

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,  
amending Regulation (EU) 2015/2120 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, *reliable* and secure connectivity for everybody and

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

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

everywhere in Europe *including in rural, remote and scarcely populated regions as well as in transport corridors*. A high-quality digital infrastructure based on very high capacity networks underpins almost all sectors of a modern and innovative economy. It *can provide for innovative services, more efficient business operations and smart, sustainable, digital societies, while contributing to achieving the Union climate targets*. It is of strategic importance to social and territorial cohesion and overall for the Union’s competitiveness, *resilience, digital sovereignty* and digital leadership. *Digitalisation has a profound impact on the every-day social, economic, political and cultural life of all people in the Union. In that regard, limited access and insufficient network expansion can deepen social inequalities, thus creating a new digital divide between people who are able to benefit fully from an efficient and secure digital connectivity, allowing them to access a wide range of services, and people who are unable to do so. In that regard, the roll-out of very high capacity networks in rural, remote and scarcely populated regions, as well as in social housing, should be a priority for public investment projects, as a key aspect of social inclusion*. Therefore, people as well as the private and public sectors should have the opportunity to be part of the digital economy.

- (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

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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).

all populated areas covered by *next-generation wireless high-speed networks with a performance of at least equivalent to that of 5G.*

- (3) To achieve those targets, there is a need for policies to speed up, *simplify* and lower the costs of the deployment of very high-capacity fixed and wireless networks across the Union, including proper planning, *enhanced* coordination and *setting-up of simplified and streamlined permit procedures as a way of reducing* of administrative burdens *on both operators and national administrations.*
- (3a) *Integrating space and terrestrial infrastructure is important for the connectivity roll-out and preparing for the next wave of digital infrastructure enabling the Union to take the lead. Recent technical progress has allowed satellite based communications constellations, to emerge and gradually offer high-speed and relatively low latency connectivity services, enable connectivity and increase cohesion across the Union, including its outermost regions, rural, remote and scarcely populated areas. In that regard, the resources provided by Regulation (EU) 2023/588 of the European Parliament and of the Council<sup>6</sup>, and in particular the potential commercial internet access capabilities of the future satellite constellation might be taken into account in the planning and deploying of very high capacity fixed and wireless networks across the Union and contribute, where possible, to the deployment of very high capacity networks. It is important to underline that satellite connectivity also comes with ground based elements whose deployment may be facilitated through this regulation.*
- (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 *carried out by network operators or public sector bodies*; (iii) burdensome *and lengthy* administrative

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<sup>6</sup> Regulation (EU) 2023/588 of the European Parliament and of the Council of 15 March 2023 establishing the Union Secure Connectivity Programme for the period 2023-2027 (OJ L 79, 17.3.2023, p. 1).

procedures to grant permits; and (iv) bottlenecks in in-building deployment of networks, which lead to high financial barriers, particularly in rural areas.

- (7) Directive 2014/61/EU of the European Parliament and of the Council<sup>7</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 **and streamlined** 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, including in rural, remote or scarcely populated areas or in transport corridors**. These measures should maintain effective competition without harming the safety, security, and smooth operation of the existing infrastructure **and public health and environment. Adequate methodologies and scientific data should be taken into account**.
- (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,

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<sup>7</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).

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>8</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. ***Member States should be encouraged to continue implementing the best practices set out in the Commission Recommendation (EU) 2020/1307 that can facilitate the implementation of this Regulation in line with the minimum harmonisation principle.***

- (11) This Regulation aims to strengthen and harmonise rights and obligations applicable across the Union to accelerate the roll-out **VHCN and cross-sector coordination, including backbone and next-generation wireless high-speed networks with a performance of at least equivalent to that of 5G**. Due to the persistent fragmentation of electronic communications markets **■**, undertakings providing or authorised to provide electronic communications networks are unable 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 national **rules** in compliance with Union law that serve to promote the joint use of existing physical infrastructure or enable a more efficient **and rapid** deployment of new physical infrastructure by complementing **or going beyond** the rights and obligations laid down in this Regulation **and provide solutions to achieve its objectives**. For example, Member States could **adopt such stricter or more detailed rules to shorten the deadlines to grant or deny permits necessary for deployment, introduce supplementary permit exemptions**, extend provisions on civil works coordination 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, **expand**

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<sup>8</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).

*the provisions on access to existing physical infrastructure to privately owned buildings, as well as introduce further measures to speed up permitting procedures*, 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 , **Commission** Directive 2002/77/EC<sup>9</sup>, and **Directive (EU) 2022/2555 of the European Parliament and the Council**<sup>10</sup>, the provisions of *those* 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 ***or limit the exercise of such rights. When applicable, rights of tenants should also be taken into account for that purpose.***
- (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

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<sup>9</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).

<sup>10</sup> ***Directive (EU) 2022/2555 of the European Parliament and of the Council of 14 December 2022 on measures for a high common level of cybersecurity across the Union, amending Regulation (EU) No 910/2014 and Directive (EU) 2018/1972, and repealing Directive (EU) 2016/1148 (NIS 2 Directive) (OJ L 333, 27.12.2022, p. 80).***

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 *undertakings primarily providing associated facilities* 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. *To ensure continuity of service and predictability for the planned deployments of associated facilities, legal persons and operators who are tenants of land or holders of rights over land, other than property rights, on which facilities are planned to be or have been installed with a view to deploying elements of very high capacity networks, should negotiate in good faith the access to the land and inform national regulatory authorities about their agreements, including the negotiated price, which where appropriate should reflect market conditions. To facilitate such negotiations, Member States could provide guidance, in particular on the price for the access to land.*
- (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 broadband access services at speeds of at least 100 Mbps 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. ***Member States may specify formal administrative requirements of these requests for access, such the form of such requests or of the draft contract or of the draft project of VHCN installation.*** 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, ***including when managed by any entity entrusted with performing tasks on behalf of those 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 and tunnels***. It is for Member States, ***in cooperation with regional and local authorities*** 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, national security or road safety***. ***In order to ensure public acceptance and sustainable deployment, network elements of VHCN should have minimal visual impact.***
- (17a) ***On the one hand, entire areas, especially in rural regions, could be left without connectivity due to the fact that the public sector infrastructure does not allow or is not suitable for the installation of elements of very high capacity networks. On the other hand, there are commercial buildings that are the only alternative to hosting such elements. To ensure connectivity in remote and scarcely populated areas and bridge the***



*digital coverage gap between rural and urban areas, while keeping the interference with private property to a minimum, where there is no alternative to developing very high capacity networks in the area concerned, Member States could provide that, if some specific conditions are met, owners of private commercial buildings located in rural or remotes areas should grant access to such buildings to operators at fair and reasonable terms and conditions and at prices which reflect market conditions. This obligation would be applied only where all of the following conditions are met: there is no very high capacity network of the same type – fixed or mobile – as that the access seeker intends to deploy, available in the area concerned and there is no prior plan to do so based on the information collected via the single information point available at the date of the request; there is no available existing physical infrastructure owned or controlled by network operators or public sector bodies which is technically suitable to host elements of very high capacity networks in the area concerned.*

- (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 **or a public sector body** 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>11</sup>.

