

Gigabit infrastructure act

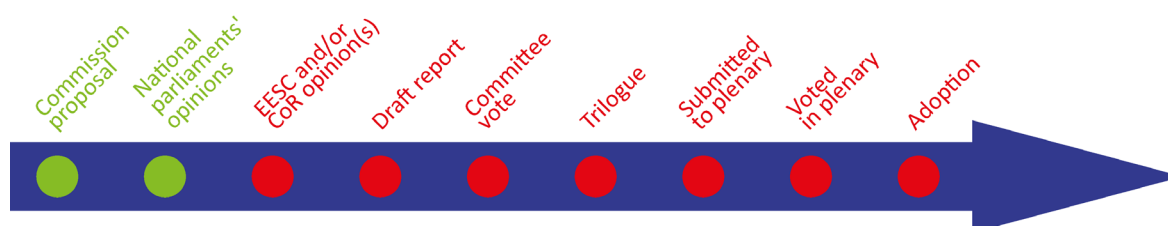
OVERVIEW

The EU's digital decade connectivity target aims at ensuring a fixed gigabit network (1 Gbps) covers all EU households, and for 5G coverage for all populated areas by 2030. A high-quality digital infrastructure based on such very high-capacity networks would underpin almost all sectors of a modern and innovative economy. The long-term success of a digital economy based on the internet of things, machine-to-machine technologies, cloud computing and big data, will crucially depend on access to the highest quality telecommunications infrastructure.

The proposed gigabit infrastructure act, introducing a regulation that would review and replace the existing Broadband Cost Reduction Directive, aims at facilitating and stimulating the provision 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 lower cost.

In Parliament, the file has been allocated to the Committee on Industry, Research and Energy (ITRE).

Proposal for a regulation laying down measures to reduce the cost of deploying gigabit electronic communications networks and repealing directive 2014/61/EU		
<i>Committee responsible:</i>	Committee on Industry, Research and Energy (ITRE)	COM(2023) 0094 23.02.2023
<i>Rapporteur:</i>	Alin Mituța (Renew, Romania)	2023/0046(COD)
<i>Shadow rapporteurs:</i>	Angelika Winzig (EPP, Austria) Beatrice Covassi (S&D, Italy) Niklas Nienass (Greens/EFA, Germany) Johan Nissinen (ECR, Sweden) Georg Mayer (ID, Austria) Elena Kountoura (The Left, Greece)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Publication of draft report	



Introduction

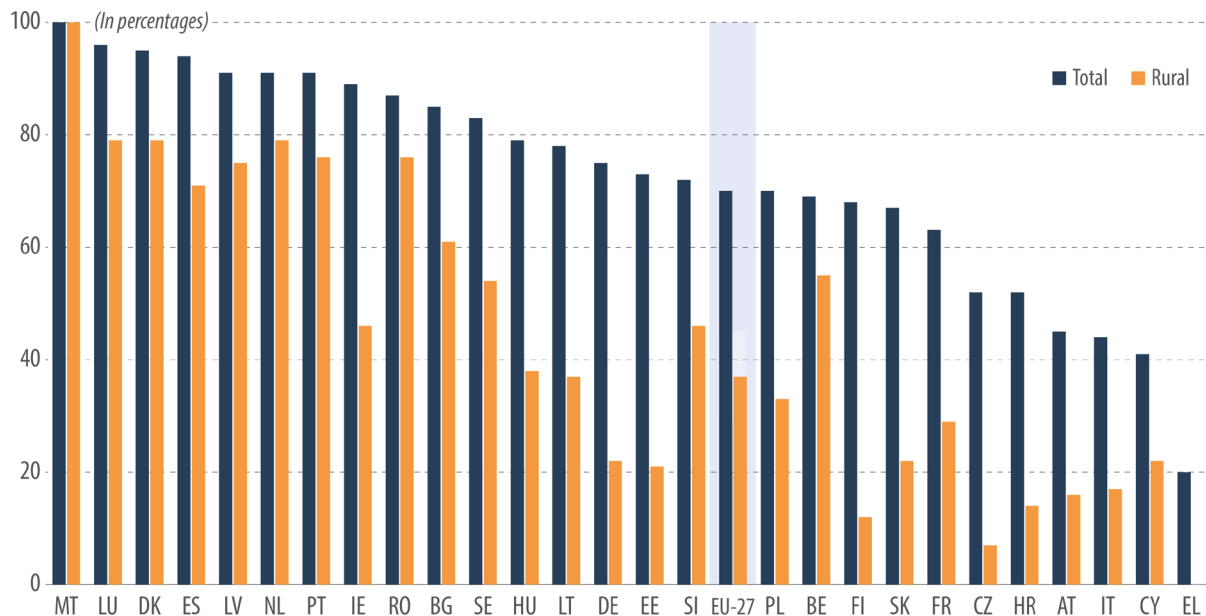
Europe is in the midst of a [digital revolution](#) that is transforming our approach to work and communicating, as well as improving living standards and economic output. The internet of things, artificial intelligence (AI), advanced robotics and augmented reality are examples of technologies driving this revolution. However, such technologies require significant investment in telecoms infrastructure to keep up with the increasing bandwidth needs and guarantee future-proof broadband quality. To enable access to digital services for all citizens and businesses, the European Union (EU) needs a [top-performance](#) digital connectivity infrastructure, based on very high capacity networks¹ (VHCN), such as optical fibre technologies in fixed network (e.g. fibre-to-the-home – FTTH) and 5G for innovative wireless/mobile systems. European Commission Executive Vice-President for a Europe Fit for the Digital Age, [Margrethe Vestager](#), noted that 'Gigabit networks are the stepping stone to our digital transformation. They can provide innovative services, more efficient business operations and smart, sustainable, digital societies. Our connectivity is crucial to deliver these opportunities to everyone in Europe'.

