such alternative means of wholesale access is offered under fair and reasonable terms and conditions; and
- ii. the deployment project of the requesting operator addresses the same coverage area and there is no other fibre network connecting end-user premises (FttP) serving this coverage area.

In the event of a refusal to provide access, the network operator or the public sector body owning or controlling physical infrastructure shall communicate to the access seeker, in writing, the specific and detailed reasons for such refusal as soon as possible, and no later than two months from the date of the receipt of the complete request for access, except for critical national infrastructure as defined under national law, for which specific and detailed reasons shall not be required in the communication of refusal to the seeker.

4. Member States may establish or designate a body to coordinate access requests to physical infrastructure owned or controlled by public sector bodies, provide legal and technical advice through the negotiation of access terms and conditions, and facilitate the provision of information via a single information point referred to in Article 10.

5. Physical infrastructure which is already subject to access obligations imposed by national regulatory authorities pursuant to Directive (EU) 2018/1972, by other competent authorities or resulting from the application of Union State aid rules shall not be subject to the obligations set out in paragraphs 1, 2, and 3, for as long as such access obligations are in place.

6. Public sector bodies owning or controlling physical infrastructure or certain categories of physical infrastructure may not apply paragraphs 1, 2 and 3 to those physical infrastructure or categories of physical infrastructure for reasons of architectural, historical, religious, or environmental value, or for reasons of public security, defence, safety and health. Member States shall identify such physical infrastructure or categories of physical infrastructure in their territories based on duly justified and proportionate reasons. The list of categories of physical infrastructure and the criteria applied to identify them, shall be published via a single information point.

7. Operators shall have the right to offer access to their physical infrastructure for the purpose of deploying networks other than electronic communications networks or associated facilities.

8. This Article shall be without prejudice to the right to property of the owner of the physical infrastructure where the network operator or the public sector body is not the owner and to the right to property of any other third party, such as landowners and private property owners or when applicable, rights of tenants.

9. Member States may provide guidance on the application of this Article.

#### *Article 4*

### **Transparency on physical infrastructure**

1. In order to request access to physical infrastructure in accordance with Article 3, any operator shall have the right to access, upon request, the following minimum information on existing physical infrastructure in electronic format via a single information point:

- (a) georeferenced location and route;
- (b) type and current use of the infrastructure;
- (c) a contact point.



Such minimum information shall be accessible, under proportionate, non-discriminatory and transparent terms and, in any event no later than 15 working days after the request for information is submitted. In duly justified cases, the deadline may be extended by 15 working days. Operators requesting access shall be informed of the new deadline via a single information point.

Any operator requesting access to information pursuant to this Article shall specify the area in which it envisages deploying elements of VHCN or associated facilities.

Access to the minimum information may be limited or refused only where necessary to ensure the security of certain buildings owned or controlled by public sector bodies, the security of the networks and their integrity, national security, the security of national critical infrastructure, public health or safety, where physical infrastructures are not subject to access obligations according to Article 3(6), or for reasons of confidentiality or operating and business secrets.

2. Network operators and public sector bodies shall make available the minimum information referred to in paragraph 1, via a single information point and in electronic format, starting not later than 24 months after the entry into force of this Regulation. Under the same conditions, network operators and public sector bodies shall make available promptly any update to that information and any new minimum information referred to in paragraph 1. In case network operators or public sector bodies do not comply with the obligation set out in paragraph 1, the competent authorities may request the missing information referred in paragraph 1 is made available in electronic format via a single information point, within 15 working days after receiving the request, without prejudice to the possibility for Member States to impose penalties to network operators and public sector bodies owning or controlling physical infrastructure for not complying with this obligation.

3. Network operators and public sector bodies shall meet reasonable requests for on-site surveys of specific elements of their physical infrastructure upon specific request of an operator. Such requests shall specify the elements of the physical infrastructure concerned with a view to deploying elements of VHCN or associated facilities. On-site surveys of the specified elements of the physical infrastructure shall be granted under proportionate, non-discriminatory and transparent terms within 1 month from the date of receipt of the request, subject to the limitations set out in paragraph 1, fourth subparagraph. Member States may specify detailed requirements on such request.