- (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 *potentially* 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 *provide 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 *its* incentives to invest, *and thus create an*

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<sup>11</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.

*incentive for the rapid rollout of VHCN to rural and remote areas. 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. An inefficient duplication of VHCN network elements, putting at risk initial investments and investment plans should, in particular, be avoided in rural areas, where more than one VHCN in the area might not be economically viable, without prejudice to Directive 2002/77/EC<sup>12</sup>, provided that the outcome of such decision would remain compliant with principle of equal treatment. 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 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.*

- (20a) *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, where a similar refusal ground is already applied in national law in compliance with EU law, 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. This wholesale active access should ensure to the requesting operator the availability of VHCN and the possibility to deliver services with the quality and characteristics inherent to VHCN and which are comparable to passive access (e.g. dark fibre or fibre unbundling) in terms of possibilities for quality or service characteristics. Moreover, these viable alternative means of wholesale active access should be provided on a non-discriminatory and open basis. This entails that the operator providing access applies equivalent conditions in*

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<sup>12</sup> *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*

*equivalent circumstances to other operators, and provides services and information to other operators under the same conditions and of the same quality as it provides for its own services, or those of its subsidiaries or partners, this in order to guarantee equal treatment, offering equal possibilities, between all operators, including the providing operator.*

- (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 include: (i) any preventive safeguards to be adopted to limit adverse effects on network safety, security and integrity; (ii) any specific liability arrangements in the event of damages; (iii) 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; (iv) the ability to deliver or provide infrastructure capacity to meet public service obligations; and (v) any constraints stemming from national provisions aiming to protect the environment, *including minimising the visual impact on infrastructure to ensure public acceptance*, 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*. *As access obligations are imposed on network operators (which include operators and utilities' companies), public sector bodies, the criteria for determining fair and reasonable prices and excessive prices, should consider their different situations and business models. For example, all access providers should have a fair opportunity to recover the costs they incur in order to provide access to their physical infrastructure as well as any additional maintenance and adaptation costs resulting from providing access to such infrastructure. In particular, any obligation of access to existing physical infrastructure or coordination of civil works imposed on operators (including undertakings providing or authorised to provide electronic communications networks and services or only associated facilities) should*

*carefully* take into account a number of factors such as ■ the economic viability of those investments based on their risk profile; *and the need for a fair return on those investments and for any time schedule for the return on investment. Finally, the determination of access prices should ensure proper consideration of the different business model of those operators which primarily provide associated facilities and offer physical access to more than one provider of public electronic communication networks, taking into account the relevant Commission guidance. 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 at the time of the conclusion of the contract. This should be without prejudice to the assessment of dispute settlement bodies which may consider, among others, that the contracts presented by the parties are not in accordance with the criteria set out in this regulation for price setting.*

- (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) To ensure consistency of approaches among Member States, *while taking into account the distinct situations across Member States* the Commission, in close cooperation with the Body of European Regulators for Electronic Communications (BEREC), could provide guidance on applying the provisions on access to physical infrastructure, including but not only on the application of fair and reasonable conditions. The views of stakeholders, *national authorities* and national dispute settlement bodies should be duly taken into account in the preparation of the guidance *to ensure, to the extent possible, that such*

*guidance are not disruptive to well-established principles, are in line with national dispute settlement bodies procedural rules, and are not harmful for further deployment of VHCN. The guidance could take into account the features of the network operators and their business model.*

- (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 or planned 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 2 months before the permit application is first submitted to the competent authorities. **Network operators and public sector bodies subject to transparency obligations could proactively and on a voluntary basis expand the minimum information made available, to additional characteristics, such as in case of existing physical infrastructure, information regarding the occupation level of the physical infrastructure, where available, or indicative information regarding the availability of dark fibre.**
- (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, 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 interconnections* 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, 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>13</sup>, the single information point could provide user-friendly access to this information.

- (30) To ensure proportionality and security, the requirement to *make available* information on existing physical infrastructure via *a* 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 *a* 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 *a* 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

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<sup>13</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).

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 could decide that* the transparency obligation for the coordination of civil works *does not apply to types of civil works that relate to critical national infrastructure or for reasons of national security as identified by Member States. Public sector bodies owning or controlling physical infrastructure and all network operators could decide that the transparency obligation for the coordination of civil works does not apply to types of civil works that are limited in scope as well as for the emergency reasons as identified by Member States.* 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 the guidelines* provided by *BEREC in close cooperation with* the Commission. This is without prejudice to the rules and conditions attached to the assignment of public funds and the application of State aid rules.

- (35a) *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 a set of numbers of hours or days, using minimally invasive techniques such as microtrenching or of an emergency character.*

- (36) To ensure consistency of approaches, *while taking into account the diverse situations across Member States*, Body of European Regulators (BEREC), *should in close cooperation with the Commission provide guidelines by entry into force + 18 months on applying the provisions on civil work coordination.*
- (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 *to the extent possible*. While preserving the right of each competent authority to be involved and maintain its decision-making prerogatives in accordance with the subsidiarity principle. *The* information on the procedures and general conditions applicable to granting permits for civil works and rights of way should be *made* available via single information points *by competent authorities involved*. 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. Those undertakings should also be able to retrieve information in electronic format about the status of their requests and whether they have been granted or refused.