The growth, competitiveness and sustainability of the European economy also depends on investments in telecommunications technologies. The international telecommunication union (ITU)'s analysis of more than 200 studies on broadband impact [notes](#) that a 10 % increase in broadband penetration yields an GDP increase of between 0.25 and 1.5 %. Moreover, the Organisation for Economic Co-operation and Development (OECD) [estimates](#) that a 10 % increase in broadband penetration can raise labour productivity by 1.5 %. A European Investment Bank study [asserts](#) that doubling broadband speeds could result in 0.3 % GDP growth. As far as sustainability is concerned, fixed [full-fibre](#) networks (FTTH) and wireless/mobile [5G technologies](#) with cell towers linked to a fibre connection/base (known as backhaul) seem to be the [most climate-friendly technologies](#) in terms of reduction of CO₂ emissions and energy consumption, when compared with legacy networks (e.g. copper/DSL). Such VHCN might contribute to achieving the climate targets set in the [European Green Deal](#) and the twin digital and green transitions envisaged as the EU's main priorities.

Household **coverage** and service subscription **take-up** in deploying VHCN will be key to ensuring fast and reliable internet access for a thriving digital ecosystem. The EU digital decade strategy [defines](#) two targets in the area of broadband connectivity for 2030: 1 gigabit speed (1 Gbps) fixed coverage for all households, and 5G in all populated areas. The latest estimated [costs](#) reported in the Commission consultation launched in February 2023 report the infrastructure investment needed to achieve these targets at around €174 billion.² A [key factor](#) slowing down the roll out of Gigabit broadband network is the high cost of deploying the underlying infrastructure, especially when all elements of the network must be built 'from scratch'. According to the Commission, civil engineering works (e.g. roadworks to lay down fibre networks) [account](#) for up to 80 % of the cost of full fibre deployment. However, once the network is in place, increasing network capacity is relatively cheap, as no changes to the network architecture are required (only equipment upgrades). New VHCN, deployed by re-using physical infrastructure or coordinating civil engineering work, could reduce the cost of deployment by €14.5 billion.³

In terms of VHCN⁴ deployment, the digital economy and society index 2022 (DESI) [reports](#) that 70 % of EU homes were already served by fixed VHCN and 66 % of populated areas with wireless/mobile 5G by mid-2021. Fixed VHCN coverage [varies](#) among Member States because of their differing regulatory objectives, market structures and technologies choices (e.g. early deployment of FTTH or possibility to upgrade existing cable networks to data over cable service interface specification – DOCSIS 3.1). For example, front-runners in deploying VHCN are Malta with 100 % coverage, as well as Spain, the Netherlands and Portugal with above 90 % coverage. Greece is one of the poorest performers, with 20 % coverage. One big difference in VHCN coverage in Europe is also related to whether the household is located in an urban or rural area. Indeed, the percentage of VHCN coverage decreases drastically in rural areas, stressing regional disparities in digital opportunities.

Figure 1 – Fixed VHCN coverage (% of households), mid-2021



Source: IHS Markit, Omdia and Point Topic, Broadband coverage in Europe studies.