4. Member States may decide that paragraphs 1, 2 and 3 shall not apply to all or parts of critical national infrastructure as defined under national law for security reasons.

5. Paragraphs 1, 2 and 3 shall not apply:

- (a) in the case of physical infrastructure that is not technically suitable for the deployment of VHCN or associated facilities'; or
- (b) in specific cases where the obligation to provide information about certain existing types of physical infrastructure pursuant to paragraph 1, first subparagraph, would be disproportionate, on the basis of a cost-benefit analysis conducted by Member States and based on a consultation with stakeholders; or
- (c) where physical infrastructures are not subject to access obligations in accordance with Article 3(6).

The justification, criteria and conditions for applying any such exceptions shall be published via a single information point.

6. Operators that obtain access to information pursuant to this Article shall take appropriate measures to ensure respect for confidentiality and operating and business secrets.

## *Article 5*

### **Coordination of civil works**

1. Public sector bodies owning or controlling physical infrastructure and all network operators shall have the right to negotiate agreements on the coordination of civil works, including on the apportioning of costs, with operators with a view to deploying elements of very high capacity networks or associated facilities.

2. Public sector bodies owning or controlling physical infrastructure and all network operators, when performing or planning to perform directly or indirectly civil works, which are fully or partially financed by public means, shall meet any reasonable written request to coordinate those civil works under transparent and non-discriminatory terms made by operators with a view to deploying elements of VHCN or associated facilities. Member states may specify detailed requirements on such request, including cases of partial financing.

Such requests shall be met provided that the following cumulative conditions are met:

- (a) this will not entail any unrecoverable additional costs, including those caused by additional delays, for the network operator that initially envisaged the civil works in question, without prejudice to the possibility of agreeing on apportioning the costs between the parties concerned;
- (b) the network operator initially envisaging the civil works remains in control over the coordination of the works;
- (c) the request to coordinate is filed as soon as possible and, when a permit is necessary, at least 2 months before the submission of the final project to the competent authorities for granting permits.

3. A request to coordinate civil works made by an undertaking providing or authorised to provide public electronic communications networks to an undertaking providing or authorised to provide public electronic communications networks may be deemed unreasonable where both following conditions are met:

- (a) the request concerns an area which has been subject to either of the following:
  - (i) a forecast of the reach of broadband networks, including VHCN pursuant to Article 22(1) of Directive (EU) 2018/1972;
  - (ii) an invitation to declare the intention to deploy VHCN pursuant to Article 22(3) of Directive (EU) 2018/1972;
  - (iii) a public consultation in applying Union State aid rules;

- (b) the requesting undertaking failed to express its intention to deploy VHCN in the area referred to in point (a) in any of the most recent procedures among those listed in that point covering the period during which the request for coordination is made.

If a request to coordinate is considered unreasonable on the basis of the first subparagraph, the undertaking providing or authorised to provide public electronic communications networks refusing the coordination of civil works shall deploy physical infrastructure with sufficient capacity to accommodate possible future reasonable needs for third-party access.

4. Member States may decide that paragraphs 2 and 3 shall not apply to types of works that are limited in scope, such as in terms of value, size or duration, or for critical national infrastructure. Member States shall identify the type of civil works considered to be limited in scope or related, based on Union or national law, to critical national infrastructure based on duly justified and proportionate reasons. Information on such types of civil works shall be published via a single information point. Member States may decide not to publish information related to critical national infrastructure .

5. Member States may provide guidance on the application of this Article.

## *Article 6*

### **Transparency on planned civil works**

1. In order to request coordination of civil works referred to in Articles 5.2, any network operator shall make available in electronic format via a single information point the following minimum information:

- (a) the georeferenced location and the type of works;
- (b) the elements of physical infrastructure involved;
- (c) the estimated date for starting the works and their duration;

- (d) the estimated date for submitting the final project to the competent authorities for granting permits, where applicable;
- (e) a contact point.