- (39) Permit-granting procedures should not ***amount to unjustified*** 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 ***permit application or the deadline set by national law, whichever is shorter***. ***Member States are encouraged to introduce provisions in their national legislation for competent authorities to grant or refuse permits faster than required by law***. This is without prejudice to other specific deadlines or obligations laid down for the proper conduct of the procedure, which are applicable to the permit-granting procedure in accordance with national or Union law. Competent authorities should not restrict, hinder or make the deployment of very high capacity networks 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 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 ***should*** determine the completeness of the permit request within ***20 working*** days from its ***receipt***. ***Where the competent authority concludes that the permit application is not complete, it should invite*** the applicant to provide any missing information within that period. For reasons of equal treatment and transparency, the competent authorities should ***be able to*** consider permit ***applications*** for civil works to be ***inadmissible*** if the minimum information required under this Regulation has not been made available via a single information point ***no later than 2 months prior to*** the first permit request is submitted to the competent authorities. 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) *To accelerate deployments of VHCN while reducing the administrative burden of permit-granting authorities, certain types of civil works, such as small-scale civil works, should not be subject to any prior permit. For reasons of transparency and legal certainty, Member States should identify these types of works and publish the information via a single information point. The exemptions from prior permit requirements could be applied to different categories of infrastructure (such as masts, antennae, poles and underground ducts) under certain specified conditions, for which building permits, digging permits or other types of permits may be initially required. They could also be applied to technical upgrades of existing installations, maintenance works, small-scale civil works, such as micro-trenching. Permits could still be required for small scale civil works of deployment of VHCN or associated facilities for reasons of architectural, historical, religious or environmental value or for reasons of public security, defense, safety, environmental or public health or to protect the security of critical infrastructure. Member States should identify these categories and publish the derogations via a single information point for transparency. In order to allow competent authorities to assess whether the planned works are covered by the derogations they would need minimum information such as information on the start and duration of the works. For this reason, Member States should be able to require the operator in question to notify the competent authorities of their intention to start the civil works by means of a declaration with minimum information.*
- (42) In order to ensure that the procedures for granting such permits 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 should include *inter alia* limiting the obligation of prior authorisation to cases in which it is essential and introducing tacit approval by the competent authorities after a certain period of time has elapsed. *Member States should be able to derogate from the tacit approval provision if they make available to the operator an alternative remedy to the non-compliance by the competent authority with the deadline to issue a decision on the permit application set out under Union or national law. Such alternative remedy should include either a mechanism to allow the operator to claim compensation for damage resulting from the delay in the procedure, or the possibility to refer the case to a*



*court or to a supervisory authority, and be preceded if the operator so requests by a meeting with the competent authority. Additionally, Member States should be able to maintain or introduce simplified authorization procedure to prior communication procedures that may exist under national law, applicable to the deployment of any element of very high capacity networks or associated facilities. Where Member States derogate from the application of the provision on tacit approval, they should ensure that - together with and without prejudice to the alternative remedies provided by them - a conciliation meeting is organised where the operator or the competent authority request this. Such meeting should be organised without undue delay with a view to facilitating the adoption of a decision on the permit. The meeting will in particular provide an opportunity to identify, where appropriate with the participation of other interested parties or relevant authorities, any additional information as well as possible adjustments to the project. Member States could still introduce or maintain any other alternative measure to ensure that the competent authorities comply with the deadline for granting or refusing permits.*

- (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.
- (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 **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, in particular through fibre-ready in-building physical infrastructure. 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 should be equipped with physical infrastructure and in-building fibre wiring, enabling the connection of end users to gigabit speeds, **unless it disproportionately increases the costs of the renovation works and it is technically feasible**. New multi-dwelling buildings and multi-dwelling buildings subject to major renovation should also be



equipped with an access point, *easily* accessible to one or more undertakings providing or authorised to provide public electronic communications networks, *unless it disproportionately increases the costs of the renovation works and it is technically feasible*. Moreover, building developers should provide for empty ducts from every dwelling to the access point, located in or outside the multi-dwelling building, *allowing connections up to the network termination points, or in those Member States where the network termination point is placed, in accordance with national law, outside the end-user's particular location, up to the physical point where the end-user connects to 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>14</sup>) provide an opportunity to also equip those buildings with fibre-ready in-building physical infrastructure, in-building fibre wiring and, for multi-dwelling buildings, an access point.

- (44a) *An access point can be particularly useful for an operator to access a building, especially in the case of multi-dwelling buildings, as that physical point can aggregate the wiring connecting specific end-user locations. In order to enhance competition by allowing more than one undertaking to serve end customers, it is important that access points serving new multi-dwelling buildings and multi-dwelling buildings subject to major renovation are easily accessible by more than one operator, without excessive effort.*
- (44b) *The provisions regarding fibre-ready in-building physical infrastructure, access point and fibre 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, an access point or in-building fibre wiring may be considered disproportionate in terms of costs, namely for new single dwellings or buildings undergoing major renovation works. This may be based on objective grounds, such as tailor-made cost estimates, economic

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<sup>14</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).

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, an access point and in-building fibre wiring and that therefore have considerable cost-saving potential. The fibre readiness of buildings should also be promoted. *Buildings that are equipped with fibre-ready in-building physical infrastructure, an access point and in-building fibre wiring should therefore 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.*
- (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 ■ 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, *without undue interference with the right to property*. Once the network is terminated at the access point, the connection of an additional customer is possible at a significantly lower cost, in particular by means of 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, in the case of multi-dwelling buildings, an access point. 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 an 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 should set out at least: the building access point specifications; fibre interface specifications; cable specifications; socket specifications; specifications *of conduits* or micro-ducts; technical specifications needed to prevent interference with electrical cabling, the minimum bend radius. ***Member states should ensure compliance with those necessary standards or technical specifications. To demonstrate such compliance, Member states should set up procedures, which could include on-site inspections of the buildings or a representative sample of them.***

Moreover, to avoid an increase in red tape related to *such procedures* set up under this Regulation, Member States should take into account the procedural requirements applied to *procedures* pursuant to Directive 2010/31/EU and also consider the possibility to enable the combined launch of both request procedures *where applicable*.

- (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 *without undue interference with the right to property, and* 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) To ensure consistency of approaches, ***while taking into account the distinct situation across Member States, BEREC, in close cooperation with the Commission, should publish guidelines, by the date of entry into force + 18 months on terms and conditions***

*of access to in-building physical infrastructure, including on the application of fair and reasonable terms and conditions, and the criteria that the national dispute settlement bodies should follow when settling disputes. The views of stakeholders and particularly of national dispute settlement bodies should be duly taken into account in the preparation of the guidelines to ensure that such guidelines would not be disruptive to well established principles, would be in line with national dispute settlement bodies procedural rules and not be harmful for further VHCN roll-out. Considering the level of flexibility that the Member States are granted in the application of these provisions, and in order to be efficient, BEREC guidelines should provide an appropriate level of granularity*

- (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, *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, *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. ***In order to avoid duplication and ensure seamless integration, Member States could carry out an assessment of already existing digital tools at national, regional and local levels and build on best practices when designing single information points.***

- (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>15</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>16</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>17</sup>; the Digital Europe Programme<sup>18</sup> - specific objective: deployment and best use of digital capacities and

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<sup>15</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>16</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>17</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>18</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)

interoperability and the Recovery and Resilience Facility<sup>19</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.

- (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 the appropriate Commission guidance *or BEREC guidelines*, 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 1 month 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.