However, there is still work to do to increase take-up. According to the DESI, only 7.6 % of EU households subscribe to a network ensuring 1 Gbps speed. According to the latest OECD broadband [statistics](#), Spain, Sweden, Lithuania, Latvia are among the seven OECD countries with a **fibre share** of total **fixed broadband** subscriptions of 70 % or higher. The European 5G Observatory [reports](#) around 31 million 5G subscribers in the EU. The Global System for Mobile Communications Association (GSMA) [forecasts](#) that there will be 311 million 5G connections across Europe by 2025, but that European markets still lag behind global peers such as Japan, South Korea and the United States in the adoption of the technology. The OECD [features](#) Denmark as having the highest percentage of 5G subscriptions (41 % of total mobile broadband subscriptions, 3.5 million subscriptions).

Existing situation

In its digital decade [strategy](#), the Commission has put forward its [vision](#) for new strategic digital objectives for 2030, including the connectivity targets to cover all EU households with a fixed gigabit network (1 Gbps) and cover all populated areas with 5G by 2030. These 2030 connectivity targets build on the 2020-2025 targets⁵ already laid out in the [gigabit society](#) and [5G action plan](#) communications of 2016. In setting the new targets, the Commission argues that, at the current pace of network development, it would be impossible to satisfy increasing user demand.

The European Electronic Communications Code ([EECC](#)) sets common rules on how electronic communications networks and services such as telephony and internet broadband connections are regulated in the EU. The [general aim](#) of the EECC is to 'promote deployment, access to and take up of very high capacity networks'. This notion primarily refers to a certain range of fixed and mobile network infrastructure.⁶

The Broadband Cost Reduction Directive ([BCRD](#)), adopted in 2014, is the main instrument used to lower entry barriers and costs related network deployments, by setting out harmonised rules on access to the physical infrastructure of all utilities for the purpose of building broadband networks (e.g. ducts, poles, masts, etc.). The directive also covers coordination of civil works, requirements for in-building wiring and 'high-speed ready' wiring guidelines (at least 30 Mbps) for new buildings construction and major refurbishments. However, the BCRD presents certain [shortcomings](#) that should be addressed in a review. These include:

- it covers the deployment of high-speed fixed and wireless broadband networks capable of delivering broadband access services at speeds of at least 30 Mbps while currently the EU target is Gigabit broadband (1 Gbps).
- it contains many optional measures and exemptions (e.g. provision of information held by public bodies is optional) that have triggered non-uniform approaches to BCRD provisions at national level, with mixed results.
- it lacks uniform processes and involves a large number of authorities (e.g. municipal, regional, environmental) for granting permits, slowing network roll out.

In September 2020, the Commission published a non-binding recommendation on a [connectivity toolbox](#) calling on Member States to agree on a set of best practices to boost deployment of and investment in VHCN. The '[Connectivity Toolbox](#)', agreed by Member States in March 2021, includes 22 best practices to help reduce VHCN network deployment costs, such as tacit approval for permit granting, 'light' permit granting procedures for civil engineering works, as well as discount possibilities on spectrum fees in return for operator commitments on mobile 5G deployments.

In addition, many funding initiatives support the deployment of broadband networks in rural, remote and other less well-served areas, such as the [Connected Europe Facility](#) (CEF Digital), COVID-19 [recovery funds](#) and [national State aid](#) initiatives.

Parliament's starting position

In its [resolution](#) of 1 June 2017 on 'Internet connectivity for growth, competitiveness and cohesion: European gigabit society and 5G', the Parliament welcomed the connectivity targets for a gigabit society. It also called on the Commission to tackle the digital divide and frame a coherent timetable and 5G financing strategy in line with the EEC. Parliament called for an investment-friendly regulatory environment, a coherent European spectrum strategy and acceleration of the EU's 5G standardisation efforts. Emphasising the positive impact that 5G could have on European society in terms of education, health, culture, cohesion and employment, the Parliament called for the development and improvement of digital skills, and demanded the Commission produce an annual 5G action plan review to report on progress made and to make recommendations.

In a [resolution](#) of 3 May 2022 on artificial intelligence in a digital age, the European Parliament stressed that the EU's digital infrastructure needs substantial updating, with just 25 % of people in the EU being able to connect to a 5G network, compared to 76 % of people in the United States. In addition, it observed that the EU lacks sufficient high-performance digital infrastructure with interoperable data spaces, high transmission rates and volumes, reliability and short delays. It further highlighted how a lack of 5G roll out in urban areas and wide access to fixed ultra-fast broadband networks might undermine the functioning of AI. Parliament therefore called for the BCRD to be put into practice to facilitate network deployment.