The network operator shall ensure that the information referred to in the first subparagraph for planned civil works related to its physical infrastructure, is correct and up to date and made available promptly, via a single information point. This must be done as soon as the information is available to the network operator and, in any event and where a permit is envisaged, not later than 3 months prior to the first submission of the request for a permit to the competent authorities.

In order to facilitate agreements on coordination of civil works when urban roads or pavements under ownership or control of public sector bodies are built or renovated, public sector bodies shall make available in electronic format via a single information point the information referred to in the first subparagraph. This shall be done as soon as the information is available to the public sector body, in any event and where a permit is requested, not later than 3 months prior to the first submission of the request for a permit to the competent authorities.

Operators shall have the right to access the minimum information referred to in the first subparagraph in electronic format, upon request, via a single information point. The request for access to information shall specify the area in which the requesting operator envisages deploying elements of VHCN or associated facilities. Within 15 working days from the date of the receipt of the request for information, the requested information shall be made available under proportionate, non-discriminatory and transparent terms. In duly justified cases, the deadline may be extended by 15 working days. Access to the minimum information may be limited or refused only to the extent necessary to ensure the security of the networks including that of critical infrastructures, and their integrity, national security, public health or safety, confidentiality or operating and business secrets.

2. Member States may decide that paragraph 1 shall not apply to information on types of civil works that are limited in scope, such as in terms of value, size or duration, in the case of critical national infrastructure, or for reasons of public safety, national security or emergency. Member States shall identify, based on duly justified and proportionate reasons, the types of civil works that would be considered limited in scope or concern critical national infrastructure, as well as the emergencies or the reasons of national security that would justify not being subject to the obligation to provide information. Information on such types of civil works excluded from transparency obligations shall be published via a single information point. Member States may decide not to publish information related to critical national infrastructure.

## *Article 7*

### **Procedure for granting permits and rights of way**

1. Competent authorities shall not unduly restrict, **or** hinder the deployment of any element of VHCN or associated facilities. Member States shall make their best efforts to facilitate that any rules governing the conditions and procedures applicable for granting permits, and rights of way, required for the deployment of elements of VHCN or associated facilities are consistent across the national territory, without prejudice to the right of the Member States to maintain rules and safeguards for the protection of public safety.
2. Competent authorities shall make available all information on the conditions and procedures applicable for granting permits and rights of way which are granted via administrative procedures, including any information on exemptions on some or all permits or rights of way required under national or Union law, via a single information point in electronic format.
3. Competent authorities shall ensure that operators can submit, via a single information point in electronic format, applications for permits, or rights of way and retrieve information about the status of its application. Member states may specify detailed procedures to retrieve the information.



4. *deleted*

5. The competent authorities shall grant or refuse permits, other than rights of way, within a maximum of 4 months from the date of the receipt of a complete permit application.

The completeness of the application for permits or rights of way shall be determined by the competent authorities within 20 working days from the receipt of the application. Unless the competent authorities invited the applicant to provide any missing information within that period, the application shall be deemed complete.

The first and second subparagraph shall be without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure that are applicable to the permit-granting procedure, including appeal proceedings, in accordance with Union law or national law in compliance with Union law.

By way of exception and based on a justified reason, the 4 month deadline referred to in the first subparagraph and in paragraph 6 may be extended by the competent authority on its own motion. Any extension shall be the shortest possible and not exceed 4 months- except where required to meet other specific deadlines or obligations laid down for the proper conduct of the procedure that are applicable to the permit-granting procedure, including appeal proceedings, in accordance with Union law or national law in compliance with Union law. Member States shall set out the reasons justifying such an extension, and publish them in advance via single information points.

Any refusal of a permit or a right of way shall be duly justified on the basis of objective, transparent, non-discriminatory and proportionate criteria.