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<sup>19</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)



- (59) Where disputes arise on access to the physical infrastructure, planned civil works or information thereof to deploy very high capacity networks, 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. ***In order to ensure transparency and predictability and to enhance enforcement and trust in dispute resolution mechanisms, national dispute settlements bodies should publish their decision while respecting the principles of confidentiality and business secrets and the single information points should ensure access to these decisions.***
- (59a) ***Provisions of Directive 2014/61/EU concerning dispute settlement continues to apply to any dispute settlement proceedings that were initiated under that Directive.***
- (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. ***National dispute settlement bodies should act independently and objectively, and should not seek or take instructions from any other body when deciding on the disputes submitted to them.***



- (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.
- (63a) ***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.***
- (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. ***However, given a delayed entry into application concerning some rules on transparency, permit-granting procedures, in-building physical infrastructure, and digitalization of single information points, some rules of Directive 2014/61/EU should remain in place until the corresponding rules of this Regulation will start applying. For example, network operators (although not the public sector bodies) will remain bound, as provided for in [Art. 4(3) BCRD], to make available information on existing physical infrastructure via a single information point so that it could be accessible promptly, until [Art. 4(2) GIA] applies.***

- (66) A period of *eighteen* months between the *dates of* entry into force and the application *of this Regulation* 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. *By way of derogation, to ensure Member States have sufficient time for put in place new systems and complying with new rules introduced by this regulation, some rules on transparency on existing physical infrastructure and planned civil works, on the digitalization of single information points and on their role to streamline permit-granting procedures, as well as on in-building physical infrastructure, will apply at a later stage. For example, the obligation to equip new and majorly renovated buildings with fibre-ready physical infrastructure and fibre wirings will become mandatory as of [entry into force + 21 months] and public sector bodies should make available information on existing physical infrastructure via the single information point in electronic form by [entry into force + 24 months] (whereas the same obligation would continue applying for network operators as already applied in accordance with Directive 2014/61/EU). Furthermore, while the transparency provisions concerning the minimum information on planned civil works, including the geo-referenced location, need a longer period [by entry into force + 24 months] to ensure that the respective single information points make available the appropriate digital tools, the existing Single Information Points will continue to be used pursuant to Article 6(1), (2) and (3) of the Directive 2014/61/EC - in the meantime. The same applies for the applicable exceptions defined by the Member States pursuant to Article 6(5) of the Directive 2014/61/EC.* Member States are to withdraw national provisions overlapping with this Regulation or contradicting it by the time each provision 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.
- (66a) *Regulation (EU) 2018/1971 (the “BEREC Regulation”)*<sup>20</sup> introduced, among others and by way of an amendment to Regulation (EU) 2015/2120 (the “Open Internet Regulation” or

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<sup>20</sup> Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (Text with EEA relevance), OJ L 321, 17.12.2018, p. 1–35.

*“OIR”),<sup>21</sup>measures regulating the retail prices for intra-EU communications. The measures aimed at ensuring that consumers are not charged excessive prices for making number-based interpersonal communications originating in the Member State of their domestic provider and terminating at any fixed or mobile number in another Member State. In accordance with the principle of proportionality the measure did not go beyond what was necessary in order to achieve those objectives. The measures entered into force on 15 May 2019 for a period of five years until 14 May 2024. Specifically, Article 50 of the BEREC Regulation introduced the definitions of regulated intra-EU communications and number-based interpersonal communications in the OIR, amended the OIR by introducing Article 5a establishing the retail charges for intra-EU communications, and amending Article 10 to provide for the expiry of Article 5a OIR on 14 May 2024.*

- (66b) The retail price caps, which entered into force in all Member States on 15 May 2019, were set at a level that allowed providers of publicly available number-based interpersonal communications services to recoup their costs, thus ensuring a proportionate intervention on both the mobile and fixed communications market. Moreover, the National Regulatory Authorities (“NRAs”) were and are still empowered to grant a derogation upon the request of a provider of publicly available number-based interpersonal communications services in case they would be significantly more affected by the measures than the majority of other providers in the Union.*
- (66c) On 15 May 2023, the Commission published a Staff Working Document on the application of the provisions on intra-EU communications of Regulation (EU) 2018/1971 of the European Parliament and the Council amending Regulation (EU) 2015/2120, together with a Eurobarometer survey report on international communications within the EU (“2022 Eurobarometer Report”). The Commission assessed the impact of the measures on the basis of the ongoing monitoring of the implementation of the rules and exchanges with stakeholders, as well as taking into account BEREC’s Opinion on intra-EU communications regulation (“BEREC Opinion”). Both the Commission’s assessment report and the results of the 2022 Eurobarometer Report show that the EU rules have proven effective and proportionate. The measures have significantly lowered the retail*

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<sup>21</sup> Regulation (EU) 2015/2120 of the European Parliament and of the Council of 25 November 2015 laying down measures concerning open internet access and amending Directive 2002/22/EC on universal service and users’ rights relating to electronic communications networks and services and Regulation (EU) No 531/2012 on roaming on public mobile communications networks within the Union (Text with EEA relevance), OJ L 310, 26.11.2015, p. 1–18

*prices of intra-EU communications. Based on the data resulting from the BEREC Opinion and the 2022 Eurobarometer Report, a significant number of consumers in most Member States have benefited from the measures and some continue to rely on traditional communications such as a telephony calls and SMS messages for intra-EU communications, with consumers communicating mostly by phone, despite an increasing number of consumers having access to number-independent interpersonal communications services for their intra-EU communication needs. This is the case for citizens aged 55 or above.*

- (66d) Moreover, the retail price caps have neither resulted in an increase of the volume of intra-EU communications, nor seem to have had a significant negative impact on the providers. Since the measures entered into force, no derogation has been requested by any provider of publicly available number-based interpersonal communications services. Additionally, the outcome of the exploratory consultation on the future of the electronic communications market and its infrastructure closed on 19 May 2023, corroborates the existence of an ongoing need to prolong the existing measures.*
- (66e) Given that the wholesale prices for intra-EU communications are not regulated and that there is a lack of overview of the transit costs, at this stage, it cannot be excluded that those retail prices would increase should the measures be removed immediately, and customers could be exposed to very high prices for intra-EU communications. Therefore, this Regulation introduces a provision in Art 16a modifying Article 10 of the OIR to prolong the application of Article 5a paragraph 1.*
- (66f) However, in view of the objective of removing retail price differences between that the tariffs applied to intra-EU communications and the tariffs applicable to domestic voice (fixed and mobile) and SMS communications, as of 1 January 2025, operators that voluntarily decide not to apply surcharges for intra-EU communications, should be exempt from applying the maximum retail prices, subject to a fair use policy so as to bring the benefits of equal retail prices for domestic and Intra-EU communications to consumers earlier. The fair use policy will be defined in an implementing act that the Commission should adopt by 31 December 2024, after consulting BEREC.*
- (66g) As a second step, as of 1 January 2029, operators should not charge different retail prices to domestic communications and intra-EU communications. The obligation for operators to comply with this measure is however subject to the adoption of a number of safeguards*

*for the operators on sustainability, fair use and anti-fraud measures. The Commission should adopt such safeguards by means of an implementing act by 30 June 2028.*