Council and European Council starting position

In its [conclusions](#) on 'Shaping Europe's Digital Future' of June 2020, the Council stressed that the COVID-19 pandemic has demonstrated the need for fast and ubiquitous connectivity. The Council called on Member States to develop, in close cooperation with the Commission, a set of best practices to reduce the costs of network deployment and facilitate the roll out of VHCN, including fibre and 5G.

On 22 November 2021, the Council published a [progress report](#) on the proposal for a decision establishing the 2030 'Path to the digital decade' policy programme. The Commission reminded Member States of the importance of finalising the adoption of the file if possible in the first half of 2022, to enable a first annual monitoring cycle, as well as establishment of the first European Digital Infrastructure Consortium (EDIC) by 2023.

The European Council [meeting](#) of 25 March 2021 stressed the need to enhance the EU's digital sovereignty and for the Council to swiftly examine the Commission's communication on the 2030 digital compass with a view to preparing the related digital policy programme. It identified the digital compass communication as a step towards mapping Europe's digital development for the next decade, and called on the Commission to use all available instruments in the field of industrial, trade and competition policy.

Preparation of the proposal

The European Commission published an [evaluation report](#) of the BCRD and commissioned a [study](#) to support the preparation of the [impact assessment](#) (IA), which was published together with the proposal. To collect stakeholders' opinions, the Commission organised: an [open public consultation](#) (OPC), workshops, surveys and expert interviews. Special efforts were also made to gather views from small and medium-sized enterprises on the impacts of possible policy options. The Body of European Regulators for Electronic Communications (BEREC), an EU-wide group of telecom regulators, published its [opinion](#) on the revision of the BCRD in March 2021. The BCRD review is part of the Commission's [REFIT programme](#), included in the Commission's [2020 work programme](#).

Study on the evaluation of the BCRD

A [study](#) on the review of the Broadband Cost Reduction Directive published in 2023 analyses the need for reviewing the existing BCRD. Specifically, the study stresses how the **high cost of deploying gigabit infrastructure** and the **complex and lengthy procedures to obtain permits and access to sites** required for network deployment are at the core of electronic communications network (ECN) operators' problems in deploying FTTH or other fixed gigabit solutions (e.g. fixed wireless access – FWA). For instance, the cost to deploy FTTH in the most rural areas is almost double when compared with the cost of deployment in densely populated areas. Complex permit procedures might also undermine the deployment of VHCN and of the thousands of small cells needed to achieve full 5G coverage. Although the study recognises that the current BCRD already includes measures aimed at addressing the problems described,⁷ it flags how the many **optional measures** and **exemptions** contained in the existing directive,⁸ as well as the unclear definition of **'fair and reasonable' price** to access existing physical infrastructure, have jeopardised national approaches and produced mixed results. The study further links the lack of progress in granting permits to deploy VHCN to the **large numbers of authorities involved** in the procedure (e.g. municipalities and environment authorities) and the **lack of uniformity** in the granting procedures at local and regional levels. The study points to an **existing mismatch** between the current BCRD objectives for 'high-speed broadband' (30 Mbps) established in the directive and the current European gigabit connectivity goal (1 Gbps). According to the authors, this might lead, for example, to inadequate specifications for new in-building infrastructure. The study recommends that a review of the BCRD should: (i) reduce the cost of fixed and wireless VHCN deployment;⁹ and (ii) work on streamlining and digitising administrative procedures required for network deployment.¹⁰ Indeed, the cost of EU inaction through maintaining the current conditions of limited sharing or coordination in infrastructure deployment would require a substantial estimated investment of €145 billion to deploy FTTH to 90 % of households in Europe and fail to achieve the target of universal availability of gigabit broadband by 2030.

Open public consultation

The European Commission [open public consultation](#) (OPC) ran from 2 December 2020 to 2 March 2021, gathering replies from 96 respondents, including ECN representatives, local and regional authorities, national regulatory authorities, consumer EU associations and the general public. The majority of responses came from Germany (22 %) and Belgium (13 %). The OPC sought stakeholders' views on evaluation of the overall functioning of the BCRD and possible adaptations to technological, market and regulatory developments for a more efficient and faster deployment

of VHCN. Most stakeholders, including the ECN operators, agree that simplified permit-granting procedures (e.g. electronic submission of permit applications) would help network deployment and that the availability of regularly updated and georeferenced minimum information on existing physical infrastructure or planned civil engineering works would help ease network roll out.