6. By way of derogation from Article 43(1), point (a) of Directive (EU) 2018/1972, where rights of way on, over or under public, or where applicable, private property, with the prior authorisation of the owner or in accordance with national law, are required for the deployment of elements of VHCN or associated facilities in addition to permits, competent authorities shall grant such rights of way within the 4 month period from the date of receipt of the complete application except in the case of expropriation.

7. *deleted*

8. Member states may in accordance with national law, specify categories of deployment of elements of VHCN or associated facilities that shall not be subject to any permit-granting procedure within the meaning of this Article.

9. Member States may, inter alia, require permits for the deployment of elements of VHCN or associated facilities on buildings or sites of architectural, historical, religious or environmental value protected in accordance with national law or where necessary for public safety, security of critical infrastructure or environmental reasons.

10. Permits, other than rights of way, required for the deployment of elements of VHCN or associated facilities shall not be subject to any fees or charges going beyond administrative costs as provided for, *mutatis mutandis*, in Article 16 of Directive (EU) 2018/1972.

## Article 8

### **In-building physical infrastructure and fibre wiring**

1. All newly constructed buildings, or those undergoing major renovation works, including multi-dwelling buildings containing elements under joint ownership, at the end-user's location, for which applications for building permits have been submitted after 24 months after the date of entry into force of this Regulation, shall be equipped with a building access point, a fibre-ready in-building physical infrastructure, and the in-building fibre wiring, including connections up to the network termination points, or, in those Member States where it is allowed to place the network termination point outside the end user's particular location, up to the physical point where the end user connects to access the public network.

2. *deleted*

3. If it does not disproportionately increase the costs of the renovation works and is technically feasible, by 24 months after the date of enter into force of this Regulation, all buildings at the end-users' location, including elements thereof under joint ownership, undergoing major renovations as defined in point 10 of Article 2 of Directive 2010/31/EU shall be equipped with a building access point, a fibre-ready in-building physical infrastructure, and the in-building fibre wiring, including connections up to the network termination points, or, in those Member States where it is allowed to place the network termination point outside the end user's particular location, up to the physical point where the end user connects to access the public network.

4. Member States shall adopt the relevant standards or technical specifications that are necessary for the implementation of paragraphs 1, and 3 at the latest 18 months after the date of enter into force of this Regulation. Those standards or technical specifications may include:

- (a) the building access point specifications and fibre interface specifications;
- (b) cable specifications;
- (c) socket specifications;
- (d) specifications of conduits or micro-ducts;
- (e) technical specifications needed to prevent interference with electrical cabling;
- (f) the minimum bend radius;
- (g) technical specifications for the cabling installation.

5. Buildings equipped in accordance with this Article shall be eligible, on a voluntary basis and following the procedures set up by Member states, to receive a 'fibre-ready' label, where Member States have chosen to introduce such a label.

6. Member States may set up certification schemes for the purpose of demonstrating compliance with the standards or technical specifications referred to in paragraph 4 as well as for qualifying for the ‘fibre-ready’ label provided for in paragraph 5. Member States may make the issuance of the building permits referred to in paragraphs 1 and 3 conditional upon compliance with the standards or technical specifications referred to in this paragraph on the basis of a technical project, and when applicable, the permit to use the building for its intended purpose after completion of construction, on the basis of a certified test report or a similar procedure set up by Member States, which could include on-site inspection of the buildings or a representative sample of them.

7. Paragraphs 1, and 3 shall not apply to certain categories of buildings, where compliance with those paragraphs is disproportionate, in terms of costs for individual or joint owners based on objective elements. Member States shall identify such categories of buildings based on duly justified and proportionate reasons.

8. Member States may decide that paragraphs 1, and 3 shall not apply, or apply with proper technical adaptations, to certain types of buildings, such as specific categories of monuments, historic buildings, military buildings and buildings used for national security purposes, as defined by national law. Member States shall identify such categories of buildings based on duly justified and proportionate reasons. Information on such categories of buildings shall be published via a single information point.