- (66h) Furthermore, the full phase-out of retail surcharges for intra-EU communications starting on 1 January 2029 is preceded by a review of the rules on intra-EU communications that the Commission should carry out by 30 June 2027, after consulting BEREC.*
- (66i) As part of the review, the Commission, with the support of BEREC, will assess the impact of the new measures, both on consumers and on the operators, also considering the developing market dynamics. The assessment shall include, inter alia, the evolution of the wholesale costs, trend of the retail prices of intra-EU communications in the EU, evolution of consumer preferences, the extent of the usage, availability and competitiveness of number-independent interpersonal communications services or any alternatives to intra-EU communications, the evolution of tariff plans as regards the intra-EU communications, possible impact on the national markets for the provision of number-based interpersonal communications services and in particular on the retail prices charged to consumers, and the potential impact of the measures on revenues for the operators.*
- (66g) The assessment will be the basis for the Commission to adopt an implementing act by 30 June 2028 setting the safeguards for the operators on sustainability, fair use and anti-fraud measures. It could also serve as basis for a possible legislative proposal by the Commission to amend the measures as possibly required.*
- (66k) For the purpose of collecting, monitoring, reviewing and reporting on the impact of the rules on intra-EU communications, the Commission, BEREC, the national regulatory authorities and, where applicable, other competent authorities concerned should treat as confidential any business secrets and other confidential information shared by the operators. However, the protection of confidential information should not prevent the competent national authorities from sharing such information in a timely manner.*
- (66l) In line with the principle of proportionality, the measures applicable to intra-EU communications introduced by this Regulation should be limited in time and should expire by 30 June 2032. Such prolongation should allow the Commission to gather and examine data relevant to assess the impact of the measures, while at the same time ensuring that vulnerable consumers are protected from potentially excessive prices for intra-EU communications. The expiry of the measures coincides with the date of expiry of the Roaming Regulation.*

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 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, *Directive 2002/77/EC* or Directive (EU) 2022/2555, 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 measures 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 ***the measures referred to in that paragraph in respect of Article 3(3) subparagraph 1 points (a) to (e) and Article 3 new paragraph 3b, Article 3(6), Article 4(5), Article 5(2) second subparagraph and (4), Article 6(2) and Article 8(7) and (8).***
- 4a. ***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*, *tunnels*, 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;*

- (2) ‘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, 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, 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>22</sup> are not physical infrastructure within the meaning of this Regulation;

- (3) (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;

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<sup>22</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).

- (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;
- (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;
- (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;
- (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 ■ works necessary for the deployment of elements of *VHCN*;
- (11) ‘access point’ means a physical point, located inside or outside the building, accessible to *undertakings that provide or that are* authorised to provide public electronic communications networks, where connection to the fibre-ready in-building physical infrastructure is made available.
- (11a) ‘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. *Network operators and* public sector bodies owning or controlling physical infrastructure *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.*

*1a. Upon request of an operator, legal persons who are primarily active as ~~are~~ tenants of land, or as holders of rights over land, other than property rights, on which facilities are planned to be or have been installed with a view to deploying elements of very high capacity networks, or manage lease contracts on behalf of land owners, and operators shall negotiate access to such land in good faith, including on the price, which where appropriate shall reflect market conditions, in accordance with national contract law.*

*2a. Operators and such legal persons shall inform the national regulatory authority of the conclusion of agreements reached in accordance with paragraph 1a, including the agreed price.*

*Member States may provide guidance on the terms and conditions, including the price, in order to facilitate the conclusion of such agreements.*

*1b. Member States may provide that owners of private buildings used for commercial purposes, which are not part of a network, shall meet, upon written request of an operator, reasonable requests for access to those buildings, including their rooftops, with a view to installing elements of very high capacity networks or associated facilities under fair and reasonable terms and conditions, and at a price reflecting market conditions. Prior to such request from the access seeker all of the following conditions have to be met:*

*a) the building is located in a rural or remote area, as defined by the Member States; and*

*(b) no very high capacity network, of the same type - fixed or mobile - as that access seeker intends to deploy, is available in the area for which the request for access is made, and there is no prior plan to deploy such a network according to the information collected via the single information point available at the date of the request, and*

*(c) there is no existing physical infrastructure in the area for which the request for access is made, that is owned or controlled by network operators or public sector bodies and is technically suitable to host elements of very high capacity networks.*

*Member States may determine categories of commercial buildings that may be exempted from the obligation to meet such an access request, for reasons of public security, defence, safety and health. This list of categories and their criteria applied to identify them shall be published via a single information point.*

2. When determining **■** fair, and reasonable terms and conditions, *including prices*, for granting access, *and in order to avoid excessive prices*, network operators and public sector bodies owning or controlling physical infrastructure shall, *where relevant*, take into account *at least* the following:
- (-a) (a) existing contracts and commercial terms and conditions agreed between operators seeking access and network operators or public bodies granting access to physical infrastructures.*
  - (a) (b) the need to ensure that the access provider 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) any additional maintenance and adaptation costs resulting from providing access to the relevant infrastructure.*
  - (b) 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;*

- (c) *(ba)* In the specific case of access to physical infrastructure of operators, , *such operators, taking into account when relevant the guidance established in accordance with paragraph 9, shall 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,*
  - (bb)* - *the need for a fair return on investment and for any time schedule for such return on investment,*
  - (bc)* - *any impact of access on downstream competition and consequently on prices and return on investment,*
  - (bd)* - *any depreciation of the network assets at the time of the access request,*
  - (be)* - *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*
  - (bf)* - *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.*
- (d)* *when considering the need for operators for a fair return on investment which reflects the relevant market conditions, their different business models, in particular in the case of undertakings that primarily provide associated facilities and offer physical access to more than one undertaking that provides or that is authorised to provide public electronic communication networks.*

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

- (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 *I*;
- (b) there is a lack of availability of space to host the elements of *VHCN* or associated facilities referred to in paragraph *I*, including after having taken into account the

future need for space of the access provider that is sufficiently demonstrated, *such as by referring to publicly available investments plans or to a consistently applied percentage for the capacity reserved for future needs (compared to the entire capacity of the physical infrastructure)*;

- (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, *suitable for the provision of VHCN, and offered under fair and reasonable terms and conditions, that are* provided by the same network operator *or, in the specific case of rural or remote areas where a network is operated on a wholesale only basis and owned or controlled by public sector bodies, that are provided by the operator of such network.*

**3a.** *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 existence of viable alternative means of non-discriminatory open wholesale active access, to very high capacity communications networks is provided by the same network operator or by the same public body, provided that the following cumulative conditions are met: (a) such alternative means of wholesale access is offered under fair and reasonable terms and conditions, including price; (b) 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; c) Such or an equivalent refusal possibility is applied at the date of the entry into force of this Regulation, in the Member State in accordance with national law complying with Union law.*

*(new paragraph 3b)* In the event of a refusal to provide access *as referred to paragraph 3 and 3a*, 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 *no later than one* month 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 access 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, 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, *or, as appropriate, regional and local authorities*, 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. *Notwithstanding paragraph 1b*, 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. After having consulted stakeholders, the national dispute settlement bodies and other competent Union bodies or agencies in the relevant sectors as appropriate, ***and having taken into account well-established principles and the distinct situation across Member States***, the Commission may, in close cooperation with BEREC, 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 **10 working** days after the request for information is submitted. ***In duly justified cases, the deadline may be extended once by 5 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, or for reasons of confidentiality or operating and business secrets.