BEREC opinion on the BCRD review

In its [opinion](#) of March 2021, BEREC offered a number of suggestions to improve the functioning of the directive, with the aim of improving the conditions for deployment and take-up of VHCNs. In particular, BEREC suggested that the expansion of physical infrastructure for hosting VHCNs could be helpful and that there is potential for coordination of civil engineering works, expansion of access obligations for existing physical infrastructure, and increased infrastructure sharing to reduce the cost of and speed up network deployment. The dispute settlement process and single information point, where a set of minimum information on existing physical infrastructure (e.g. location and type of infrastructure) must be made available, could also be improved. In addition, BEREC suggested caution in considering changing the scope of the rights and obligations under the BCRD from high-speed ECNs to VHCN, because networks which do not qualify as a VHCN may also contribute to the EU's connectivity goals, but would not benefit from the network deployment cost reductions envisaged under the existing BCRD.

Impact assessment

The Commission conducted an impact assessment (IA) on the proposal to address the problem of reducing costs and accelerate VHCN deployment by: (i) optimising deployment and re-use of physical infrastructure; and (ii) drawing up consistent, streamlined and digitalised administrative procedures for network deployment across the EU. The IA analysed four policy options to help achieve the digital decade connectivity targets by 2030. The four options included: (1) Minimal update to extend the BCRD's scope to VHCN; (2) Extend the scope to VHCN but also extend access to public non-network physical infrastructure assets and improve permit-granting procedures for network deployment; (3) Build on the option above, but also introduce new rules to clarify access to physical infrastructure (e.g. in-building wiring), civil engineering works coordination (e.g. georeferenced information), as well as strengthening the permit-granting procedures and mandating installation of in-building fibre with the creation of a national fibre-ready label for certain types of buildings through standards; (4) Build on the previous option, but extend access obligations and civil engineering work obligations to all private operators and mandate an EU fibre-ready label through standards.

All options except the first one would require a new regulation instead of a directive. Option 3 prevailed as the preferred choice, as it appears to best balance short-term implementation costs with medium-term benefits, keep unnecessary regulatory burdens to a minimum, and limiting greenhouse gas emissions from the electronic communications sector.

The IA was submitted to the Regulatory Scrutiny Board (RSB) on 16 February 2022 and [received](#) a positive opinion with reservations on 18 January 2023. The RSB required that the initiative should clearly set out the incremental value of the proposed [gigabit infrastructure act](#) (GIA) by explaining the different determinants affecting the roll out of VHCN and the importance of 5G standards. The RSB also noted that the trade-offs between the needs of infrastructure sharing and the risk of excess capacity (overbuild) should be considered in more detail. The RSB observed that the cost-benefit analysis of the environmental impacts of the initiative (e.g. reduction of CO₂ and other greenhouse gas emissions) requires greater clarity and convincing arguments, to allow a better understanding of the effects.

The changes the proposal would bring

Principles and objectives

In February 2023, the Commission [presented](#) a set of actions, the 'connectivity package', consisting of the draft [gigabit infrastructure act](#), a draft [recommendation](#) to promote gigabit connectivity, and an [exploratory consultation](#) on the future of electronic communications infrastructure including the [network cost contribution debate](#). The aim of the connectivity package is to make gigabit connectivity (1 Gbps) available to all citizens and businesses across the EU by 2030, in line with the objectives of the EU digital decade policy [programme](#) and to enable the transformation of the connectivity sector in the EU.

With the proposed gigabit infrastructure act, the Commission seeks to facilitate and stimulate the roll out of VHCN (including 5G) 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 lower cost. According to the Commission, a directly applicable regulation such as the proposed gigabit infrastructure act would be the most suitable instrument to realise the 2030 digital targets, rather than the current directive. The proposal would therefore replace the BCRD.

Main provisions

Broader scope and access to existing physical infrastructure

Article 3 of the existing BCRD gives ECN operators the right to access the physical infrastructure¹¹ of utilities, such as electricity networks, as well as that of other telecoms operators, for the purpose of deploying high-speed broadband (30 Mbps).

The gigabit infrastructure act would update the scope of the current directive, moving from the deployment of high-speed broadband network (30 Mbps) to the deployment of VHCN (e.g. FTTH and 5G – article 1). The definitions of network operator and physical infrastructure in article 2 are extended to include **providers of associated facilities** (e.g. tower companies – 'TowerCos') and **'any other assets, including street furniture'**, such as street lights, street signs, traffic lights, billboards, bus and tram stops, and metro stations (e.g. supporting small cells deployment for 5G).