## *Article 9*

### **Access to in-building physical infrastructure**

1. Subject to paragraph 3, first subparagraph, any provider of public electronic communications networks shall have the right to roll out its network at its own costs up to the building access point.
2. Subject to paragraph 3, any provider of public electronic communications networks shall have the right to access any existing in-building physical infrastructure with a view to deploying elements of VHCN if duplication is technically impossible or economically inefficient.

3. Any holder of a right to use the building access point and the in-building physical infrastructure shall meet all reasonable written requests for access to the building access point and the in-building physical infrastructure from providers of public electronic communications networks under fair, reasonable and non-discriminatory terms and conditions, including price, where appropriate. Member States may specify detailed requirements for these requests.
4. In the absence of available fibre-ready in-building physical infrastructure, any provider of public electronic communications networks shall have the right to terminate its network at the premises of the subscriber, subject to the agreement of the owner or the subscriber, using, the existing in-building infrastructure, to the extent that it is available and accessible under paragraph 3, and provided that it minimises the impact on the private property of third parties.
5. This Article shall be without prejudice to the right to property of the owner of the building access point or the in-building physical infrastructure where the holder of a right to use that infrastructure or access point is not the owner thereof, and to the right to property of other third parties, such as landowners and building owners.
6. Member states may provide guidance on the application of this Article.

## *Article 10*

### **Digitalisation of single information points**

1. Single information points shall make appropriate digital tools available, such as in the form of web portals, electronic addresses, databases, digital platforms or digital applications, to enable the online exercise of all the rights and the compliance with all the obligations set out in this Regulation.
2. Member States may interconnect or fully or partially integrate several digital tools supporting the single information points referred to paragraph 1, as appropriate.

3. Member States shall set out a single national digital entry point, consisting of a common user interface ensuring seamless access to the digitalised single information points.

## *Article 11*

### **Dispute settlement**

1. Without prejudice to the possibility to refer the case to a court, any party shall be entitled to refer to the competent national dispute settlement body established pursuant to Article 12 a dispute that may arise:

- (a) where access to existing infrastructure is refused or agreement on specific terms and conditions, including price, has not been reached within **2** months from the date of receipt of the request for access under Article 3;
- (b) in connection to the rights and obligations set out in Articles 4 and 6, including where the information requested is not provided within fifteen working days, or in duly justified cases within another fifteen working days, after the request under Article 4 is submitted, and within two weeks after the request under Article 6 is submitted;
- (c) where an agreement on the coordination of civil works pursuant to Article 5(2) has not been reached within 1 month from the date of receipt of the formal request to coordinate civil works; or
- (d) where an agreement on access to in-building physical infrastructure referred to in Article 9(2) or (3) has not been reached within 1 month from the date of receipt of the formal request for access;

1a. Member States may provide that, in the event of disputes referred to in paragraph 1 point (a) and (d), when the entity from which the operator requested access is at the same time the entity entitled to grant the right of way to the property on, in or under which the subject of access is located, the competent national dispute settlement body may resolve the dispute regarding the right of way.



2. Taking full account of the principle of proportionality, the national dispute settlement body referred to in paragraph 1 shall issue a binding decision to resolve the dispute at the latest:

- (a) within four months from the date of the receipt of the dispute settlement request, with respect to disputes referred to in paragraph 1, point (a);
- (b) within two months from the date of the receipt of the dispute settlement request, with respect to disputes referred to in paragraph 1, points (b), (c) and (d).

Those deadlines may only be extended in duly justified exceptional circumstances.

3. As regards disputes referred to in paragraph 1, points (a), (c) and (d) the decision of national dispute settlement body may consist in setting fair and reasonable terms and conditions, including price, where appropriate.

Where the dispute relates to access to the infrastructure of an operator and the national dispute settlement body is the national regulatory authority, the objectives set out in Article 3 of Directive (EU) 2018/1972 shall be taken into account, where appropriate.

4. This Article is in addition to and without prejudice to the judicial remedies and procedures in compliance with Article 47 of the Charter of Fundamental Rights of the European Union<sup>18</sup>.