- (1a) In addition to the minimum information referred to in paragraph 1, first subparagraph, Member States may require information on existing physical infrastructure such as information on the occupation level of the physical infrastructure.***

2. Network operators and public sector bodies shall make available *at least* the minimum information referred to in paragraph 1, *and, where applicable, as additional information referred to in paragraph 1a via a single information point* and in electronic format. 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 10 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.*
- 2a. *By way of derogation from paragraph 2, Member States may extend the deadline referred to in that paragraph for municipalities with less than 3500 inhabitants. Any such extension shall be granted only once for the shortest time possible and shall not exceed twelve months. When extending the deadline, the Member States shall set out a roadmap with deadlines for making minimum information referred to in paragraph 1 available via a single information point electronic format. Those exceptions and the roadmaps shall be published via a single information point. During that period, those municipalities shall ensure that the available information is accessible to operators.*
3. Network operators and public sector bodies shall meet reasonable requests for on-site surveys of specific elements of their physical infrastructure upon specific *written* 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 identify, based on duly justified and proportionate reasons, the critical national infrastructure as defined under national law, or parts thereof that shall not be subject to the obligations laid down in paragraphs 1, 2 and 3.*
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 **■** a consultation with stakeholders; *or*
- (ba) *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 and notified to the Commission.

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. ***To that end, they shall keep the information confidential and use it only for the purpose of deploying their networks.***

#### 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*. ***Members states may specify detailed requirements, relating to administrative aspect of the request.***

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 *or public sector bodies owning or controlling physical infrastructure* 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 *or public sector bodies owning or controlling physical infrastructure* 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 *1* months before the submission of the final project to the competent authorities for granting permits.

*2a. Member States may provide that requests to coordinate civil works made by an undertaking that provides or is authorised to provide public electronic communications networks to an undertaking owned or controlled by public sector bodies and providing or authorised to provide public electronic communications network may be deemed to be unreasonable where the civil works contribute to the deployment of VHCN, referred in article 3(3), only when these are located in rural or remote areas and are owned or controlled by public sector bodies.*

3. A request to coordinate civil works made by an undertaking *that provides or that is* authorised to provide public electronic communications networks to an undertaking *that provides or is* authorised to provide public electronic communications networks may be deemed *to be* unreasonable where both *of* 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 *that refuse* 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 identify, based on duly justified and proportionate reasons, the types of civil works considered to be limited in scope, such as in terms of value, size or duration, or related to critical national infrastructure. The justification, criteria and conditions for applying exceptions to such types of civil works shall be published via a single information point.*

*Member States may decide that public sector bodies owning or controlling physical infrastructure and all network operators shall not apply paragraphs 2 and 3 to types of civil works that relate to critical national infrastructure or for reasons of national security identified by the Member States pursuant to first sub-paragraph.*

*Public sector bodies owning or controlling physical infrastructure and all network operators may decide not to apply paragraphs 2 and 3 to types of ■ works that are identified by the Member States as limited in scope pursuant to the first sub-paragraph.*

5. *By [entry into force +18 months], after having consulted stakeholders, the national dispute settlement bodies and other competent Union bodies or agencies in the relevant sectors as appropriate, and after having taken into account well-established principles and the specific situations of each Member State, the BEREC shall, in close cooperation with the Commission , provide guidelines on the application of the provisions referred to in this Article, in particular on: a) apportioning the costs associated with the coordination of civil works; b) the criteria that the dispute settlement bodies should follow when settling disputes falling within the scope of this Article; and c) the criteria for ensuring sufficient capacity to accommodate foreseeable future reasonable needs if coordination of civil works is refused pursuant to paragraph 3.*



*Article 6*

**Transparency on planned civil works**

1. In order to negotiate agreements on coordination of civil works referred to in Article 5, any network operator **and public sector bodies owning or controlling physical infrastructure** 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 **and public sector body owning or controlling physical infrastructure** 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 **for its civil works envisaged in the following 6 months** and, in any event and where a permit is envisaged, not later than **2** 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. **Such reasoned request** shall specify the area in which the requesting operator envisages deploying elements of **VHCN** or associated facilities. Within **10 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 5 working days**. Access to the minimum information may be limited **or refused** only to the extent necessary to ensure the security of the networks and their integrity, national security, **the security of critical infrastructure**, public health or safety, confidentiality or operating and business secrets.

2. ***Member States may identify, based on duly justified and proportionate reasons, the types of civil works considered to be limited in scope, such as in terms of value, size or duration, or related to critical national infrastructure, as well as the emergencies or the reasons of national security that would justify not being subject to the obligation to make the minimum information available pursuant to paragraph 1.***

***The justification, criteria and conditions for applying exceptions to such types of civil works shall be published via a single information point.***

***Member States may decide that public sector bodies owning or controlling physical infrastructure and all network operators shall not apply paragraph 1 to types of civil works that relate to critical national infrastructure or for reasons of national security identified by the Member States pursuant to first sub-paragraph.***

***Public sector bodies owning or controlling physical infrastructure and all network operators may decide not to apply paragraph 1 to information on types of civil works that are limited in scope as well as for the emergency reasons identified by the Member States pursuant to first sub-paragraph.***

#### 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.
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 ***and ways to submit applications in electronic format and retrieve information on the status of the application***, via a single information point in electronic format.
3. Any operator shall have the right to submit, via a single information point in electronic format, applications for ***all necessary*** permits, ***or renewals thereof***, or rights of way and to

retrieve information about the status of its application. *Member states may specify detailed procedures to retrieve the information.*

4. The competent authorities *may*, within 15 working days from its receipt, reject applications for permits, including for rights of way, for which the minimum information has not been made available via a single information point, pursuant to Article 6(1) first subparagraph, by the same operator which applies for that permit.
5. The competent authorities shall grant or refuse permits, other than rights of way, within 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.

█ Competent authorities *shall invite* the applicant to provide any missing information within that period. *Determination by the competent authority that the permit application is complete shall not result in any suspensions or interruption of the overall 4 month period for the examination of the permit request, which shall start from the date of the receipt of the complete application.*

The first and second *subparagraphs* 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 *and without prejudice to rules that grant the applicant additional rights or aim to ensure the fastest possible granting of permits.*

*Member States shall set out the reasons which could justify, in exceptional and duly substantiated cases, extension by the competent authority, acting on its own motion, of the deadline referred to in the first subparagraph and in paragraph 6, and publish them in advance via a single information point.*

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 with national law, in accordance with Union law.*

An extension *may not be requested in order to obtain missing information which the competent authority has failed to request from the applicant pursuant to the second-subparagraph of this paragraph.*

Any refusal of a permit or *a* right of way shall be duly *substantiated* 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 *months* period *or deadline set by national law, whichever is shorter*, from the date of receipt of the *complete* application *except in the case of expropriation*.