The proposal introduces an access obligation to physical infrastructure that is not part of a network but is **'owned or controlled' by public sector bodies – 'public non-network assets'** (article 3), such as public administration buildings, with an exception for certain categories of buildings (e.g. reasons of public security, safety or health). As far as access conditions to existing physical infrastructure is concerned, the proposal further specifies the current requirement to provide access under **'fair and reasonable terms and conditions, including price'** by listing factors to take into account, such as: (i) the 'fair opportunity' for the access provider to recover its costs; and (ii) the impact of the access request on the operator's business case (e.g. infrastructure investment).

The proposed gigabit infrastructure act introduces a possibility for Member States to establish a **specific body to coordinate access requests** to physical infrastructure owned or controlled by public sector bodies (article 3.4). The body would be tasked with: (i) providing legal and technical advice through the negotiation of access terms and conditions; and (ii) facilitating the provision of information through the single information point (SIP).

Streamlined and accelerated permit granting procedures

Article 7 of the existing BCRD requires Member States to make information concerning the conditions and procedures for granting permits for civil engineering works for the deployment of ECN available via a SIP. The directive: (i) sets a default four-month deadline for local authorities to grant or refuse a permit from the date of the receipt of a complete permit request; (ii) gives Member

States the option to require permit applications through electronic means; and (iii) allows them to provide compensation when deadlines are not respected. This means that Member States may optionally decide on whether ECN operators must be compensated if they suffer damage because of the competent authorities' non-compliance with the deadlines for granting permits.

The proposed gigabit infrastructure act simplifies the licensing/authorisation procedures for the deployment of VHCN by, inter alia:

- requiring Member States to provide **consistent rules** governing the conditions and procedures applicable for granting permits, including rights of way;
- introducing a **tacit authorisation**, deemed to be granted in the absence of a response from the competent authority (tacit approval) within the four-month period required to issue the license/authorisation, unless this period is extended;
- adding a **mandatory right to compensation** (rather than optional), for damage caused through non-compliance with the legal deadlines (e.g. competent authorities must confirm the completeness of a permit obligation within 15 days of receipt);
- mandating that the **fees** for such procedures cannot exceed the administrative costs;
- **enabling** operators to submit permit applications **online**.

Transparency: Going fully digital

Article 4 of the existing BCRD requires that Member States ensure that network operators (e.g. electricity, gas, water, transport and telecoms) give ECN operators access to a minimum set of information¹² regarding their physical infrastructure (e.g. location and type of work). Member States have the option to oblige public sector bodies holding information about physical infrastructure to make it available through a SIP.

The proposed gigabit infrastructure act **obliges** network operators and public sector bodies owning or controlling physical infrastructure to publish information about existing and planned physical infrastructure suitable for the deployment of VHCNs via a **fully digitised SIP**. This transparency obligation does not apply to infrastructure considered critical for national security or where it would be disproportionate. In addition, the proposal requires that information on location and route must be **georeferenced** and should be provided in any event **no later than 15 days after the request** for information is submitted.

Article 5 of the existing BCRD requires Member States to ensure that all network operators or indirectly performing directly 'civil works', either fully or partially financed by public means, meet reasonable requests (those that do not entail any additional costs, including delays) from telecoms companies to coordinate civil engineering works on transparent and non-discriminatory terms to roll out broadband networks. Member States may provide guidelines on allocation of the costs associated with the coordination of civil engineering works.

For **coordination of civil engineering works**, the proposal establishes that any network operators carrying out civil engineering, publicly financed in whole or in part, would have to meet any reasonable written request to coordinate with other operators deploying VHCN or other associated facilities under fair, reasonable and non-discriminatory terms (FRAND). It further extends the deadline for requesting coordination of civil engineering works. Indeed, the request should be filed at least two months before the submission of the final project to the competent authorities for granting permits. Information on such types of civil engineering work must be published via a SIP and the Commission must be notified.

Article 10 of the proposal requires that all the information collected in the **single information point** (e.g. on existing physical infrastructure or planned civil engineering works) should be made available in a digital format, such as web portals or digital platforms. This would allow the exercise of rights and compliance with obligations set out in the proposed regulation. To ensure network security (e.g. critical infrastructure), or to safeguard legitimate business secrets, the information made available through the digitised SIP may be limited to certain parties.

Access to in-building physical infrastructure and fibre wiring

The proposed gigabit infrastructure act maintains ECN operators' right to **access any existing in-building physical infrastructure** if duplication is technically impossible or economically inefficient. In addition, it requires that **all new and substantially renovated buildings must be fibre-ready** (rather than high-speed ready, as in the BCRD), in terms of in-building infrastructure, access points and in-building fibre wiring. The proposal would also introduce a **mandatory fibre-ready label**, instead of the voluntary option in the current BCRD, for these new and substantially renovated buildings, by obliging Member States to adopt technical standards and a certification scheme to underpin the label. These standards must set specifications including cable, socket, pipe and fibre interface types. This fibre-ready label would work as a prerequisite to obtain a building permit.

