

European Commission
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ISPA AUSTRIA'S CONTRIBUTION TO THE PUBLIC CONSULTATION ON THE PROPOSAL FOR A GIGABIT INFRASTRUCTURE ACT

[ISPA – Internet Service Providers Austria](#) welcomes the opportunity to provide comments to the proposal on measures to reduce the cost of deploying gigabit electronic communications networks and repealing Directive 2014/61/EU (Gigabit Infrastructure Act). We are a voluntary business representation and act as the voice of over 220 internet service providers from various fields all along the internet value chain in Austria. Moreover, the majority of ISPA members are SMEs, and as such, face novel challenges from any new requirements.

ISPA welcomes the Commission's intention to further support the roll-out of very high-capacity networks (VHCN) with this draft legislation. The Gigabit Infrastructure Act (GIA) can play a key role in order to ensure, that the ambitious connectivity targets of the Digital Decade will be met. Many of the provisions included in the GIA are taken from the Broadband Cost Reduction Directive, which however has not been implemented satisfactory in several Member States. Choosing a Regulation instead of a Directive should thus ensure a better harmonisation across the EU and ISPA very much encourages the Commission to withhold the pressure by Member States to change it to a Directive. In order to release the full potential of the GIA and to ensure consistent application across all Member States, ISPA would like to address the following aspects of the draft text and provide recommendations where appropriate.

- **Access to existing physical infrastructure (Article 3)**

ISPA welcomes that the draft Regulation extends the concept of “physical infrastructure” to include also assets that are not part of a network but owned or controlled by public sector bodies. The efficient use of existing physical infrastructure will not only speed up the deployment of very high-capacity networks, in particular in urban areas, and thereby reduce costs, but it is also important from the perspective of sustainability to rely on existing infrastructure instead of building new one.

At the same time, it is crucial to ensure that any refusal of access to specific physical infrastructure is based on objective and justified reasons. The GIA provides an exhaustive list of such reasons in paragraph 3. Whereas ISPA welcomes the intention of the Commission to harmonise the legal

framework across Member States as much as possible, in this case providing an exhaustive list might be detrimental as it prevents Member States from including or removing reasons in the future based on new technological developments or the emergence of new business models. For that reason, ISPA requests to change the wording as follows:

*(3) Network operators and public sector bodies owning or controlling physical infrastructure shall ~~may~~ refuse access to specific physical infrastructure **only** based on **objective and justified reasons, such as: ~~one or more of the following conditions:~~ [...]***

Moreover, the broad exemption in paragraph 6 might significantly undermine this provision as it allows Member States to exclude certain “categories of buildings” from the scope for reasons of architectural, historical, religious, or natural value, or for reasons of public security, safety and health. There is a clear risk that both the categories of buildings as well as the exemptions will be interpreted broadly by Member States to protect the interests of public sector bodies. In addition, it will cause uncertainty on the side of the electronic communication network (ECN) providers in the planning procedure as it is it will not always be apparent whether a particular building belongs to a certain category.

Instead, Member States should be required to identify specific buildings in their territory which fall under one of the exceptions and provide a respective list of these buildings via the single information point. Such an interpretation would also be in line with the wording of recital 17 which only refers to the exemption of buildings and not categories of buildings.

Finally, there is a strong public interest in the fast roll-out of VHCN, recognised amongst others in the EU’s Digital Decade. Access to physical infrastructure belonging to the public sector must thus on a general basis be granted for a lower fee than access to private infrastructure as it appears more reasonable for the public sector to accept potential impairment due to the deployment of network components on their infrastructure.

- **Transparency on physical infrastructure (Article 4)**

According to Article 4 (1) network operators must make the minimum information available upon request no later than 15 days after the request has been submitted. Whereas ISPA welcomes the Commission’s effort to speed up the deployment process, including access to information on physical infrastructure, we would like to point out that especially for small and medium-sized ECN providers with limited personnel, providing this information, in particular the georeferenced location and route, within such a short timeframe may create substantial challenges.

ISPA therefor suggests adding the following wording to the text:

(1) [...]

*Such minimum information shall be accessible promptly, under proportionate, non-discriminatory and transparent terms and, in any event no later than 15 days after the request for information is submitted. **Where this timeline cannot be met on grounds***

of force majeure or de facto impossibility, including for objectively justifiable technical or operational reasons, the requesting operator shall be informed as soon as possible.

Moreover, aside from having information available on “physical infrastructure” as defined in the draft Regulation, up to date information on all cross-sector underground infrastructure would be equally important for ECN providers in order to maximize the efficiency of civil works coordination. Such information should thus also be made available via the single information point.

- **Coordination of civil works (Article 5)**

ISPA generally welcomes that the GIA adopts the requirement from the Broadband Cost Reduction Directive, whereby coordination requests must only be met in terms of civil works which are fully or partially financed by public means. For the sake of legal certainty, the term "public means" should however be further defined and clarified that it refers exclusively to state subsidies and not also to the ownership structure of the telecommunications companies. Considering that the GIA is a regulation that has direct legal effect in the Member States, this clarification seems all the more important.