*This Article shall be without prejudice to the possibility of Member States to introduce further provisions for competent authorities to speed up the permit granting procedure.*

*Competent authorities may renew the permit granted to an operator for civil works necessary for the deployment of elements of VHCN or associated facilities in cases where for objectively justified reasons, the civil works could not start or be concluded before the expiration of the validity of the permit. The renewal of the permit shall be granted without additional procedural requirements for the operators.*

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.
- 11a. *The Commission shall monitor the application of this Article in the Member States. To that end Member States shall report every 3 years to the Commission the status of their implementation and on whether the conditions listed therein have been met.*

- 11b.** *The procedure established in this Article shall apply without prejudice to Article 57 of the Directive (EU) 2018/1972.*

**Article 7a**

***Absence of decision on the application for permit***

- 1.** *In the absence of a **decision** from the competent authority within the **applicable** deadline referred to in **Article 7, paragraph 5**, the permit shall be deemed to be granted upon expiry of the deadline. The first sub-paragraph shall apply provided that the permit granting procedure does not concern rights of way. Upon request, the operator or any affected party shall be entitled to receive written confirmation from the competent authority that, where applicable, the permit has been implicitly granted.*

*Member States shall ensure that any third party affected has the right to intervene in the administrative procedure and to challenge the decision granting the permit.*
- 2.** *Member States may derogate from paragraph 1, if at least one of the following remedies is available for the relevant permit granting procedure:*
  - a.** *The operator which suffered damage as a result of non-compliance by the competent authority with the applicable deadline set out in accordance with Article 7, paragraph 5, shall be entitled to claim compensation for damage, in accordance with national law; and*
  - b.** *The operator may refer the case to a court or to a supervising authority.*
- 3.** *Member States acting in accordance with paragraph 2 shall ensure that, upon expiry of the deadline set in accordance with Article 7, paragraph 5, and without prejudice for the right for the operator to immediately seek remedies in accordance with paragraph 2, the competent authority or any other body defined by the Member State shall without undue delay, upon request of the operator or on its own motion, invite the applicant to a meeting to facilitate the adoption of a decision on the permit application.*

*The meeting shall be convened by the competent authority no later than 2 months after the submission of the request. Without undue delay after the meeting, the competent authority shall provide the written account of the discussion, including*

*the views of the parties involved and indicating to the operator a date when a decision on the permit application will be issued.*

#### *Article 7b*

##### *Exemptions from permit granting procedures*

**1. *Civil works which consist in:***

- repair and maintenance works which are limited in scope, such as in terms of value, size, impact and duration;*
  - limited technical upgrades of existing works or installations, with limited impact, or*
  - small-scale civil works that are limited in scope, such as in terms of value, size, impact or duration required for the deployment of VHCN;*
- shall not be subject to any permit-granting procedure within the meaning of this Article, unless such a permit is required in accordance with other Union law.*

**2. *Based on duly justified and proportionate reasons, Member States shall identify types of civil works to which paragraph 1 applies. Information on such types of civil works shall be published via a single information point.***

**3. *By way of derogation from the paragraph 1 and subject to the procedure laid down in paragraph 2, competent authorities may require permits for the deployment of elements of VHCN or associated facilities in the following situations:***

- on physical infrastructure or certain categories of physical infrastructure for reasons of architectural, historical, religious or environmental value, or for reasons otherwise protected in accordance with national law; or*
- where necessary for reasons of public security, defence, safety, environmental or public health, or to protect the security of critical infrastructure.*

**5. *Member States may require operators which plan to carry out civil works covered by this paragraph to notify the competent authorities, prior to the start of the works, of their intention to start the civil works.***

*This notification shall not entail more than a declaration by the operator of its intention to start the civil works and the submission of minimum information which is required to*



*allow competent authorities to assess whether those works are covered by the derogation set out in the second subparagraph. Minimum information shall include at least the date when the civil works are expected to start, their duration, contact details of the person responsible for undertaking the works and the area concerned by the works.*

Article 8

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

1. *All newly constructed buildings, and those undergoing major renovation works, including elements under joint ownership, for which applications for building permits have been submitted shall be equipped with a fibre-ready in-building physical infrastructure, and in-building fibre wiring, including connections up to the physical point where the end user connects to the public network.*
2. All multi-dwelling buildings newly constructed or *those* undergoing major renovation works, for which applications for building permits have been submitted shall be equipped with an access point.
3. *If it does not disproportionately increase the costs of the renovation works and is technically feasible, by 21 months after the date of entry into force of this Regulation, all buildings, 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 fibre-ready in-building physical infrastructure, and in-building fibre wiring, including connections up to the physical point where the end user connects to the public network.* All multi-dwelling buildings undergoing major renovations as defined in point 10 of Article 2 of Directive 2010/31/EU, shall also be equipped with an access point.
4. Member States shall, *in consultation with interested parties and on the basis of industry best practices* adopt the relevant standards or technical specifications [*by date of entry into force +18 months*] that are necessary for the implementation of paragraphs 1, 2 and 3. Those standards or technical specifications *shall easily allow ordinary maintenance activities for the individual fibre wirings used by each operator to provide very high capacity network services and* shall set at least:
  - (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.

*(fa) technical specifications for the cabling installation.*

5. Member States shall *ensure* compliance with the standards or technical specifications referred to in paragraph 4. *To demonstrate such compliance, Member States shall set up procedures, which could include on-site inspection of the buildings or a representative sample of them.*
6. 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.*
7. Paragraphs 1, 2 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 shall identify, based on duly substantiated and proportionate reasons, the 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, that shall be exempted from the obligations provided for in paragraphs 1, 2 and 3 or to which these obligations shall apply with proper technical adaptations* . 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, *and without prejudice to property rights, any provider of public electronic communications networks* shall have the right to roll out its network at its own costs up to the 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 access point and the in-building physical infrastructure shall meet all reasonable *written* requests for access to the 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. *Members states may specify detailed requirements, relating to administrative aspect of the request.*
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 and/or the* subscriber, *in accordance with national law, 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 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. *By [entry into force +18 months],* after having consulted stakeholders, the national dispute settlement bodies and other competent Union bodies or agencies in the relevant sectors as appropriate, *and having taken into account well-established principles and the distinct situation across Member States, BEREC shall,* in close cooperation with *the Commission, publish guidelines on the terms and conditions of access to in-building physical infrastructure, including* on the application of *fair and reasonable terms and conditions, and the criteria that the national dispute settlement bodies should follow when settling disputes.*

*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, *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 *existent or newly developed* digital tools supporting the single information points referred to paragraph 1, as appropriate, *in order to avoid duplication of digital tools*.
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.
- 3a. *Member States shall ensure adequate technical, financial and human resources to support the roll-out and the digitalisation of 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 1 month 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 *the applicable deadlines*.
  - (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;

*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 also regarding the right of way.*

2. Taking full account of the principle of proportionality and the principles established in Commission guidance *or BERECEC guidelines*, 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 one month 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.