Advisory committees

The European Economic and Social Committee (EESC) and the European Committee of the Regions (CoR) have not yet adopted opinions. However, the EESC [opinion](#) is ongoing and expected on 13-14 July 2023. Maurizio Mensi (Civil Society Organisations' Group – Group III) was [appointed](#) as rapporteur.

National parliaments

The [subsidiarity deadline](#) for national parliaments to issue an opinion on the proposal was 17 May 2023. Only one [reasoned opinion](#), from the Italian Chamber of Deputies, has been submitted. This opinion, inter alia, stresses how the decision to introduce a regulation, rather than amend the existing directive should be reconsidered.

Stakeholder views¹³

Legal instrument: Regulation or directive?

In its [analysis](#) of the Commission's proposal, BEREC points out the advantages of a directive instead of a regulation. However, the EU regulator argues that a directive would ensure telecoms national regulatory authorities (NRAs) more flexibility in addressing the specific regulatory and deployment conditions in their countries, which vary widely among EU Member States. Taking a similar approach, the German broadband association (Bundesverband Breitbandkommunikation e.V./BREKO), which represents the majority of German fixed fibre network operators, [stresses](#) it would have preferred a directive rather than a regulation, to continue ensuring flexibility for Member States to adapt the framework to their different individual needs.

In contrast, the leading wholesale provider of active and passive telecommunications infrastructure services in the central and eastern Europe region, CETIN, [agrees](#) on the proposed choice of legal instrument, as providing more immediate benefits to the VHCN deployment process in view of the 2030 digital decade objectives.

Scope – TowerCos and rooftops

Vantage Towers AG, a European tower company active in several Member States, [states](#) that inclusion of tower companies (TowerCos) in the scope of the regulation and imposing stringent new obligations on them for sharing infrastructure (e.g. fair and reasonable prices) would undermine future network roll out plans. According to Vantage Towers AG, there is no evidence that the TowerCos market does not function. Indeed, as a neutral host, TowerCos already have a strong commercial interest in sharing their infrastructure with as many operators as possible.

A British-Dutch-American multinational telecommunications company, Liberty Global, however [supports](#) the extension of access obligations to non-network physical infrastructure owned and controlled by public sector bodies (e.g. buildings, street signs or streetlights). It also suggests that

the list of physical infrastructure should explicitly mention rooftops, which would further accelerate the roll out of VHCNs.

Transparency obligations – Administrative burdens and security concerns

BREKO advises against providing georeferenced information as a mandatory transparency requirement on existing physical infrastructure, as well as on planned civil engineering works, as such information sharing would greatly increase the risk of sabotage and physical attacks on critical infrastructure. Recommending a careful approach to facilitating civil engineering works coordination and avoiding increasing the administrative burden on network operators, CETIN proposes applying the information obligation only to those works that present viable coordination opportunities (e.g. municipalities reconstructing pavements and fully or partially public-financed works).

Defining the 'fair and reasonable' access model

A European Telecommunications Network Operators' Association (ETNO) [position paper](#) calls for the provisions regarding the 'fair and reasonable price' to access infrastructure to be complemented with sufficiently detailed guidelines, to avoid excessive prices. On this point, ETNO advises that the concept of 'fair and reasonable' should not have a disruptive application on network operators that already have a business model based on renting infrastructure to third parties (e.g. TowerCos and wholesale-only operators). The European GSM Association (GSMA), representing mobile network operators, [welcomes](#) the Commission's proposal to issue guidance on the application of provisions related to access to physical infrastructure and to improve the definition of 'fair and reasonable' pricing.

Tacit approval for permit granting

On one hand, BEREC is against including mandatory tacit approval for rights of way for several reasons. For instance, BEREC considers the possibility that private persons allow major works on their premises (e.g. constructing a mast), because an authority did not make a timely decision to be disproportionate. On the other hand, ETNO and GSMA find the concept of tacit approval could prove effective and welcome the provision.

Faster permit granting procedures and dispute settlement

Digital Europe, representing the digital technology industry in Europe, [suggests](#) setting an even shorter timeline than the four-month period required to issue the license/authorisation envisaged in the proposal. Liberty Global considers the four-month deadline proposed under the proposal as an absolute maximum, but that Member States should be able to set shorter timelines.