ISPA also supports the newly added condition, that a request to coordinate civil works may be deemed unreasonable and thus refused where the requesting undertaking has failed to express its intention to deploy very high-capacity networks in that area in the appropriate procedures previously. This should prevent the abuse of this right by requesting operators to gain access to remote or scarcely populated areas, as this could make the whole VHCN roll-out in that area financially unviable and endanger further investments.

- **Procedures for granting permits, including rights of way (Article 7)**

ISPA welcomes the objective of the GIA to drastically reduce the burden and uncertainty in procedures applicable for granting permits by mandating nationally consistent rules. Currently, Member States with a federalist system, such as Austria, have a heavily fragmented legal framework with regard to the conditions for broadband roll-out. In particular where ECN providers intend to deploy new network infrastructure across two or more federal states this entails significant additional burden due to the fact that they are often unable to obtain all relevant permissions for one region in due time which thus further increases the costs of the VHCN roll-out and causes significant delays. ISPA therefor strongly encourages the Commission to adhere to this requirement and withstand the pressure of some Member States to maintain a larger margin of appreciation.

ISPA also supports the proposal by the Commission that a complete permit application shall be deemed to have been granted in the absence of a timely response by the competent authority within four months. In order to provide more legal certainty, ISPA however suggests replacing the wording "in the absence of a *response*" with "in the absence of a *decision*" as otherwise any kind of response

by the authority could be considered sufficient which would clearly undermine the effect of this provision.

Besides, paragraph 5 grants Member States the option to define certain exemptions under national law which would allow a competent authority to extend the deadline on its own motion. This entails a large margin for Member States to undermine the four-month deadline with an extensive list of justifications which would be clearly at odds with the general objective of this Regulation.

ISPA thus proposes to specify the relevant justifications already in the Regulation itself, which would also contribute to a more harmonised implementation of the GIA in all Member States. Additionally, a further condition should be included providing that a deadline may only be extended once based on the same justification.

- **In-building physical infrastructure and fibre wiring (Articles 8 and 9)**

ISPA welcomes that all newly constructed buildings as well as such undergoing major renovation works shall be equipped with a fibre-ready in-building physical infrastructure up to the network termination points as well as with in-building fibre wiring. In terms of multi-dwelling buildings, this should include an obligation for building developers to provide for empty ducts from every dwelling to the access point. Being able to terminate their network to the building's access point by using existing physical infrastructure significantly facilitates the subsequent connection of additional customers by the ECN provider.

In this context it must however be ensured, that both the access points as well as the empty ducts provide enough space for all interested providers as the experience with the implementation of Art 8 and 9 of the Broadband Cost Reduction Directive has shown that access to existing physical infrastructure was often denied to due lack of space. In order to avoid that, minimum space requirements should be included as a condition for the "fibre-ready" label provided in paragraph 5.

In addition, ISPA would like to underline the importance of providing Gigabit connectivity not only at the primary optical network terminal (ONT) but throughout the whole house or apartment. The GIA should therefor already take account of new solutions such as Fiber to the Room (FTTR), which is already recognized as a construction standard by ETSI's Industry Specification Group on the Fifth Generation Fixed Network (ETSI ISG F5G). FTTR allows connecting the primary ONT via optical fibre to other FTTR devices in the house or apartment, thus extending Gigabit connectivity to potentially every room. In order to avoid costly subsequent renovations of an apartment, Article 8 should thus already require that newly constructed buildings as well as such undergoing major renovation include pre-installed fibre wiring or ducts inside the apartment, which would ensure that also future connectivity needs are already met.

- **Digitalisation of single information points (Article 10)**

The expansion of the single information point envisaged in Article 10, in particular the fact that ECN providers will be able to submit all requests for permits and rights of way in electronic format via a digital platform, will also further facilitate the VHCN roll-out. Many of the relevant permits will however still have to be granted by local authorities who are not always fully versed in VHCN technologies and their associated implications. As these authorities serve as an important facilitator for the VHCN roll-out in particular also in rural areas, ISPA suggests providing tangible and reliable information about broadband technologies in the SIP also to such authorities. This could include amongst others an overview over the benefits that the VHCN roll-out brings also locally, advises on how to address misinformation about technologies such as 5G and information on how to deal with requests from operators. Some countries already have such information hubs in place. The Austrian NRA for example provides a comprehensive "5G Guide" for municipalities which provides not only the technical and legal background but addresses also questions on potential health implications.¹ A similar brochure has also been developed in France.²

We would like to reiterate our gratitude for this opportunity to contribute. For further information or any questions please do not hesitate to contact us.

Sincerely,

ISPA Internet Service Providers Austria



Stefan Ebenberger
Secretary General

¹ Rundfunk und Telekom Regulierungs-GmbH: 5G Gemeindeservice, available at: www.rtr.at/5GGemeindeservice

² Guide à destination des élus: L'essentiel sur la 5G, available at: www.entreprises.gouv.fr/fr/actualites/numerique/5g-guide-d-information-destination-des-elus-locaux