*(3a) The dispute settlement bodies shall publish their decisions resolving disputes, while respecting the principles of confidentiality and protection of business secrets. The single information point shall ensure access to the decisions published by the Dispute Settlement Bodies.*

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>23</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.
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.

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<sup>23</sup> Charter of Fundamental Rights of the European Union (OJ C 326, 26.10.2012, p. 391–407)



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 ■ 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) 2018/172 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 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 appropriate, effective, proportionate and dissuasive.

*Article 15*

**Report and monitoring**

1. By [DATE OF ENTRY INTO FORCE + 4 YEARS], 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.

*The report shall include developments related to the scope of the regulation that have a potential impact on the progress towards a fast and extensive deployment of very high capacity networks, in rural, insular and remote areas, such as islands and mountainous and scarcely-populated regions, as well as on the evolution of the market for tower infrastructure, and the take up of various backhauling solutions including satellite backhauling in digital high speed connectivity.*

2. To that end, the Commission may request information from Member States that shall be submitted without undue delay. In particular, by [DATE OF ENTRY INTO FORCE + 18 MONTHS], 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 [16a]*

**Amendments to Regulation (EU) 2015/2120 laying down measures concerning open internet access and retail charges for regulated intra-EU communications and amending Directive 2002/22/EC and Regulation (EU) No 531/2012**

*In Article 2, the following paragraphs are added:*

*‘(5) ‘number-independent interpersonal communications service’ means number-independent interpersonal communications service as defined in point (7) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council.’*

*‘(6) ‘domestic communications’ means any number-based interpersonal communications service originating in the Member State of the consumer’s domestic provider and terminating at any fixed or mobile number of the national numbering plan of the same Member State.’*

*‘(7) ‘intra-EU communications’ means any number-based interpersonal communications service originating in the Member State of the consumer’s domestic provider and terminating at any fixed or mobile number of the national numbering plan of another Member State.’*

*In Article 10, paragraph 5, the date ‘14 May 2024’ is replaced by the date ‘30 June 2032.’*

**New paragraphs are added to Article 5a**

*7. From 1 January 2029, operators shall not apply different retail prices to consumers for domestic communications and intra-EU communications, provided that technical rules on safeguards, such as, sustainability, fair use and anti-fraud measures, are adopted. By 30 June 2028, the Commission shall adopt, after consulting BEREC, an implementing act laying down those technical rules in accordance with the examination procedure referred to in Article 5b.*

*8. From 1 January 2025, operators may on a voluntary basis comply with the obligation not to apply different retail prices laid down in paragraph 7. Those operators shall be exempt from the obligations laid down in paragraph 1, subject to fair use policy, with a view to bringing the benefits of equal retail prices for domestic and Intra-EU communications to consumers earlier. To that end, the Commission shall adopt an implementing act on fair use, based on typical usage patterns, and anti-fraud measures by 31 December 2024, after consulting BEREC. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 5b.*

*9. By 30 June 2027, after consulting BEREC, the Commission shall review this Article, and based on the assessment of its impact, the Commission may, if appropriate, decide to submit a legislative proposal in order to amend it.*

*The assessment shall include:*

- a) the evolution of the wholesale costs related to the provision of intra-EU communications;*

- b) the evolution of competition in the market for the provision of number-based interpersonal communications services and the trend of the retail prices of intra-EU communications within the different Member States;*
- c) the evolution of consumer preferences and choice of special offers and bundles not charged on the basis of actual consumption of intra-EU communications;*
- d) the possible impact on the national markets for the provision of number-based interpersonal communications services and in particular on the retail prices charged to consumers at large, taking into account the costs of providing intra-EU communications, and the potential impact of the measures on revenues for the operators and, if possible, investment capacity of the operators, in view in particular of the future roll out of networks in line with the Digital Decade targets for connectivity in case additional charges for intra-EU communications are not applied already;*
- e) the extent of the usage, availability and competitiveness of number-independent interpersonal communications services or any alternatives to intra-EU communications;*
- f) the evolution of tariff plans as regards the intra-EU communications, and in particular, the extent to which the implementation of the measures provided for in paragraph 8, has produced results in the direction of eliminating differences on retail prices for consumers between domestic and intra-EU communications.*

*10. In order to carry out the assessment described in paragraph 9, BEREC shall collect from national regulatory authorities on a regular basis the relevant information. Where applicable, the national regulatory authorities may provide such data in coordination with other competent authorities. The data collected by BEREC pursuant to this paragraph shall be notified to the Commission at least once a year. The Commission shall make them public. To ensure BEREC can carry out its obligations under this provision, operators shall be obliged to cooperate providing the requested data, including confidential data, to the relevant national authorities.*

*New Article 5b is added*

*Article 5b*

*Committee procedure*

*1. To fulfil its obligations under Article 5a, the Commission shall be assisted by the Communications Committee established by Article 118(1) of Directive (EU) 2018/1972. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.*

2. *Where reference is made to this Article, Article 5 of Regulation (EU) No 182/2011 shall apply.*

#### Article 17

##### **Repeal**

1. Directive 2014/61/EU is repealed *with effect from [date of entry into application]*.
- 1a. *By way of derogation to paragraph (1), where the provisions of this Regulation replacing the provisions of Directive 2014/61/EU apply from a later date, the corresponding provisions of Directive 2014/61/EU shall remain in force until that same date, as set out below:*
  - (a) *Article 4(3) of that directive shall remain in force until [date of entry into force + 24 months];*
  - (b) *Article 6(1), (2), (3) and (5) of that directive shall remain in force until [date of entry into force + 24 months];*
  - (c) *Article 7(1) and (2) of that directive shall remain in force until [date of entry into force + 24 months];*
  - (d) *Article 8(1), (2), (3) and (4) of the same directive shall remain in force until [date of entry into force +21 months].*
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 *18* months after *the date of* entry into force *of this Regulation*.
3. *By way of derogation from paragraph 2 of this Article:*
  - a. *Article 4(2), Article 6(1), Article 7(2) and (3) and Article 10(1) to (3) shall apply from [24 months after the date of entry into force] of this Regulation;*

***b. Article 8(1) to 8(3) shall apply from [21 months after the date of entry into force] of this Regulation;***

***c. Article 5(5), Article 9(6) shall apply from entry into force of this Regulation;***

***d. Article 16a shall apply from 15 May 2024.***

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

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