Other positions

European consumer organisation BEUC, [welcomes](#) the revision of the existing directive. BEUC encourages the co-legislators to focus on empowering consumers, especially the most vulnerable and those living in more remote areas.

Providing detailed comments, CETIN proposes inter alia, amendments regarding: (i) applying the obligation to provide information about planned roadworks (article 6(1) to public sector bodies, as well as (ii) adding a sufficient in-door mobile coverage by design requirement (e.g. at least 50 Mbps), as a condition to obtain building permits for newly built or substantially refurbished large commercial buildings (article 8).

The Centre on Regulation in Europe (CERRE) [reports](#) that the implementation of the BCRD was not effective. The most significant reasons cited by CERRE are: (i) failure in institutional design (no one

has overall responsibility for implementation); and ii) the inability to systematically designate prices for access. The report also suggests that NRAs should be designated as lead agencies for the implementation of the BCRD, with responsibility to deal with infrastructure access requests and set prices for access at fair conditions.

Legislative process

In Parliament, the [file](#) has been assigned to the Committee on Industry, Research and Energy (ITRE). Alin Mituța (Renew, Romania) has been appointed as rapporteur.

At the Council, work on the proposal has started and the Council took note of a progress report on the proposal on 2 June 2023.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

[Network cost contribution debate](#), EPRS, European Parliament, April 2023.

[Path to the digital decade programme](#), EPRS, European Parliament, February 2023.

[The EU digital decade: A new set of digital targets for 2030](#), EPRS, European Parliament, August 2021.

[European declaration on digital rights and principles](#), EPRS, European Parliament, June 2021.

[EU electronic communications code and co-investment: Taking stock of the policy discussion](#), EPRS, European Parliament, February 2018.

[Towards a European gigabit society: Connectivity targets and 5G](#), EPRS, European Parliament, June 2017.

OTHER SOURCES

[Measures to reduce the cost of deploying gigabit electronic communications networks](#) (gigabit infrastructure act), Legislative Observatory (OEIL), European Parliament.

ENDNOTES

- ¹ Article 2(2) of the EEC defines the term 'very high capacity network' as: 'Very high capacity network' means
 - either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location; or
 - an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation'.
- ² This figure includes the 5G coverage of major transport paths and does not take into account potential cost reduction thanks to the simultaneous deployment of fixed and mobile gigabit networks. Source: forthcoming study 'Investment and funding needs for the digital decade targets' (see Commission [consultation](#), p. 4.
- ³ European Commission [staff working document](#), impact assessment gigabit infrastructure act, February 2023, p. 95.
- ⁴ Draft BEREC [guidelines](#) on very high capacity network, March 2023.
- ⁵ (i) Commercial introduction of 5G service in at least one major city in each Member State by 2020.
(ii) 100 % of EU households with access to at least 100 Mbps download, upgradable to 1 Gbps and 100 % of socio-economic drivers (e.g. schools, businesses, research centres) with access to at least 1 Gbps at symmetrical speeds by 2025.
(iii) Uninterrupted 5G coverage for all: (i) European urban areas, and (ii) major terrestrial transport paths, by 2025.
- ⁶ Including entirely fibre-based networks such as fibre-to-the-home (FTTH), networks mixing copper and fibre elements or coaxial cable with very high bit rate digital subscriber lines (e.g. FTTC/VDSL and cable DOCSIS 3.1) and 5G.
- ⁷ Measures to facilitate access to existing physical infrastructure from a range of network operators, to support civil works co-ordination, require 'high-speed ready' in-building infrastructure and to set limits on timeframes for permit granting and incentivise compliance with those timeframes.
- ⁸ e.g. processing of permit applications by electronic means or the provision of compensation in cases where deadlines are not met.
- ⁹ e.g. extend access obligations to include non-network infrastructure suitable to deploying ECN.
- ¹⁰ e.g. tacit approval if the deadline for the permit granting passes without a decision.

- ¹¹ Article 2(2) BCRD: 'physical infrastructure' – meaning any element of a network which is intended to host other elements of a network without becoming itself an active element of the network, such as pipes, masts, ducts, inspection chambers, manholes, cabinets, buildings or entries to buildings, antenna installations, towers and poles; cables, including dark fibre, as well as elements of networks used for the provision of water intended for human consumption, as defined in point 1 of Article 2 of Council Directive 98/83/EC – is not physical infrastructure within the meaning of this directive.
- ¹² e.g. location and type of works, network elements involved, estimated date for starting the works and their duration, and a contact point.
- ¹³ This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under 'European Parliament supporting analysis'.

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eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

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