## *Article 12*

### **Competent bodies**

1. Each of the tasks assigned to the national dispute settlement body shall be undertaken by one or more competent bodies, which can be an existing body.

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<sup>18</sup> Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407)

2. The national dispute settlement body shall be legally distinct and functionally independent of any network operator and any public sector body owning or controlling physical infrastructure involved in the dispute. Member States that retain ownership or control of network operators shall ensure effective structural separation of the functions related to the national dispute settlement procedures and those of the single information point from activities associated with ownership or control.

National dispute settlement bodies shall act independently and objectively, and shall not seek or take instructions from any other body when deciding on the disputes submitted to them. This shall not prevent supervision in accordance with national law. Only competent appeal bodies shall have the power to suspend or overturn decisions of the national dispute settlement bodies.

3. The national dispute settlement body may charge fees to cover the costs of carrying out the tasks assigned to it.

4. All parties concerned by a dispute shall cooperate fully with the national dispute settlement body.

5. The functions of a single information point referred to in Articles 3 to 8 and 10 shall be performed by one or more competent bodies appointed by the Member States at national, regional or local level, as appropriate. In order to cover the costs of carrying out those functions, fees may be charged for the use of the single information points.

6. Paragraph 2, first subparagraph, shall apply *mutatis mutandis* to the competent bodies performing the functions of a single information point.

7. The competent bodies shall exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that they shall have adequate technical, financial and human resources to carry out the tasks assigned to them.

8. Member States shall publish the respective tasks to be undertaken by each competent body via a single information point, in particular where those tasks are assigned to more than one competent body or where the assigned tasks have changed. Where appropriate, the competent bodies shall consult and cooperate with each other on matters of common interest.

9. Member States shall notify to the Commission the identity of each competent body in accordance with this Article for carrying out a function under this Regulation, and their respective responsibilities, by twelve months after the date of entry into force of this Regulation and any modification thereof, before such designation or modification enters into force.

10. Any decision taken by a competent body shall be subject to an appeal, in accordance with national law, before a fully independent appeal body, including a body of judicial character. Article 31 of Directive (EU) 2018/1972 shall apply *mutatis mutandis* to any appeal pursuant to this paragraph.

The right to appeal in accordance with the first subparagraph shall be without prejudice to the right of the parties to bring the dispute before the national competent court.

### *Article 13*

### *Article 14*

## **Penalties**

Member States shall lay down rules on penalties, applicable to infringements of this Regulation and of any binding decision adopted pursuant to this Regulation by the competent bodies referred to in Article 12 and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

## *Article 15*

### **Report and monitoring**

1. By 5 years after the date of entry into force of this Regulation, the Commission shall present a report to the European Parliament and the Council on the implementation of this Regulation. The report shall include a summary of the impact of the measures set out in this Regulation and an assessment of the progress towards achieving its objectives, including whether and how the Regulation could further contribute to achieving the connectivity targets set out in the Decision establishing the Digital Decade Policy Programme 2030.
2. To that end, the Commission may request information from Member States that shall be submitted without undue delay. In particular, by 24 months after the date of entry into force of this Regulation, Member States shall, in close cooperation with the Commission, through the Communications Committee set up under Article 118 of Directive (EU) 2018/1972, set out indicators to adequately monitor the application of this Regulation and the mechanism to ensure a periodic data gathering and reporting to the Commission thereof.

## *Article 16*

### **Transitional measures**

Member States may provide that in case of municipalities with less than 3,500 inhabitants the 24 months deadline referred to in Article 4(2) shall be 36 months after the entry into force of this Regulation. During that period, those municipalities shall ensure that the available information is accessible to operators upon request.

## *Article 17*

### **Repeal**

1. Directive 2014/61/EU is repealed.
2. References to the repealed Directive shall be construed as references to this Regulation and read in accordance with the correlation table in the Annex.

## *Article 18*

### **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from 24 months after the date of entry into force of this Regulation.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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